

THE DECISION-MAKING PROCESS
IN A RURAL COMMUNITY
IN LESOTHO

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by
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SELECTED SESOTHO GLOSSARY

<u>banna ba lekhotla</u>	men of the court
<u>bohali</u>	marriage, marriage payment; 'dowry', 'bride-price', 'bridewealth', 'childprice' (see Ashton 1952:66 ff., Duncan 1960:19-20, Poulter 1976)
<u>bokhinapere</u>	small place where one puts one's horse to graze; area surrendered by a lesser to a greater authority placed over him (see Ashton 1952:317, Duncan 1960:57-8)
<u>leboella</u> (pl. <u>maboella</u>)	reserved grazing grounds (see Duncan 1960:74-8)
<u>lekhotla</u> (pl. <u>makhotla</u>)	'court where men sit in the village, where public business is transacted and public ceremonies held; court of justice' (Ashton 1952:317); 'is also used of any deliberative assembly ... and can be applied to a band or regiment of warriors, or to a political party' (Hamnett 1975:148)
<u>lekhotla la puso</u>	administration court
<u>lekhotla la tlhopho</u>	arbitration court
<u>lelapa</u>	small court formed in front of a house by a reed enclosure; home; family
<u>liremo</u>	uncultivated plants of economic value (see Duncan 1960:99-102)
<u>liretlo</u>	medicine made in part from flesh sliced from a living human victim (see Jones 1951, especially p. 14)

<u>'mehi</u> (pl. <u>babehi</u>)	<u>leboella</u> caretaker
<u>mofumahali</u>	chieftainness; honorific term sometimes used loosely to indicate respect (from <u>ho fuma</u> -- to become rich)
<u>mohanyetsi</u> (pl. <u>bahanyetsi</u>)	contradictor, opponent, adversary; member of the Opposition
<u>mokhibo</u> (from <u>ho khiba</u>)	graceful dance performed by women or girls in a kneeling position
<u>morena</u>	chief; may be used as a 'courtesy title to anyone of importance' (Hailey 1953:74); (from <u>ho rena</u> -- to be rich, not to work)
<u>moreneng</u>	the chief's place
<u>ntate</u>	my father; also form of polite address towards any man
<u>phala</u> (pl. <u>liphala</u>)	chief's 'bugle'; non-hereditary lower rank headman (see Hamnett 1975:155); might also be translated in local parlance as the 'eye' of a chief, his representative in a certain area
<u>pitso</u> (pl. <u>lipitso</u>)	assembly, gathering, public meeting (from <u>ho bitsa</u> -- to call)
<u>gomatsi</u>	stealth, theft, difficulty; term used for the emergency and its manifestations at village level after the abortive general election of 1970
<u>sechaba</u>	nation, tribe, people

TERMINOLOGY

An inhabitant of Lesotho is known as a Mosotho, of which the plural is Basotho. Sesotho is the language they speak (linguistically identified as Southern Sotho). The Basotho also use the word Sesotho to qualify things specifically of their culture. Before independence the country was called Basutoland, its people Basuto. I use the modern forms of these terms, referring, for example, to the country as Lesotho even in colonial times. Direct quotations and references retain the spellings used by their authors. I follow the orthography used in Lesotho, and not the 1959 South African one.

In order to maintain some anonymity for my informants, I have used pseudonyms throughout: for places, for the chieftainship, and for ordinary people in the ward of study. The only figures who appear under their own names are prominent political ones who are not of the 'Seeiso' chieftainship.

The word 'chieftainship' needs comment. It translates the Sesotho borena (from the same stem, rena, that yields morena, or chief) which means 'chieftainship, kingship, government, authority' (Mabille and Dieterlen). The word is used in a sense other than that too, and in common with other writers, I freely apply it in the context Hamnett describes:

it shades off into a collective sense and can refer to the chieftainship as a body or corporation. The 'chieftainship' in this latter sense has, in fact, a collegiate character, in which the Paramount Chief has a pre-eminent and archetypal role, but which he does not exhaust. (1975:86-7)

The term morena is used with bewildering variability in Lesotho. It refers, of course, to a chief, but may also be addressed as a mode of respect to someone not, or only distantly, of chiefly connexions, or to female members of the chieftainship. Similarly the title mofumahali (chieftainess) may be loosely used to indicate respect. The former title 'Paramount Chief' has been superseded by 'Motlotlehi' (The one who deserves praise) for His Majesty King Moshoeshoe II.

I am aware of the terminological traps inherent in terms such as 'use', 'own', 'hold', to refer to the interest held in a land by its user in traditional African land tenure systems. Cowen (1967) discusses the dangers and sets out the principles involved in Lesotho. For ease of reference, however, I continue simply to use such phrases as 'her land', 'the land holder', 'the land user', 'he owns three lands', and so on.

GENERATIVE CONCEPTS

A great avalanche suddenly slides down a mountainside and sweeps away everything in its path. It destroys homesteads and kills unsuspecting men, women and children in their sleep. The world is overawed and stands aghast. The resultant shock numbs the intellect. No one pauses to contemplate the number of factors responsible for this irresistible movement of the snow. Everybody has temporarily forgotten that a host of natural phenomena, unobtrusively working over many decades, have contributed--each in its own way, no matter how small--to its engulfing movement. As it is in nature, so it is in the political affairs of men. (Khaketla 1971:1)

The Kingdom of Lesotho has one great asset missing in most new African states, namely, a highly literate homogeneous population which constitutes a genuine national community of long standing. Nevertheless, its political fabric has constantly been strained to the breaking point by the unrelenting competition of various factions and interests within the society. (Weisfelder 1969:27)

Nowadays it is common to hear the complaint "Politics is killing us" --meaning that party political allegiance has so divided the community that the old institutions and social relationships, which were based on a general consensus and a wide sharing of values, are no longer effective. (Devitt 1969:121)

The role of the Chiefs has always been a positive one. A Chief lives with the people, advises, guides and directs. He gives encouragement. He is the focal point. I still feel that the majority want the Chieftainship system to play this role, starting with the King down to the lesser Chiefs. I am much happier talking to the people, discussing their problems, than sitting here. I was brought up that way, as an ordinary Mosotho herdboys. And I am certain that the Chieftainship system can be blended to a modern society. (Motlotlehi, His Majesty King Moshoeshoe II; quoted by Khaketla 1971:169)

Those who have studied the history of that type of Indirect Rule which is based on the use of traditional African institutions will not need to be reminded that it was no part of the objective of the first advocates of this system to preserve intact the institutions which it utilized. Their whole conception of Indirect Rule implied that these institutions would gradually adjust themselves in response to the new conditions in which they were to operate and the new needs which they would be called upon to meet. But it is improbable that anyone concerned in the introduction of the system ever envisaged either the rapidity or the range of the changes which traditional institutions were to undergo in the course of this process of adjustment. ... Basutoland is certainly a case in point ...
(Hailey 1953:99)

The Chieftainship is, in sum, neither traditional nor bureaucratic. It is not finally responsible to the people or to the Government. And yet it is the fulcrum of Basutoland's political structure. The British Administration and the elected politicians can only approach the people under the aegis of the local Chief, and villagers must pass along an interminable hierarchy of headman and chiefs before they can talk to the District Commissioner, bring a case to court, or take greetings or complaints to the Paramount Chief himself. There is no other official channel of communication between peasant commoners and the rest of Basutoland, and no other administrative machinery in the villages.
(Wallman 1969:24-5)

Despite substantial opposition in the Senate, the BNP leadership did push through legislation increasing governmental supervisory and disciplinary powers over traditional administration and effectively reducing certain prerogatives of the king. While the government may have gained some additional levers over political enemies, it could not hope to enforce an end to abuses of power, inefficiency, and drunkenness among chiefs without seriously undermining its own power base.
(Weisfelder 1972b:135)

The study of law is a diagnostic tool, applied to a part of society that may be particularly sensitive to values.
(Aubert 1969a:277)

The typical view of law as a distillate of an integrated culture, as an institutionalization or "reinstitutionalization" of major cultural values which people (as an undifferentiated unity) are willing to impose authoritatively upon themselves, does not help us understand what features of culture become law, how law changes, the fact that law is as much used to wage as to settle conflict, or the use of law in societies with legal pluralism. Law as a vehicle for the oppression or suppression of members of one class, caste, religion, race, ethnic group, political party, or interest group by another is also inexplicable in this view of law. So, too, is the conscious creation or borrowing of novel legal principles by an elite which imposes these legal principles upon the populace in an effort to induce change. It is only if legal ideas are viewed as arising from and as being relevant to conflict situations that these various aspects of law--aspects of which we are all aware, but of which most anthropological studies of law take little cognizance--can be understood.
(Tanner 1970:380-1)

[Something] that is going on in any law case is the struggle between the parties over particular issues. If the position of the parties, the authority, or the nature of the issues ... are a matter of concern in public affairs then the struggle between them may be a political matter in itself. Thus the political qualities of a dispute may reside in three distinct elements: the procedures, the persons, and the issues.
(Moore 1970:340)

Since we live in a period in which the potential effectiveness of central planning and the use of law as the tool of the social engineer are heavily emphasized, it is perhaps worth stressing what is probably obvious, that by no means all, nor even the most important social changes necessarily get their principal impetus from legislated or other legal innovations, even in centrally planned systems. A corollary proposition is probably equally obvious, that the effect of legislative innovations is frequently not what was anticipated, though perhaps with adequate sociological analysis, it might have been predicted.
(Moore 1973:730)

My main point is that most of the salient constraints on the course of change will be found to be social and interactional, and not simply cognitive. They will derive from the existing social and ecological system within which change is taking place. And finally, they can most usefully be analyzed with reference to the opportunity situation of social persons or other units of management capable of decision-making and action: the mechanisms of change must be found in the world of efficient causes.
(Barth 1967:668)

Chapter One

INTRODUCTION

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LESOTHO

Lesotho is a small, mountainous country entirely surrounded by South Africa.⁽¹⁾ The stark nature of its terrain and topography present harsh options to its inhabitants. Much of the country is mountainous, better suited to the keeping of stock than to agriculture. The lowlands, where the soils are more amenable to the plough, are scarred and cut by dongas. The soil is overworked and overcrowded and Lesotho does not grow enough to feed its people who depend on migrancy as a viable alternative to the limited resources of their own land. They stream from the country to seek wage employment in South Africa, for Lesotho has minimal industrial development and cannot provide jobs for her people. The civil service absorbs some of the educated elite, as does teaching, but the majority must sell their sweat in South Africa's service.

The inescapable fact about Lesotho's economic destiny is that there are too many people on too little land. The population of about one million is confined within 30 344 square kilometers, and concentrated in the lowlands. The country has few natural resources that could dynamically change the gloomy picture of:

the interaction between an archaic form of land tenure, a social system biased against rapid change, mounting population pressure, and the physical features of the land. From the interaction of these four factors has evolved a pattern of eroding soils, declining output per unit of land, malnutrition, and labour migration, with all the attendant social and moral evils. (Leistner 1966:6-7)

Lesotho could, in theory, harness her water resources to sell both power and water to her encompassing neighbour. The potential has been investigated, but such a venture, even were South Africa to cooperate, would exact the political price of further dependency. Lesotho has diamonds in exploitable quantities, but the granting of concessions to

offshoots of world capitalism has caused ruptures between Lesotho's indigenous miners and the Government of Prime Minister Leabua Jonathan.

There is not much to go round in Lesotho. This has led to a situation in which political competition and in-fighting have been given a keen edge, spawned of necessity. The party in power has packed Government jobs with its supporters as patronage is an indispensable adjunct in Lesotho to Government stability. The desire to oust a Government seen to practise favouritism has been correspondingly high among Opposition supporters and, in a country where even traders are pressured to employ Government followers, the edge of political rivalry scrapes right down to grass roots and leaves scars of bitterness and grudge. With its relatively highly educated population, who, for more than a century, have nourished expectations of freedom and development and measured the fact of life of their own poverty by the yardstick of South Africa's prosperity, political contest in Lesotho is shaped by a hard equation which breeds an intensity of competition resembling a zero-sum game. At the rural level where my fieldwork was conducted, the acrimony and polarization of national politics were reflected in schism and factionalism which formed the design of my study.

Lesotho only stands apart from South Africa because of Moshoeshoe I. He drew to himself the scattered remnants of tribes and people fleeing from the turbulent movements of the nascent Zulu Empire. Utilizing the mountain depths as a refuge from the tides of the Lifaqane (The Wars of Calamity), he welded from these disparate elements what was to become the Basotho nation. Using the mountain fortress of Thaba Bosiu as a defensive base, he played off one enemy against another as he built up an island of security with treaty and alliance. He used missionaries as translators, mediators and policy advisers to deal with the encroaching world. He was quick to see the value of innovation,

and the gun and the horse were incorporated into the armoury of Lesotho, revolutionizing their power and art of warfare. Lesotho was to be drawn into that complex of power relations which is still working itself out in Southern Africa. The Boers were trekking into the interior to escape colonial rule and the blunting presence of Xhosa settlement in the coastal area. It was inevitable that Boers and Basotho clash for the fertile lands where the foothills of Lesotho meet the plains. The two peoples were similar, with their flocks and herds and desire to till the earth. There came now to Basotho history a time of skirmish and confrontation, with Moshoeshoe establishing himself as perhaps Southern Africa's finest statesman. He sought always the middle path and struck many of the early observers as an admirably reasonable man. Eventually the long wars wore the Basotho nation down and, although they were never decisively conquered, they were forced to turn to Britain for aid and seek shelter in the British Empire.

Moshoeshoe left behind him, ingrained in his people's traditions, a reverence both for the chieftainship and for the tenets of enlightened rule that remain a force in the country to this day. The political structure of the traditional chieftainship still largely reflects the main descent lines from Moshoeshoe which provide the arterial system that sustains this power structure.

Basotho have traditionally accorded great respect to chiefs and most continue to do so. ... They tend to regard chieftainship as a mark of tribal self-respect and to look with pity and contempt on a man without a chief; and it is ... a fact that Lesotho has developed both politically and administratively on the basis of chieftainship. Chieftainship is, in fact, a national institution with which Basotho often identify themselves and of which they are proud.
(Hamnett 1975:87)

The chieftainship today, however, is inheritor to contracted powers, prerogatives and traditional charisma. Coexistence with a colonial authority diminishes indigenous autonomy and in common with much of

Africa, the chieftainship in Lesotho has had to accede to a progressive distortion of its role. Reforms introduced in the 1930's led to a diminution in chiefly powers and a concomitant accretion to centralized agencies. Many scions of the burgeoning chieftainship were lopped of power by the end put to the 'placement system' whereby the sons of tribal authorities were traditionally given areas of jurisdiction. The formalization of gazetting penned in the traditional hierarchy. These changes were to direct the concept of chieftainship into a more bureaucratic style which, with the institution of a National Treasury in the 1940's, transmuted the very sources of chiefly legitimacy and authority and confirmed the process of turning tribal authorities into the salaried executive arm of Government. (2)

The impetus that changed the role of the chief did not come only from the formal planning of the bureaucrat: the opening up of the diamond and gold fields in South Africa created an urgency for labour. Basotho became involved in a cash economy and, as was common in Southern Africa, the tribal economic sphere became integrated with the forces of world commerce. The dissolvent power of money ate into many of the fine bonds that connected chiefs and people in a subtly balanced concord of mutual reciprocities. Chiefs became more concerned with the accumulation of cash, and subjects' dependency dwindled as they could strike out into South Africa and free themselves of the social and economic limitations of a chiefly ward. Crossing the border opened new horizons to the migrant and ideas of liberation from both colonial power and traditional suzerainty fed back into Lesotho. The chieftainship was challenged from commoner platforms and chieftainship became more nearly associated with Central Government.

At the time of my study, the chieftainship was uneasily poised between a newly independent Government which was continuing the policy

started in colonial times of assuming powers and rights of jurisdiction formerly within the traditional province; politicians contesting a hotly fought general election; and a peasantry estranged in some measure from their traditional heads. The thesis attempts to come to terms with how this intercalary position is reflected in decision-making in the ward of a Principal Chief. It explores the trend of encapsulation whereby Government feeds into the local orbit to breach local autonomy. It considers problems such as the articulation of local interests. In particular, it attempts to probe the dovetailing between the local community and the wider society, with all the compromise, complication and adjustment that such interfaces entail.

THE WARD

'Mampho's, the village of study, is situated where the low-lands flow to meet the foothills on one of the roads winding into the mountains. It is not far from the main tarred road and the District administrative capital, and the numerous buses that pass through it keep it in touch with the country's capital. As it is the seat of Principal Chief Seeiso, one of the twenty-two principal and ward chiefs who administer the country directly below the King in traditional rank, the village is the tribal administrative heart of a large ward.⁽³⁾ Consequently it lacks the neat arrangement of smaller, perhaps lineage-based communities, and sprawls across a plateau and along the rocky slopes. This part of the ward is densely settled and from the village there is an almost imperceptible slide into a number of satellite villages at times so closely adjoining that the transition is not immediately discernible. The village itself is sufficiently large to be divided into a number of sub-sections, each with its own name and perhaps its own phala (chief's 'bugle' or 'eye'). The village emphatically

does not give a sense of tight-knit community life, which might be illustrated by the point that the headmanship of 'Mampho's is not hereditary, and that, over the years, a succession of different men have held this position. Although church attendance, soccer teams, communal work parties, drinking in beer houses, and so on, provide for group activities, the village does not conform to the model presented in earlier literature of an integrated sociological unit, balanced around the person of the chief or headman and the forum of the men's lekhotla (court and daily gathering place).⁽⁴⁾ It is a lowland village and its people look outwards to the mines and the wider world rather than remaining rooted with exclusively Basotho concerns. Its nearness to the tarred road and the South African border simplify the step of contracting to go to Gauteng (the place of gold; Johannesburg). The village holds few job opportunities: there is a store, a few cafe owners, some men with tractors and one who attempted wild-cat diamond mining.⁽⁵⁾ Two were unable to sustain their entrepreneurship during the fieldwork period, and the village in the main, like most of Lesotho, remains locked into the South African system. I did not meet one man of whom I asked the question, who had never worked in South Africa or for whites locally. The Chief's administration provides 'jobs at home' for very few, and those not necessarily of the village. Women, too, have been migrants and it is not uncommon to hear tales of Soweto or Welkom from women who have spent long periods away from home. The impression of a society in which the indigenous economy had become subservient and captive to a grasping industrial neighbour was sustained by the difficulty people had in acquiring oxen to plough their lands, and by the fact that fresh milk was virtually unobtainable in this village inhabited by descendants of people who once measured their wealth in herds. Although Wallman's words perhaps overstate the picture as I observed it, the following statement

goes far towards capturing the atmosphere of a village when one foot remains on a tribal base, the other wavering uncertainly to find its path in a modernizing world:

Basutoland village life is a particularly unhappy compromise, and ... the Mosuto villager has a number of special frustrations. His aspirations are continually stirred by industrial enterprise over the border, but his opportunities are strictly limited to an unsuccessful peasant economy at home. Legend and history insist on the glory and the might of the Basuto Nation, but the policy and the fact of South Africa testify otherwise. The political structure of the village rests on cooperation under a beneficent Chief, but is in fact fraught with ambiguity and suspicion and is markedly ill-administered. The peculiarly wide gap between the ideal and the real, between what is known to be possible and what actually is, generates tensions which the villager sees no way of resolving. Hence the retreat into lethargy, the drunken brawls that follow a party, the endless litigation and the accusations of treachery and sorcery characteristic of everyday village life. (1969:45-6)

The fact that 'Mampho's has long been the centre of a principal chiefdom partly contributes to its size, its amorphous structure and its air of disjointedness. But the village suffers in other ways too from the particular genealogical past of its chieftainship. This lineage is descended from one of Moshoeshoe's first four sons and is thus one of the most prominent dynasties in Lesotho. The present Chief's father was tried in the late 1940's for liretlo (ritual or medicine) murder and subsequently hanged, and the taint of this tragic event has never quite been eradicated. 'When chiefs are fighting, it is time to lock your door at night,' I was told, and this mistrustfulness was fanned to life while I was there by a protracted and unhappy struggle between the incumbent Principal Chief and his mother, Chieftainess 'Mampho, who had taken over at her husband's death as regent and who, after her son's installation, was fighting a rearguard action not to be dislodged from the base of power in which she had entrenched herself.

The actual administration of the ward is decentralized in sub-wards. The village of study falls in the sub-ward Lichaba's where,

for successive generations, the Principal Chief has made his home and ruled directly. When Chief Paul Seeiso III, the present Principal Chief, was installed, his mother retained her gazetted position as Chief of this area. The power struggle was sparked off by this situation, that the Principal Chief had no sub-ward to administer himself, and the consequent eclipse of his de facto authority by the former regent who, it was feared by his advisers, would be motivated by her own ambitions at the expense of her son's interests. The factionalism and dissension engendered by this conflict drove cleavages across the entire ward and were responsible for a good proportion of the administrative failure with which the ward was taxed. It will emerge too that the breach in ward relations was wedged all the wider for the national party-political competitiveness it mirrored: the Chief supported the King and was thus inclined towards the Opposition, while his mother, who stood as a candidate in the 1970 general election on a United Democratic Party (UDP) ticket, was identified more closely with the ruling party.

Discord so radical cast something of a pall over the village, and blurred even further the outlines that were still to be discerned of organic and integrated traditional decision-making, and dictated its own logic over how, as an anthropologist, to fashion one's approach.

THE PARTY-POLITICAL BALANCE IN LESOTHO

It is clear that there would be a pervasive seepage of party-political influence and reaction affecting structures of decision-making and administration in a country so newly come to independence (on 4 October 1966). The bulk of the thesis attempts to evaluate how decision-making processes in a chieftainship have been influenced by political change and centralization. Decision-making at the rural level has been adulterated and compromised by a trend of modification started

under the colonial regime and continued under an independent Government. Furthermore the fraternal strife that has plagued the country, since the introduction of party politics and the organization of party machinery to contest modern elections, has drawn in and mutated to its design local-level decision-making arrangements and interactions. The force of this party-political grid on the country has had such penetrative power that a large part of the thesis is only comprehensible to the reader if he commands a synopsis of the major political forces at work.⁽⁶⁾

The crucial election to determine the composition of the Government that was to guide the country under its new Constitution and rule after independence was held on 29 April 1965 and was contested by three major parties. The party that won the election was the Basutoland National Party (BNP) under Chief Leabua Jonathan; it secured a narrow victory margin of 41,63 per cent of the vote (31 out of 60 seats in the National Assembly).⁽⁷⁾ Under the leadership of Chief Leabua Jonathan, the BNP at that time was characterized as maintaining a moderate and conservative stance. It drew heavily upon support from the Roman Catholic Church, from women, who were voting for the first time in this election and who are said to have endorsed the party's policy of detente with South Africa for 'bread and butter' reasons, and from the more traditionalist highland regions. It did not seem, then, to constitute a threat to the chieftainship and held appeal for lesser authorities although it did not then have the support of the majority of the principal chiefs and its relations with the King were to remain unhappy. It was, with its emphasis on tradition, on maintaining ties with South Africa at the expense of other, more radical African connexions, a middle-of-the-road party whose victory at the polls was unexpected.⁽⁸⁾

The party from which it snatched a bare majority was Ntsu Mokhehle's Basutoland Congress Party (BCP) which polled 39,66 per cent

of the vote (25 seats). The BCP has been seen to have a radical image. Its leader, an M.Sc. graduate of Fort Hare, has a charismatic personality and has reportedly been influenced by political contacts beyond the insularly Southern African, and by pan-Africanist ideals. In sharp contrast to the BNP, Mokhehle was not sanguine about South Africa's embrace of Lesotho, and his party was identified with an anti-apartheid stance, and a desire that Lesotho 'co-operate with South Africa, but on a basis of equality' (Macartney 1973:479). The opportunistic image presented of Mokhehle in some quarters was not borne out by his subsequent conduct when Lesotho underwent political crisis. During the emergency of 1970, for example, he rejected violent resistance. The party's attitude towards the chieftainship has been an ambivalent one: they have thundered against the privilege and incompetence of traditional rulers, yet Mokhehle has indicated a respect for the historical traditions descended from Moshoeshe and has supported the King when it was politically expedient to do so.⁽⁹⁾ However, changing coalitions dictated by circumstances make it difficult in Lesotho to label any one party definitively. The overall profile projected by this party was that of a more organized, sophisticated, thrusting, modernizing and reforming organization, appealing more to secular interests and stressing the cutting away of old shackles in bringing about a changed state.

Greatest support for the chieftainship came from the Marematlou Freedom Party (MFP) which gained 16,49 per cent of the poll (4 seats), and at that stage had the support of most of the principal and ward chiefs. Naturally, with its endorsement of the chieftainship to maintain national unity, the party enjoyed the support also of the King and may be viewed as royalist: it sought to unify the nation behind the symbol of the King who would rule in terms of traditional tenets of good government in consultation with the nation. Suffering from a

divided and changing leadership, it did not enjoy success at the polls, but the party still retained importance as a balancing force between the two major parties and, in a country where the King is still greatly respected, inherited some charisma from his role.

The 1965 general election was sufficiently inconclusive as to ensure that the period before the next, the first post-independence, general election of 1970 would see a desperate trial of political strength between Government and Opposition. Those were corrosive years in Lesotho, where the depth of division destroyed old unities and left deep marks scored by the violence and acerbity of dissonant loyalties.

An issue which greatly served to polarize Government and Opposition was the role to be played by His Majesty King Moshoeshoe II as Head of State in an independent Lesotho. Even prior to the pre-independence election, the King had opposed being relegated to the position of a titular monarch or 'rubber stamp' but, after heated debate and controversy, both the Basutoland National Assembly and Senate voted that he have curtailed executive powers. Thus Jonathan's Government, with its precarious victory, was faced at once by an experienced party that had lost by the slenderest margin, and a young, Oxford educated, resentful monarch, backed energetically by the Opposition. These simmering feuds led, soon after independence, to violence, and resulted in the arrest of Mokhehle and the placing under virtual house arrest of the King who was 'forced under penalty of abdication to abjure any activity not expressly approved by "His Government" ' (Weisfelder 1969:5). The steps taken by the Government to hamstring the King as political agent indicate the divisiveness that was to precede the 1970 general election, an election that, it was at times feared, might not be called on schedule, so furious was the Government's assault on what it called the 'communistic' tendencies of the Opposition.

Jonathan was unfortunate in making a martyr of the King, for he provided a rallying point for Opposition sentiment, and there is little doubt that many Basotho were shocked by the treatment meted out to the figure who symbolized their nationhood. Previously irreconcilable, the BCP and MFP combined in convenient alliance. Chief Jonathan is head of a country which, in common with many emergent nations, had 'great expectations' of the coming of independence. The lowering of the flag at midnight did nothing to relieve the country of its straitjacket as poor relation to South Africa, bleeding its labour in its service, and politically situated in its pocket. Although Jonathan instituted the almost requisite prestige projects, building a highway bearing his name, and introducing some grass-roots development efforts, it was not easy for him to meet the hopes aroused by independence. His regime suffered under the impact of internecine struggle, the near-insoluble fact of the country's poverty and the forces marshalled against it by the Opposition. Government conduct became ever more shrill as 1970 approached: Jonathan put pressure on civil servants, became more immoderate in categorizing his political opponents as the enemy, and 'repeatedly felt compelled to warn that any constituencies foolhardy enough to return opposition candidates would be placed low on the list for future government aid and development projects. ...' (Weisfelder 1972b:125). The façade in Maseru of busy Ministers and foreign aid experts, the sweepings across the country accompanied by cavalcades of cars, outriders and entourages, could not disguise the fact that the BNP was confronting an Opposition that was well dug in and that violence had been done by the Government to the symbolic structure of the country. It was not unexpected to me when Leabua Jonathan's party lost the general election in 1970,⁽¹⁰⁾ for the swing against him had been visible in indicators at the local level.

On 30 January, three days after the general election, Chief Jonathan stunned Lesotho with his announcement on the radio that he and his Ministers had proclaimed a state of emergency and suspended the Constitution. He rationalized this decision by maintaining that the Opposition had compromised the election by the atmosphere of intimidation they had engendered. This contradicted earlier reports on the election and was obviously a cover-up for what was a blatant seizing of power by a party that had lost. Jonathan moved to clamp the country and increased Government's power to deal with possible resistance to his coup. Emergency powers were promulgated, Opposition leaders were detained, Opposition publications were banned, and a curfew was imposed. Those detained found appeal impossible because that session of the High Court, presided over by Mr Justice Jacobs, seconded to Lesotho from the South African Bench, was suspended. To tighten his grasp on the country yet further, Chief Jonathan announced that the King would leave the country for an indefinite period.

All these measures drove the country into turmoil; blood was shed and running battles were fought between the Police Mobile Unit and groups of dissident Basotho. To put down resistance, what Khaketla (1971) has called a 'reign of terror' was instituted. According to his account, death, torture and brutal suppressive measures were used to blanket any upsurge of resistance to the extreme action which had nullified the democratic process. This period has put scars on the psyche of the country which will take years to heal and has left a legacy of bitterness which provides a potential for conflict which is still present. It was not only those who obviously resisted Jonathan's regime who were the objects of intimidatory violence: this period saw at village level, the victimization of those who were known simply to be of the Opposition. Houses were searched; it was regarded as an

offence, for example, in my area, to possess a South African newspaper which gave account of the events of these times. The campaign was waged with the intent to cow a populace into acceptance of this perversion of their governmental processes.

I spent my longest continuous period in the field--from May 1969 to late January 1970--in an atmosphere of rising political hysteria preceding the election, and my subsequent visits, in University vacations, in the turbulent aftermath of the coup. The backwash of these events was directly reflected in the village in which I lived for sixteen months.

The first Sunday I spent in 'Mampho's, my wife and I awoke to see and hear, moving through the village, a procession almost medieval in its pageantry. A line of horsemen, riding side by side, was winding its way along the road. They were greeted by the high-pitched ululations of the supporters of the BCP, and by rallying cries of 'Falla koto!' (11) Wearing red blankets, they signalled their support of the BCP. They rode slowly and almost ceremonially, their procession designed to catch the attention of the villagers, who had come running to watch the horsemen entering their village. The riders were followed by people on foot, by trucks, Land-Rovers and buses; they were heading the crowd that was on its way to attend a political rally. Although we were to see such processions many times, the spectacle remained a riveting one.

Weekends were marked by a political rhythm, a sense of movement and urgency. People would make their way by buses, trucks, in fact, any mode of transport, to criss-cross the country on their way to hear politicians speak. Traditional dances were resuscitated to provide ceremony and continuity to meet the demands of holding the large audiences. Late on Sunday evenings, the ebb of this movement could still be heard, with

truckloads of people clapping and singing their party songs and groups of horsemen, now riding more loosely once the rallying immediacy had lapsed. The country was on the move to throw its support behind favoured candidates and parties.

There was a striking difference between the political processions of the BNP and BCP: the BNP were often led by cavalcades of motorcars accompanied by outriders on motorcycles, sweeping noisily and dramatically to their meetings. They had at their disposal superior technical means of reaching the electorate: Government vehicles, for instance, gave them a distinct advantage. Late at night we were often woken by loudspeakers blaring out political slogans or songs, betokening that a BNP motorcade was returning late from a rally. The differential in command over technical electioneering facilities underlined the fact that the BNP was the party in power and was throwing in the full resources of Government to secure victory. There was a fine irony to be observed at times in the appellations painted on the side of a Government vehicle, calling attention to the department and purpose for which it should have been used, and the use to which it was being put in the election campaign.

The Basotho have a word for the rapid flashing of word-of-mouth news. This is cheche. Political events that happened in Maseru in the morning were discussed in the village by evening. It was commonplace for men to meet the buses, accost a traveller, and glean from him the latest political news. News spread fast through the village and as evening fell, one could often hear people shouting from house to house such things as, 'What do you think of the things Leabua said today?' perhaps answered by, 'What do you know, you people ! Mokhehle will show Tona-Kholo [the Prime Minister] !'

Activity and interest were not confined to a handful of polit-

ically concerned people. Old and young, men and women, all seemed to be preoccupied with lipolitiki. The opening gambit in conversation was often, 'What do you as a stranger here think of politics in Lesotho? Have you ever seen a country where there is so much politics? Do other countries also indulge in politics like we do?' Older people would ascribe blame for droughts, the disobedience of youth, family quarrels, in fact, a great deal of misfortune, to lipolitiki. Politicians made extravagant claims about their influence over natural phenomena. Well after the 1970 election, a snowfall in early December had Opposition women jubilant in the village, claiming it as a portent because the King was shortly to return from exile. By some, history was divided into two distinct periods: the time before politics and the time after politics. Villagers often approached me to express regret that I had not come to their village before these troubled years. They said I was not learning about the Basotho or any real Sesotho institutions, but a society that had begun, as one person put it, to 'run mad after politics', using the phrase as it is used to describe a whore pursuing a man.

Political rivalries inspired scissions within the village which often found striking symbolic outlet. Once off the main tarred highway, roads were often barely passable. It became an Opposition joke in the months preceding the general election that whenever one came across a gang labouring to improve a road surface, it was fairly certain that Jonathan would be travelling that way for a rally the next weekend. Roads in 'Mampho's village also were neglected, eroded, rocky and near impassable in the rain, but during the campaign months, sporadic road repairs were attempted along the plateau. The work was done by villagers--mostly women--under the direction of an elderly phala known for his support of the BNP. They were paid for their work in mealie meal distributed for this purpose by the Lesotho Government which, it was

alleged by the Opposition, had been donated by South Africa as aid to the starving. Members of the BCP and MFP, although they too were hungry and short of work, held that to work on such programs would be to accept 'Leabua's manna'; less elegantly phrased by one fervent Mohanyetsi (Opposition member) as, 'I don't eat mucus'. It is also debatable that Opposition supporters would have been employed thus, as Khaketla claims that during the building of the Leabua Jonathan Highway, people seeking work would not be engaged 'unless they proved that they were card-bearing members of the B.N.P. ' (1971:184) The road workers in 'Mampho's expressed their support of and association with the Government by laboriously building the word 'MUSO (Government) into the road surface with raised, contrasting stones, in letters about sixty centimetres long. Bahanyetsi, for their part, were doggedly opposed to any innovation suggested by the Government. I had a good friend who was committed to the organizing of co-operatives; because the credit union movement in Lesotho was so closely associated with the Government, he found his work blocked and his ideals, which had real potential for a country like Lesotho, diluted by political resistance and mistrust. His true desire to serve his people simply could not overcome political differences.

Party-political fervour intruded into all manner of local relations; for example, members of a dance troupe quarrelled about performing for any but their own party rally. Sometimes, one of the first things pointed out to one about a person one met, was his political affiliation. This sense of identity being submerged in political allegiance carried over into litigation: verdicts given in contentious cases were scrutinized for traces of political bias. On more than one occasion during a recess in a court case, people took the trouble to warn me that the case I was recording held little interest for someone

who 'wanted to know the law', for it was a political test case. The importance of a case might be signalled by the familiar faces of local-level politicians in the courtroom. Adjournments would see tight huddles and rapid advice-giving discussions.

That summer before the emergency, although there were political strains in the village, the calm evening air still carried men's praise-chants and children's voices raised in games; the hillsides were agleam with cooking fires. Qomatsi--as the emergency and the apprehensions it brought were known locally--stilled these village evening sounds and drove people behind closed doors as nightfall imposed the curfew. Bahanyetsi were frightened now and would only talk about lipolitiki to those they knew well and trusted, for the village had felt the impact of police repression and stories were whispered about how brutally had been treated those who were arrested, detained or searched. The force of these repressive measures was enormous, for since Lesotho is a small country, often the police performing their tasks were personally known to villagers. It became commonplace to refer to the political parties by disguised names. Belief in the structure of the society was shaken because the police in their incursions into villages, it was said, did not even trouble to work through the chiefs and the headmen, as was lawful and customary. Tragically, old grudges were paid off by tips to the police. People were uneasy, for 'vigilantes' roamed the village after dark to enforce the curfew, their identity not always certain and their actions seemingly answerable to no authority. By these measures, the population was cowed into a grudging acceptance of a changed Lesotho.

METHODOLOGY

I lived for sixteen months in the village of study. The longest continuous period was from May 1969 to late January 1970; the rest of the time was made up of field trips during University holidays. In addition, my wife made one field trip independently to check data. The actual period during which information was obtained was in fact longer than sixteen months because my field assistant worked full time during my absences and sent me detailed reports of court cases, meetings, interviews and any information he thought germane. He was employed thus during the years 1970 and 1971. In addition to his services, I employed his wife for the duration of 1970 to collect supplementary information, conduct certain surveys, and interview independently. (12)

Although the ideal situation is, of course, not to be dependent on an interpreter, I was forced to use a field assistant as I was not conversant with Sesotho before entering the field. I attempted to learn Sesotho in the field and succeeded only at a simple conversational level. My wife studied Sesotho for three years through the University of South Africa and, although fairly competent, she never achieved a sophisticated command of the language.

I was fortunate in that my field assistant, Litaba, developed an insatiable interest in the field study, as he has long been a student of his own legal system, has worked for chiefs for many years in administration and is a keen observer of his country's political developments. I also profited in that my wife took part in the fieldwork and was in effect a second researcher. Although not formally trained in anthropology, she knew the main direction and theoretical trends that interested me and was invaluable in collecting information, in discussing strategies for further research and in recording data.

We camped out in an empty trader's house which was well suited to the fieldworker as it was within easy walking distance of the Chief's administrative complex and the two courts around which so much of the study focused. These were the Local Court, the lowest-level official Government court, and the Principal Chief's court of arbitration and administration. I spent the first two weeks walking around, familiarizing myself with the area, waiting for an interview with the Principal Chief to obtain official permission to commence my study, and trying to find a suitable interpreter/go-between. My work lacked direction until I started attending village courts; the information and spin-off these yielded inclined me to decide to centre my study around the courts and to follow up leads provided by cases. The accessibility of the Chief's administrative complex was doubly convenient, for I had decided to use as another focus to the research the administrative tussles of the time.

A settled routine started to form our days. Early in the morning I would meet with Litaba to discuss what cases were likely to appear, the gossip of the day and how we were going to spend our time. After breakfasting together, we would stroll up to the central portion of the village to find out what was going on by joining the men standing outside the administrative complex. If nothing seemed interesting there, we would make our way to the Local Court; or, if previously interested by a case, we would make our way directly there. Our work was, to a large extent, dictated by the schedule of the courts. If cases had thrown up noteworthy avenues, we would seek to interview litigants or deputations.

In addition, I carried out small surveys on migrancy, land holding patterns and stock ownership. I also devoted time with vary-

ing intensity to local history, genealogies, trouble cases concerning the ancestors, marriage disputes, succession and installation disputes and witchcraft accusations. I originally planned and even wrote two chapters which, for lack of space, are not included now. These were on family moots, which I investigated in depth through case histories, and on the headman's court.

In 'Mampho's village the fieldworker was faced with an embarrassment of riches. My wife and I made contact with a wide range of people. One of our friends was an entrepreneur who was trying to convert capital acquired in South Africa into a viable alternate life-style based on contract ploughing, share-cropping, transport and diamond prospecting and mining in the mountains. Through him, we gained access to other entrepreneurs. This was fascinating material in the Lesotho context, but would in itself have grown into a full-time study if we had chosen to concentrate on it. We thus kept up the friendships but neglected the field material. Similarly, we were invited by a lethuela (a type of diviner who has overcome a nervous affliction) to take part in and observe the ceremonies in which she played a leading role. One such ceremony we attended was the induction of a novice who had been instructed by our friend. She, too, remained an acquaintance, but from the wealth of data that even my preliminary observations yielded, it was apparent that this was another avenue which would require an intensive and lengthy study of its own. I regretted as well that I could not go deeper into the co-operative movement because this was an avenue which my informants themselves were keen that I investigate. My problem was time. And once I had decided that the courts and the Chief's administration were what offered most, I decided to centre on them and let other areas of interest impinge only where they were relevant or when spare time and personal inclination gave leisure.

After Litaba and I had exhausted the courts for the day, we would go home, eat and then get down to the business of recording the day's information. The method employed here was that Litaba would dictate directly in English from the notes he had taken to my wife, who typed them up. I would interrupt at any point where I felt that elucidation was necessary. It was from this raw case material that leads, questions and investigations sprang. Cases that seemed to pose problems of interpretation and in particular seemed to point to incompatibilities arising from social change were followed up. It was through this direction I imposed on the raw data that some of my most interesting case studies eventuated. Litaba's ability to take detailed notes stemmed from specialized experience. He had served as a Local Court President himself and had learned then to keep the longhand records demanded of a President of that court. It was easy to take notes in the Local Court as the President himself must make a record and the proceedings are governed by his pace.

While I spent most of my days attending the courts, my wife occupied her time with Litaba's wife who ran a spinning, weaving and homecrafts business. She usually had a group of women who came to her to be trained. Litaba's house is situated alongside a road that serves villages in the foothills. My wife found that the women who came for instruction were from a number of villages and were often informative on much of the gossip and rumour current in the area. They could overhear and join in the conversations of litigants on their way to and from the courts. My wife, by questioning the women on what they overheard, could fill out details that had passed me by. My wife was able to strike closer associations than I with women in the area. One of

these was the Principal Chief's aunt, the sister of his late father, who was living at the moreneng (chief's place). The Chieftainess was a particularly valuable contact and friend as she commanded wide knowledge of the affairs of the chieftainship.

As I have mentioned above, my study was affected by the political tensions of the time and the struggle between the Chief and his mother. I tried at all times to adopt a 'neutral' stance. Real disengagement was virtually impossible, however. For example, Litaba was a supporter of the Principal Chief and a member of the MFP. As such, he was involved in the affairs of the time and so too, by extension, I was identified perforce with his sympathies. I was aware of the limitations this could place on fieldwork, and tried to counteract them wherever possible; in this I was fortunate in Litaba's own personality, for he maintained contacts across the schisms of the Lesotho scene. Nevertheless my study would have been better had I been able to move as a free agent between opposing groups. On the other hand, without the connexions Litaba could offer, I would hardly have been able to collect the sort of information I did on, for example, factional activity. Besides, so keenly polarized did some issues become, that establishing contact with one section would have been viewed by the other with utmost suspicion, so that detailed probing of both sides' commitments would have been improbable. The inherent difficulties were intensified because so much of my research was based on investigating conflict and tracing sectional differences and alliances. The problem was somewhat offset however in that Litaba was a personal adviser of Chief Seeiso and often assisted in the administration. In this capacity, he was able to visit other villages and follow up disputes on my behalf to seek information that might not have been offered freely had my interest been made explicit.

I would have liked to attend all the political rallies in the area, investigate in detail the organization and campaigning of the parties at the grass roots, and immerse myself in the stuff of local party politics. This proved impossible. Early in my fieldwork I visited a village on a weekend afternoon, not knowing that it was the venue of a political rally. Although my business was with the Chief of the area, it was made quite patent to me that my presence on such an occasion was unwelcome; this was reinforced by my name being taken by a plainclothes policeman and my being questioned as to my presence there. Subsequent experience convinced me that an overt investigation of party-political affairs would be counterproductive. It was bound to draw unhealthy interest in my role in the country and perhaps tag me as a trouble-stirrer. Thus, rather than enquire directly into party politics, I decided to take it as a 'given' and look in depth at how the backwash of politicization affected what could be termed indigenous decision-making practices. Although I generally professed not to be studying party-political affairs, I still tried to follow their course in the village as closely as possible. Litaba, whose presence was to be expected at political rallies and other controversial lipitso (gatherings), attended in his own right and took notes on my behalf. His firm commitment to local politics and the leadership role he played therein kept me abreast of village undercurrents and action.

As a white South African, conscious of the iniquities of the apartheid system practised in my own country, I am extremely grateful to the Basotho for the civility and hospitality they extended. In a long period of residence as white strangers in a black community, only one man chose to withhold the generally courteous, generous and interested welcome we were widely accorded. He was a man who had been deported

from South Africa, and even he expressed his refusal to have anything to do with white South Africans, not in an aggressive or personal manner, but rather as indicating his rejection of a system as a matter of principle. Nonetheless, because of the peculiar political restiveness pertaining, people had reservations about giving certain information. Some were suspicious of detailed family data being taken down as they thought it possible that I might in some way be interested in altering voter registration. The initial handicap of such mistrust eased off when it became apparent that I was not a participant in the conflicts of the period.

The sprawling and heterogeneous nature of the village presented early difficulties when trying to conceptualize my study. There were no communal activities in the sense of events that drew in the whole village as a community. The old type of men's lekhotla was defunct; there were no village days of reed-cutting, as in the past; when men went to plough, it was often an individual act: the meeting of a man with a tractor or oxen to point out the limits of one's field. Beer huts were places where drinking and talking brought people together, but I did not find them useful by way of providing me with keys to community issues. It was the courts which I found to offer the best prism through which to trace the course of the events and processes I sought to record. The courtroom provided, in its concentration of disputed decisions, discordant values and contested issues, an introductory corridor to decision-making and a lightning conductor to institutional trouble spots from which litigation sprang.

The Principal Chief's court is the present continuation of a past institution. The traditional lekhotla was the male communal meeting place where the chief and his banna ba lekhotla (men of the

court; variable panel of assistants) gathered with the men of the community to sort out grievances, give advice, adjudicate and direct decisions. Once damages were paid, fines (generally paid in stock) were a perquisite of the chief, who was expected to feed his lekhotla. He had extensive power to enforce judgment, even to the point of 'eating up' a rebellious offender in extreme cases by seizing his stock and burning his huts (see Ashton 1952: 237-8, 247-8).

Reform in the 1930's and 1940's struck at the very heart of the chief's authority by chipping away at the traditional judicial system, and thus at a visible expression of the chief's legitimacy. In time, only a substantially reduced number of tribal authorities were officially recognized and warranted to hold courts; finally, the judicial structure was detached from the chieftainship. The official judicial system cannot sustain the weight of litigation, however, particularly at the lower levels, and provision was made for tribal authorities to continue to dispense adjudication in the form of arbitration. The vital difference lies now in the court's incapacity to enforce: it cannot fine, it cannot 'eat up'.

Such was the first court I studied, the Principal Chief's court in which his personnel continued to hear complaints, decide claims, direct adjudication and if necessary, pass disputes on to other agencies which might more bindingly deal with them. His court was also there to deal with the administrative business of his ward, another cogent reason for its continued existence. As in the past, however, the two processes of adjudicating and administering were largely fused in the running of the court, and it is as a composite chiefly function that I observed and describe them.

The court in the village that was empowered to fine and execute

judgments was the Local Court, on the lowest rung of the official court system. Presidents of such courts are not highly trained or necessarily well educated, but they and their staff are more sharply differentiated from the community than the men who run the Chief's court: they are specialized, salaried Government officials. These courts fall under a different Government department from the chieftainship, and their powers, constitution and jurisdiction are precisely regulated by proclamation. Appeal lies from here to the Central Courts, and thence to the Judicial Commissioner's Court, High Court and Court of Appeal. In addition, there are various classes of Subordinate Courts or Magistrate's Courts, which have revisory jurisdiction over the proceedings of Local and Central Courts.⁽¹³⁾

OUTLINE OF THESIS

The two chapters that deal with the Chief's court and the Local Court, Chapters Two and Six respectively, beyond attempting a descriptive evaluation, also seek to explore such questions as the extent to which they are identified with the interests of the litigants they serve and how they have become tied to and identified with what I have termed the encapsulating structure. In line with the overall theoretical thrust of the thesis, a consideration of the Chief's court is also designed to throw light on such central problems as the changed and emasculated position of chieftainship and the mediational viability of its intercalary role. Furthermore, the court's competence as a conflict-resolving mechanism is weighed up in an examination of the effectiveness of its reconciliatory procedures in a society where norms, values and common identifications have undergone considerable modification. Analysis is aimed at reviewing the place of an institution that has itself been

modified and is fulfilling a changed role in an altered society.

I made no attempt to sample cases systematically in these courts, but attended them as my work schedule dictated. Certain series of connected cases stood out to attract the observer's attention, and these I followed up to pursue what in some instances turned out to be 'social dramas', in Turner's phrase, 'a limited area of transparency on the otherwise opaque surface of regular, uneventful social life' (1957; 2nd ed. 1968:93). The surfacing and resurfacing of certain conflict patterns in cases, sometimes in formulations that were but variations on a constant theme, suggested that there were deep-seated normative and structural discontinuities causing a repetitive groundswell of disagreement. Chapter Three is based on such a follow-up procedure. Here the impasse which threw up litigation drew its sources from the weakened structural position of headmanship, the changing normative expectations surrounding this role, and the debilitating effects of social and economic change on the integrity of the small village community and its private adjustments. Analysis here raised the seminal question of how a local, encapsulated community adapts to, resists, absorbs or rejects the influences and demands of the outer order. In writing up this material, I have tried to take stock of the role of the Chief's court in mediating conflict of this nature, and its role as an articulatory link between the enclosed and the encapsulating systems. Invaluable here was a transactional model that sees action in terms of options and alternatives and change as defined in cumulative acts rather than in legislation.

Chapter Three shows that the Chief's court served as an agonistic display forum used on occasions by litigants, not so much as a dispute-settling locus, but as an arena for the public enactment of

conflict. Chapter Seven deals specifically with this topic, but takes as its focus the Local Court, which provided an arena removed both symbolically and spatially from overt influence from the tribal sphere. It offered a more authoritative platform from which party-political points could be scored, grudges worked out and plays countered. The chapter seeks to reinforce a motif that recurs throughout this work: that the ubiquitous influence of political pressure and bottled-up antagonisms create dichotomies which bear such a loading in a constricted society, that outlet must be found even if, in the process, institutions must be pressured. This line of thinking is buttressed by the symbolically significant fact that during the emergency, support, and by extension, trust, was withdrawn from the Local Court by those of the Opposition who were apprehensive of the implications of appearing in it.

Lesotho is a society where land, people and access to resources form a reticulation of constraints that mirrors the harsh ecological reality of this densely settled and impoverished countryside. Access to land is still through the door of the chieftainship and with competition for this limited resource endemic, the Local Court, again, provides an authoritative forum. In some land cases, we have the intermeshing of the end product of a hunger for land on the part of peasants, the desire by the chieftainship to shore up its position, and the conversion of land to a factor that mediates between peasants and chiefs through the language of legitimacy. Chapter Eight examines land litigation, using the concept of 'the lie' as a metaphor for the lengths to which the desire for land and control over its apportionment can push forensic strategy. For it emerges that, given its scarce value, land assumes a dimension of importance far in excess of its production value, and that it becomes a symbol which attracts to its side 'teams' who

contest for it in the courts.

It is because access to resources yields a demonstrable framework in which to prove power and authority, that I chose to illustrate, in Chapter Four, the pressured position of the Principal Chief's administration with analytic accounts of three areas of administration only, these being land allocation, control of liremo (wild resources) and the pitso. The first of these topics shows how land and its allocation are subject to an intensification of both centralization and politicization. The description complements earlier chapters in that it builds in factors such as local accommodations and resistance to innovation. The liremo section is designed to concentrate on the Government's move to tie in to centralized agencies that which was formerly autonomous and pertaining to the chief and the tribal system. The account of lip-itso assesses communication and proposes that interference or 'noise' along channels comments on the attenuated powers of chieftainship, the alienation of the chieftainship from the people, and the difficulties of Government reaching people in this divided society. Taken in sum, these three essays seek, prior to Chapter Five, to introduce an uneasy chieftainship.

Chapter Five is the description and analysis of the struggle for power between the Principal Chief and his mother. I have called this elsewhere in the thesis the coming together of a 'concatenation of events'. I was fortunate to be in the field while this competition took place, because it gathered in and laid bare, in its very concentration, the major trends in decision-making in Lesotho. Thus the case study inquires into such problems as the role of the sechaba (the people) in decision-making, what mobility and integrity remains to the chieftainship to settle its own affairs, and how far Central Government

permits autonomous decisions in this sphere. Auxiliary questions include the articulation of local interests, the sources of chiefly legitimacy and its public demonstration, and the deployment of resources in political wrangling. Factionalism is examined at the grass-roots level as arising from causes specific to the Lesotho context. Out of all these sub-categories, there is the attempt to capture essentially an interaction of forces in a now complex society where distinct interest groups jockey around the point of intersection of chiefly conflict. The chapter will have succeeded if it conveys to the reader a sense of the layers of divisiveness at work in the ward and also the subtle interplay between field and arena that characterized this period in the village.

I have not written a conventional conclusion. My final chapter, Chapter Nine, deals with the activities of a broker, himself a synthesizer and maker-of-connections. The chapter is included as a conclusion because the broker's activities summarize and counterpoint such themes as encapsulation, communication, the articulation of parochial interests and demands, the changing position of the chief and the connexion of law with people. A consideration of the broker's 'activities at law' paves the way for conceptualizing law as a code that is undergoing continual modification and access to which is consequently variable. The courts and the judicial process are re-examined essentially in terms that have been reiterated throughout the thesis: How has change affected the law? Does law serve the people? Has encapsulation divorced the people from their customary law by creating disjunctions between them and the system there to serve them?

In looking at the linkages between the local community and its environment, my perspective has been from the inside, as it were, from below, upwards and outwards. I had neither the time nor the resources

to review these seams from any point but the village, and my primary concern remained with the local individual: how he saw, used, was constrained or assisted by the encapsulating system. (14)

This introduction does not seek to provide an exhaustive theoretical orientation. It is intended rather to feed the reader in to the thesis with enough background to make his own connexions in the cumulative and composite picture I have attempted to construct of my subject. The theoretical concern and bearing of each chapter is developed in it and each has meaning for the others if one is to seek to encompass the complex dimensions of decision-making in this chiefdom.

Chapter Two
THE CHIEF'S COURT

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The traditional courts of chiefs and headmen exist today merely as institutionalized forms of mediation and conciliation. They cannot enforce their decisions and it is a criminal offence for a chief to try to usurp the powers of the Local and Central Courts. ... This demotion has, not surprisingly, proved difficult for the chiefs and headmen to accept. It was a strong indictment of their judicial incompetence and corruption. (Poulter 1976:38)

Such is the litigious passion of the Basotho that the judicial structure could hardly function were it not underpinned by this officially invisible hierarchy of chiefly tribunals. (Hamnett 1975:95)

INTRODUCTION

The present position of the Chief's court mirrors the changing nature of Lesotho society. Naturally, its form has altered as the chief's role has become distorted, and its intercalary position points to Lesotho's having become a complex society. I shall orient my analysis to evaluate to what extent the court is still of the encapsulated society, and how far it has become bureaucratized and formalized with demands made on it by Government.

I see the court as a hybrid: Janus-faced, it looks back to its tribal roots, but has close connexions to and has been affected by the expansion of State controls. It is still a popular court, yet its powers are lacking in the 'bite' such courts once enjoyed. It cannot fine; it cannot enforce obedience as formerly. Much of its continued utility and credibility depend on the force of its personnel, and I studied an unhappy period of its history. The Principal Chief himself exerted no real direction over his administration, which was further hampered by the sectionalism thrown up by his struggle for power with his mother. His court functionaries, at times at cross-purposes and jealously quarrelling, could impose a bureaucratic distance between the court and the people it served when it suited them. A negligent administration, under a good deal

of criticism, served further to undermine credibility in chieftainship, and sometimes made questionable the point of seeking solutions for one's problems in this tribal forum.

To see this court as a vestigial tribal relic, however, is wrong. The court was busy and sought after by the people of the ward as a locus for dispute-settlement. It is still essential to the peasantry because, in its interjacent position, it straddles vital synapses. Because it handles so many administrative matters it remains a familiar locale for the troubled administrator where those who hear him are not distanced to the extent the DAS ⁽¹⁾ or other Government officials are. Although the Chief's administrators are not as representative of the community as the men of the lekhotla in former times were, they have a closer perception of the needs of the ward than those in Government structures. The court can bring a parochial and personalized knowledge to bear on the affairs it hears, and its flexibility of tone and procedure reflect a concern for the vitality of going relationships. The bulk of its work concerns arbitration, a task its local perspective is still suited to fulfil. Although the chieftainship is not what it once was, it still has an aura; people do still bring their disputes and problems to this traditional sorting house.

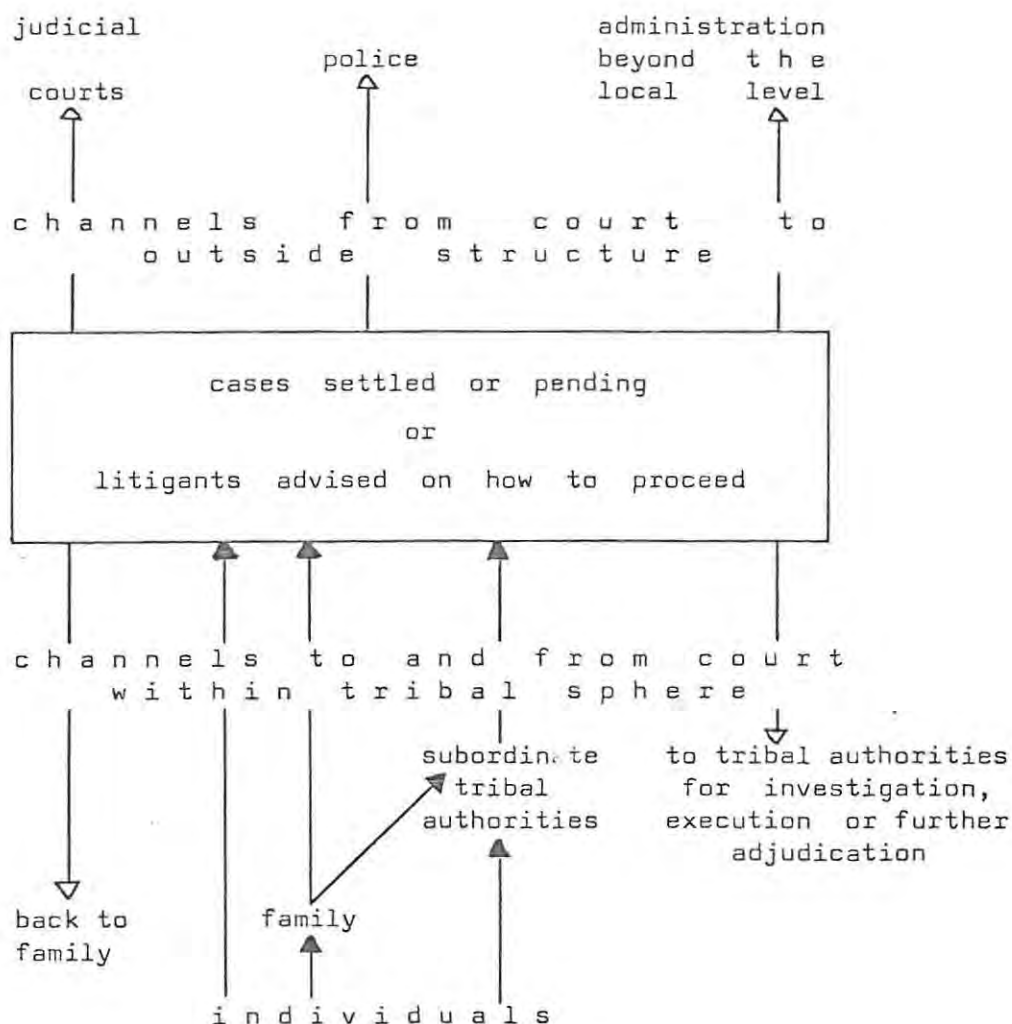
The Chief's court stands midway between two systems. In several ways, it cushions the relative autonomy of the encapsulated tribal order. It still endorses tribal norms, channels and customs. Yet its procedures are also subject at times to pressure from outside, that certain things be handled in certain ways, according to certain time-scales.

WHAT THE COURT IS

This is the court of Chief Seeiso, situated in his seat, the village of 'Mampho's. The court is housed in an administrative complex built of stone blocks and roofed with corrugated iron, with a verandah running

along its front. Its location near the Principal Chief's own group of houses provides a focal point for village and ward affairs. There was an air of bustle about the place: horses were tethered under trees, and men going about court or administrative business leaned against the verandah exchanging news and gossip.

This court is at the apex of what I term tribal courts, which provide dispute-settling loci at the various levels of the hierarchy of tribal authorities and, as such, it exists as a court of appeal for the ward.⁽²⁾ My records, however, include both appeals and direct cases from other parts of the ward as well as cases (the majority) brought or appealed from the administrative sub-ward Lichaba's. The following diagram shows how the court functions as a dispute-settling locus and a clearing house for litigation, a complex process presented in simplified form.



The court was generally presided over by the senior adviser or another representative of the Principal Chief, usually assisted by one or more clerks and at times by a court messenger. The composition of the court fluctuated: sometimes, for example, a clerk would take over, and on occasion my field assistant, who was an adviser to the Principal Chief, was co-opted to sit. At times only one member of the court would take charge of a case. The Principal Chief himself seldom appeared.

Traditionally, every chief had his own court. There was no distinction between what are now called 'administrative' and 'judicial' affairs. ... The chief discharged a plurality of tasks, which were not segregated into distinct 'roles' or 'capacities'. He acted as judge in disputes between his subjects, he adjudicated rival claims to land, he allocated land to applicants and withdrew it from those who had forfeited their right to enjoy it; he maintained order in his ward and punished those who broke it; he issued instructions to his subjects, presided over the popular assembly or pitsa, called on his people to labour in his fields, appropriated the fines paid to him in court and witnessed all the major and many of the minor events and transactions in his ward; he was spokesman for his people in a question with another area or with a higher chief, and he transmitted the policies and directives of his superiors back to his people. In all these various activities, the chief was performing, not a variety of roles, but the one, unitary role of 'being a chief'. (Hamnett 1975:90)

1938 saw the beginning of a process of change that was radically to alter the judicial system of Lesotho. Reforms and restructurings have had the effect of superseding the chief's original judicial functions by a system of official courts external to his control, and officially restricting his jurisdiction to administrative affairs. Thus today in the village of study it is the Local Court which is the lowest level of the official judicial structure. Although this implies that the chief's role was fragmented in the separation of his administrative and judicial roles, in fact the continuity of his traditional functions was not so radically affected. The 1938 legislation made express provision for 'arbitration courts' to function informally and without statutory powers to settle or to pass dispute on to appropriate formal courts, and this function was simply assumed (or continued) as

part of the duties of the chiefs' administration courts (see Hamnett 1975:94).

At the lower levels of structure, at least--the levels where chiefly authority was immediately visible and routinised--the judicial and administrative roles were once again largely fused. (Hamnett 1975:94)

The Chief's court in 'Mampho's, far from being a withered remnant of the old indigenous judicial system, played a vital part in the processes of dispute-settlement. There was, for example, the conviction that litigation could not proceed to the Local Court without having passed through the tribal channels and indeed the Local Court itself saw the system of tribal adjudication as a desirable preparatory stage of litigation. The Basotho, as has often been commented, are an intensely litigious people. The Chief's court and the courts of subordinate authorities function as an indispensable filter for the mass of litigation arising at the local level. At one meeting of the chiefs and headmen of the ward, the Principal Chief's clerk drew attention to the essential role of the courts of subordinate authorities. He remonstrated with them because the Chief's court was being inundated with cases that ought to have been dealt with at an earlier stage, and stressed that they should take their judicial duties seriously and attempt to settle disputes in their own courts.

WHAT THE COURT DOES

Administration and adjudication, ... while analytically distinguishable, are not often concretely differentiated: that is, they may not be institutionalized in distinct social structures. (Fallers 1974:10)

That the court deals with both administrative and judicial matters is indicated by the terminology used to describe such courts. The administrative aspect is subsumed in the title lekhotla la puso (administration court) which derives from the verb ho busa (to reign or

govern) while the appellation lekhotla la tlhopho, also applied to the chief's court, points to its arbitral nature. The verb ho hlopha means 'to arrange, to place in a given order, to tabulate', and lekhotla la tlhopho means 'court where cases are heard for sorting out'. A common saying about the court is lekhotla le lokisa litaba, meaning that the court mends affairs, derived from ho lokisa ('to make straight, to put right; to prepare, to arrange; to repair'); various words for 'justice' derive from the same stem, loka (Mabille and Dieterlen 1961). Significant here is the overall meaning of preparing and sorting out, for this is a large part of the work of the Chief's court.

Hamnett's definition of administrative as opposed to judicial activity serves as well as any to preface some introductory remarks about the analytic problems of dealing with cases from a court in which administration and adjudication are intermeshed.

Basically, the judicial courts are said to be concerned with the ascertainment, declaration and (where necessary) enforcement of existing rights, at the suit of the party claiming them. The administration on the other hand is concerned with the creation, modification or extinction of rights, so far as such acts lie within the legally defined competence of the administering power. (1975:93)

The administrative step of creating rights, however, does not proceed without the ancillary step of defining existing rights and, however limited a factor that may be, it involves coming to decision in a way that draws in elements of the judicial process. Even in purely administrative matters, the Chief's court was that part of the administration most directly concerned with 'the declaration of existing rights'. I propose thus to discuss the nature of the Chief's court I studied in terms of how it operated as a court, without trying to declare at this stage which aspect, the judicial or the administrative, predominated in any one case. A later section will redirect attention to the problem, and there I shall show why I am reluctant to impose too rigid an

analytic distinction on the concrete examples of my case material.

MEMBERS

The Principal Chief himself seldom appeared in court and when he did, he did not usually play a dynamic part in the hearing.⁽³⁾ Apart from his lack of experience, he was by nature shy and reticent and he mostly left the court business to others. Thus when I speak of the judicial process in this court, I mean that process as defined by those representing the Principal Chief. Whenever he was present during a hearing, those assisting him maintained his presence as head of the court even if he took little part in the deliberations leading to decisions; for example, they might preface their decision with such statements as, 'The Principal Chief instructs me to tell you ...' In his presence, discussion preceding a decision would sometimes take the form of advice addressed to him, thus maintaining the sense of his having the final word. The power invested in his position bestowed a kind of authority upon the court, and a sanction that derived from a traditional respect for chieftainship itself. For example, the Principal Chief was called from his home to the courtroom on one occasion to reprimand a defendant who was abusing the other party and the court and his presence served to restrain the offender. It was the office rather than the man himself which exerted this authority. I often heard remarks about his repeated absences from the village, about his preferring the attractions of Maseru to his duties, and about his other weaknesses as a Principal Chief. Because he was educated in England, he knew less about local affairs, local ties and local ways than was expected of a man of his position and criticism often focused upon such tokens of his estrangement as his big car and his fashionable wife with her city ways. Nonetheless, he was held up as the ultimate head of the court whose other members

were there as his arm. In one instance, for example, when dissatisfied petitioners sought counsel from one of his advisers because they were being obstructed by a court member, they were advised not to go over the Principal Chief's head to Local Government, but rather to see him in person first to discuss their grievance. So general, however, were disparaging references to the way Principal Chief Seeiso viewed his responsibilities that he served almost to handicap the effectiveness and credibility of his court and indeed of his whole administration, of which one had the feeling that he was a passenger.

An important characteristic shared by the men who played a leading part in the court was their bureaucratic experience. As they were described to me, they were men who knew 'the administration'. One was an ex-sergeant of police who, I was told, after leaving his position with the Principal Chief, stood as a candidate in the 1970 general election. Another was a Chief who went on to become a local tax-collector. One of the clerks took up a position under the DAS and I was later informed that he had been promoted. Another came from a position in Maseru, and he had also had extensive experience in local administration. It seemed to me that these men, although of the ward, were not representative of the community in the way in which the traditional banna ba lekhotla had been, but instead qualified for their positions because of certain skills. A knowledge of English was one of these. The very fact that they were literate (and had to be, to perform their duties) points to their selection being based on other than traditional ties. In other ways too, for example, their style of dress, they were set apart from the ordinary people they served. Some were not resident in the village, but commuted daily, and this reinforced the sense in which they might be regarded as 'outsiders'.

It is less easy to speak generally of the role of the Principal

Chief's representative in court for this position was filled by a succession of men during the time of study, and the representative of the time did not preside over every case recorded. He and his assistants used at times to work as a team in eliciting and testing evidence and in coming to a decision. This was particularly noticeable in their questioning in certain cases when they would take turns to fire questions at the parties involved.

The flexible composition of the court occasionally led to inconsistencies. After a postponement, for instance, the court would not necessarily include the same people who had been present earlier, nor would it necessarily be presided over by the same man. A case was brought, for example, against one Headman Teko by the chieftainship at the request of his villagers; the charge was that he had failed in his duty, notably by not attending a vigil held in his village, but also the villagers wanted it stated that they were not satisfied with him. The court consisted of Chief Leboea and Thipa. After a postponement it was presided over by the clerk Rametse, assisted by the court messenger and one other member of the administration, Makhabane, who decided that the Headman was to be charged with a criminal offence in the Local Court. They instructed those concerned to return the following day for the letter necessary to the prosecution. When they came for the letter, however, they saw Chief Leboea who seemed unwilling to give it and, after several attempts, the matter petered out and the Headman was not prosecuted for that offence.

Because of a lack of firm direction from the Principal Chief, judicial administration was complicated too by personal, political and factional conflict among those responsible. These strains led inevitably to delays and confusion and I have record of a representative of Government criticizing the Chief for the way members of the

administration allowed their being at cross-purposes to interfere with the processing of business; he singled out specifically the lack of communication between individuals and the consequent duplication of work.

There was the possibility then of personalities affecting the processing of cases. It must be kept in mind that individual members of the court might have handled cases in characteristically different styles, that some were more efficient, say, or less biased than others, and that each might have viewed the duties of the court from a slightly different angle. Criticism levelled against members of the court reflected on the administration as a whole, and since it was under heavy censure at the time, and headed by a Chief whose grasp on affairs was neither decisive nor forceful, the members of his court (especially his court representative) were in a position that exposed them to criticism. One representative left the administration shortly after I arrived because, so rumour had it, of alleged misdemeanours in the allocation of lands. His successor was discussed critically for arriving late to work, for keeping erratic hours, and for purported partiality towards friends and fellow administrators. An issue dividing the administration was the relative power of the Principal Chief and his mother, the ex-regent, who still controlled the affairs of Lichaba's, and this had its effect on the court as well, for some felt that sectional interests compromised its impartiality. So although it is the judicial process mainly that I shall discuss, it must be remembered that the court did not exist in the sort of vacuum, politically, that higher, official courts theoretically do. Far more than they, the court cannot be distinguished from the political matrix from which its authority derived and in terms of which its legitimacy was defined. Its strength and effectiveness were critically connected with the reputation of its members.

In a way, these weaknesses are contingent on the general lassitude besetting this chieftainship. But there is also the consideration that this is a court in transition; its members are neither fish nor fowl. They are of the ward, some of them of the chieftainship, and they do know many of the people who pass before them. But equally, they are caught up in an administrative network that is coming more and more under centralized control, and whose directives they are there to carry out.

TONE

An examination of the tone of this court does much to reveal why it remains a popular forum for the settlement of disputes. By going to the Chief's court, the peasant enters a scene of dispute-settlement very different from that of the formal, official Local Court. It is as though the step one takes in entering this court still holds one within that which is relatively familiar, for it is not unlikely that those hearing one's problems know the antecedents of the case and will draw out in detail the ramifications of one's troubles. It is a place with a less hurried style where, in one's own way, one can explain one's predicament. This atmosphere of give-and-take speaks of the vitality and continuity of the Chief's court, for its roots in the ways of the traditional lekhotla are to be seen in its conciliatory mode. The fact that members of the court knew personally many of the litigants before them, and that such knowledge could be relevant to and had its influence on cases, often lent a measure of subjectivity. Many interchanges were marked by a tone of debate and dialogue.

'Manapo of Mafa's village appeared before the court (the clerk Rametse took this case) charging her Headman, Mafa, because he had inspected her lands in her absence and allocated them to someone else. She had returned to Lesotho after twelve years in South Africa during

which she had made no provision for her lands to be ploughed on her behalf.

(4)

Mphumo, representing Headman Mafa, explained that there was a law that if a land were left uncultivated for two years it reverted to the headman to reallocate, and 'Manapo had been away for twelve years. He did not know where she was, and as she had left him no information about the ploughing of her lands, he had inspected and reallocated them to one of his subjects who had no land.

Rametse: What you said is quite clear, but there is another law, apart from the one about failing to plough lands. This law ... says that before you take someone's land, you must write to the person who was using the land. In your letter you ought to say that you intend using the land. There must be a reply within thirty days if they don't want the land taken from them. I agree with you fully, but this point forbids me. Did you write to 'Manapo?

Mphumo: No, I did not, because I did not know where she was.

Rametse: Now, do you notice that this is a problem? What do you think now?

Mphumo: My Chief, I understand. But what about the twelve years?

Rametse: I have already told you that I agree with you on that point, and I asked you what you said about the new law. You told me you did not write to 'Manapo. Now what shall we do, tell me?

Mphumo: My Chief, I think it is as I told you. I took the land lawfully. If 'Manapo wants to return, she can fill in her Form A and say that she would like to have a land. Then I'll consider it and bring it to you. As for this land, I'm sorry, I've used it already. I will not be trusted by people if I do this sort of thing.

Rametse: You tell me we ought simply to ignore this second law?

Mphumo: Yes. I acted according to the law. I took the land lawfully.

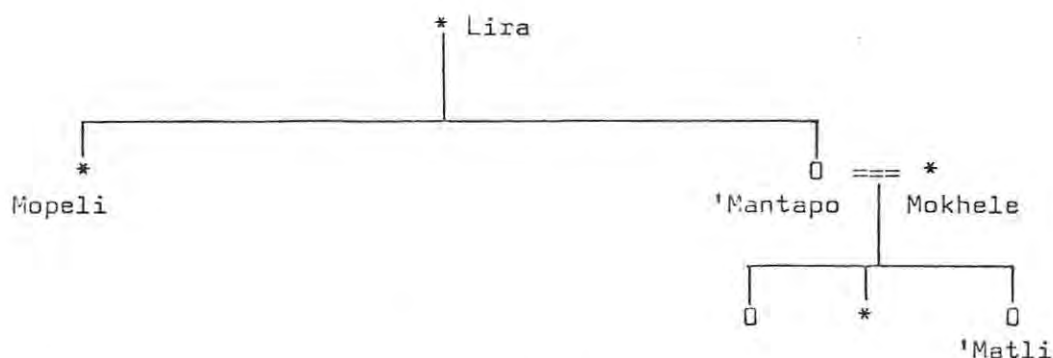
Rametse: I advise you to go back home and see to it that you return 'Manapo's land; see that you get another land for your other subject. I think you will go home and keep peace with 'Manapo and the rest.

This case has been given amply to illustrate the unhurried dialogue and the familiarity between the court and the Headman. The tone was forthcoming and persuasive and the court's view of Mafa's action was fully explained and substantiated in a reasonable way; he was not simply informed that he was wrong, but was invited to discuss the question fully. A later section will deal with the arbitration process in this court, but this example anticipates that discussion in that it illustrates how the court might aim its explanation persuasively at convincing the

litigant of where he has gone wrong and coaxing him, in this instance, towards a recognition that the norms he cited to justify his action were in conflict with other equally compelling principles.

The court's knowing many litigants before it was also reflected in its sometimes personal remarks. In a case, for example, about disputed succession after the death of a Headman, one of the court members, Chief Lejapoli, interrupted the statement of a member of the family to say that the wife of whom she was speaking ought not to be mentioned because she was not the late Headman's real wife, but a whore. The woman who had been interrupted objected fiercely to that statement, and later another member of the court, Litaba, asked Lejapoli not to comment on a certain point because of his disparaging remark. Litaba also warned the Principal Chief, who was present for this case, not to be taken in by the people before him but to know that there was more to the case than met the eye; he drew attention to the 'sour' look on the face of the first wife of the deceased Headman, and later called upon someone to speak because he had overheard him mumble something that hinted at underhandedness in the case being caused by hatred. This degree of personalized commentary was not to be found in the Local Court.

One of the chief functions of this court was to lokisa litaba or mend matters, rather than simply to find for one or other party, and accordingly its tone was at times helpful, explanatory and patient. The expectation that it was the court's duty to help litigants showed in the attitude of parties too; there were those who relied heavily on the court to take a lead in questioning and in other ways expected it to assist them in formulating and running their cases. The following illustrates how the court took a lead, as well as providing some idea of the tone and texture of the court. Rametse presided, assisted by Litaba and the messenger Lesole.



Mopeli charged Mokhele because he was refusing to part with the girl 'Matli, then about fourteen years old. He explained that Mokhele had gone to 'Mantapo's parents saying that he did not love his wife any longer and wanted her to leave with her three children; then he refused to let 'Matli go with her mother. It seemed that the girl herself would not leave. The day before this case, Mopeli said, he had gone to Mokhele's village with his sister and the girl was pleased to see them until her father came home, when she would not speak to them. Mokhele also did not say a word to them, not even to ask how they were. The next morning, as they were about to leave, they noticed a parcel of luggage outside the hut which 'Mantapo said were things she had bought for 'Matli. They called the village Headman to see the parcel and other witnesses also identified its contents as clothes 'Matli always used to wear. When asked by the Headman, Mokhele and 'Matli agreed that the things were 'Matli's, but denied any knowledge of how they had come to be lying outside the hut.

The court then questioned Mopeli on his statement:

Rametse: Are you representing Lira?

Mopeli: Yes, I am representing my father Lira.

Rametse: What would you like the court to do for you at this stage?

Mopeli: I should like the court to make Mokhele hand 'Matli into my hands.

Rametse: Is 'Mantapo not the wife of Mokhele?

Mopeli: She was, but not any longer, according to what was done by Mokhele.

Lesole: Did you ever give Mokhele back his bohali [brideprice; marriage payment]?

Mopeli: No, I did not.

Lesole: Why not?

Mopeli: Because Mokhele said he did not love 'Mantapo any longer, and he did not want his bohali for 'Mantapo. He said 'Mantapo could go away with her children.

Lesole: Now what do you want the court to do?

Mopeli: What I would like the court to do is to hand over to me, lawfully, 'Matli and 'Mantapo, just as the boy and the girl who are already in my hands.

Litaba: Why do you claim this?

Mopeli: It is because I could see that Mokhele played a trick: perhaps some time after the death of my father Lira or after my death, Mokhele could claim back 'Mantapo and her three children, saying that we were keeping them unlawfully.

- Litaba: What is this luggage you brought before the court?
- Mopeli: The luggage belongs to 'Matli, and it was bought by 'Mantapo for 'Matli. Now after they saw us yesterday, this morning the luggage was found outside. We brought it to the court because I'd like to find out why Mokhele wanted me to pick up the luggage on the road when he does not want me to pick up 'Matli as I pick up the luggage.
- Litaba: I don't know whether others understand what you are saying. I for one don't. Explain exactly what you want.
- Mopeli: What I want, my Chief, is 'Matli. I don't want this luggage. I will take the luggage once I'm given 'Matli.

Mokhele was asked whether he had any questions to put to Mopeli and he said he had not 'because I told him long ago to take his sister from me'. In his response to the charge he explained that he and his wife had not got on from the time she was nursing their second child. After the birth of 'Matli she seemed to go mad: she kept going back to her people and had lovers, sometimes even when he was home. He could not tolerate it and called his family and told them that their bohali 'had drowned' and that they should not regret its loss. 'Mantapo left him when 'Matli was about a year and seven months old and the child was brought up by his mother. He assured the court that he meant it when he said 'Mantapo could take all her children.

In reply to Mopeli's questions, Mokhele insisted that he had instructed 'Matli to return to her mother and had no intention of keeping her against her mother's wish. Asked why he had not withheld support from her to make her go, he said, 'As she has not gone yet, I cannot let her suffer while she is in my hands because she's my child'. Then the court questioned him:

- Lesole: I notice that you have framed a plan. What makes you say that 'Matli ought to go with her mother and her uncle and yet when she refuses to go you don't chase her away from your house?
- Mokhele: I cannot, as she is my child, as I've already said.
- Litaba: How many years have you kept 'Matli with you, away from her mother?
- Mokhele: Over ten years, a long time.
- Litaba: What made you keep her like that over ten years, and yet you've said she could go.
- Mokhele: 'Matli was left when she was young. She was brought up by my mother. When I said her mother could go away with her, she was still too young to move.
- Litaba: Why didn't you take her to 'Mantapo's place?
- Mokhele: I did not because I did not like going to her place.
- Litaba: Why did you not order 'Matli to go to her mother's place when she was six?
- Mokhele: No, I did not, because I did not like to.
- Litaba: Has your new wife got children?
- Mokhele: Yes, she has five.
- Litaba: So you are keeping 'Matli as your nursemaid?
- Mokhele: No. 'Matli can go at any time.
- Litaba: Have you learned when he said this morning 'Matli's luggage was found outside?
- Mokhele: Yes, I heard that.
- Litaba: Among that luggage, was there anything bought by you?
- Mokhele: No, I do not know, because I have not seen it.

Litaba: Please, 'Mantapo, spread out the clothes there.

Nothing bought by Mokhele was among the clothes spread out.

Rametse: What is really your plan, man?

Mokhele: I plan nothing.

Rametse: This is 'Matli's luggage, but all those things were bought by 'Mantapo. Why are the things you bought not in here?

Before Mokhele could reply, the Headman of his village interrupted and told the court that that morning when they investigated the clothes, 'Matli had said to her mother, 'Take your luggage. I don't like it! I have my grandmother and my father who will buy for me--if you are after your clothes!'

Rametse called the girl to speak at once, to comment on what the Headman had said, and 'Matli admitted that she had said that, 'because I don't like her'. She said she did not know her mother, and had not been brought up by her. Rametse asked the mother to question her, and the girl, very cross, insisted, 'I do not know you. Have you brought me up? Did you ever buy me a thethana [fringe skirt worn by little girls]?' She said she wanted nothing from her mother and would not leave her place for her mother's.

Rametse: May I say to you, Mokhele, that you have already told this court that you don't like 'Mantapo any longer?

Mokhele: Yes, that's what I said, Ntate [my father].

Rametse: You said she could go with her children?

Mokhele: So I said, Ntate.

Rametse: Why can't you let the child go with her mother as you said?

Mokhele: I am willing to tell her that.

Rametse: Tell her then, to go now.

Mokhele: 'Matli, go to your mother. I don't want to be in trouble.

'Matli: I'm sorry, I am not going.

Rametse: What are you saying, girl?

'Matli: I say I cannot go with her.

Rametse: Ntate Mopeli, did you hear what the girl said?

Mopeli: Yes, I have heard. It's as I told you, my Chief: Mokhele's playing a game with me. He says he'll let me have 'Matli; right at the bottom of his heart he says, 'Matli, you must not go'. He has kept this daughter of my sister as a slave or a nursemaid for his wife's children.

Rametse: Where is the older daughter?

Mopeli: The older daughter is married.

Rametse: Who got the bohali of the older daughter?

Mopeli: They are with 'Mantapo.

Rametse: Do you want those bohali cattle, Mokhele?

Mokhele: No.

Attention is drawn to the participant tone of the court.

Although Mopeli's opening statement was detailed, the members of the court questioned him closely to discover what his intention was in bringing the case and made him spell out exactly what he wanted the

court to do for him. The case illustrates how questioning was one of the foremost tasks of the court. It also shows how they functioned as a team to test the veracity of statements, and how aggressive and subjective their questioning could be, for they seemed to jump to conclusions about Mokhele's motives in keeping his daughter. When I questioned Litaba about the difference in the court's attitude towards Mopeli and Mokhele, he explained that he himself knew how Lira and 'Mantapo used to keep going to Mokhele to get the child 'Matli and how he kept tricking them with excuses and promises. He also said 'Mantapo had been thrashed when she left Mokhele, and that she left without any of her children; the two older ones had followed her. At least one member of the court then had inside knowledge of this dispute, and that knowledge helped to define the court's attitude towards the parties.

The fact that those hearing a case may bring personal knowledge to bear lends this court a tone derived from a traditional judicial heritage in which individuals were most probably evaluated in terms of well worn customary criteria such as 'quarrelsome neighbour' or 'disobedient daughter-in-law'. The individual may still appear in this court in terms of a complex of social links, and the judges may have personal knowledge of the quality of those links.

There is a strong sense then of the judicial process being marked at times by a decreased objectivity, emphasized by the participant manner in which cases were handled. This might result in the establishment of a sort of dialogue between the court and the parties, an interaction that could be so intense that parties sometimes argued with the court or gave what could only be called backchat.

In a case in which Chief Molise charged his superior, Chieftainess 'Matanki, for depriving him of three lands, the following interchange occurred:



- 'Matanki: You insult me, Molise?
 Molise: I've never insulted you.
 'Matanki: This court allows Molise to insult me? I'm going away now. Right in this court I'm not protected.
 Rametse: Chieftainess 'Matanki, you are the one who began by insulting Molise, and he never insulted you. Please have patience and let's talk about the case.
 'Matanki: I cannot. I see that you are biased.
 Lejapoli: Yes, Chieftainess, you are right to say that we are biased because you have just used an abusive expression in this court, and we did not charge you. Why do you call Molise a boaster in this court?
 'Matanki: Oh, are you also like that?

But despite this seeming familiarity, and although people were allowed to interrupt or speak out of turn at times, despite the dialogue, backchat and occasional outbursts and licence allowed, the court was also quick to pull up people who, in their opinion, overstepped the mark. One complainant interrupted the court's questions to a witness to say, 'Let me talk--she's lying!'

- Leboea: Stand up, Ntate. What makes you talk while I'm talking? Didn't you give your statement as complainant before this court? Now why are you talking? Don't you know that before the court any person who wishes to say something will be allowed to do so? A person like you interrupting in court! Is this the first time you appear in court?
 Samuel: No, I always come to court.
 Leboea: What are you after then? Do you want me to leave off this case and let you and me make a criminal case for obstructing the law, and for me to handcuff you as Mokoro here is handcuffed [a man being held in connexion with stocktheft]? Do you see the man to my left [Lesole, the messenger]?
 Samuel: Yes, I see him, Chief, but I plead for mercy.
 Leboea: He is the 'policeman' of this court ...
 Samuel: Please, my Chief, forget me.
 Leboea: I point my finger at you ...

What I have called the familiarity of tone between disputants and court cannot entirely be separated from the political ties between them, for those I recorded as giving backchat were also fellow administrators. In his discussion of 'subjective' and 'objective' types of judicial process, Hamnett makes this point:

If ... a functional relationship exists between the degree of political differentiation on the one hand and the scale of

abstraction on the other, it would be expected that the traditional legal system of Basutoland would reveal a degree of "objectivity" roughly comparable to the extent of its internal political differentiation. The judicial task of the chiefs encourages this expectation. They stand (or stood) in a position mid-way between the non-institutional procedure of reference of an almost undifferentiated political system and the fully institutionalised process of western type. (1970:309-10)

The degree to which process in this court falls within the 'objective' (5) category will be relevant throughout this chapter, for it will help to indicate to what extent this court was an assisting and accessible venue for the ordinary litigants who passed before it. The case that follows is given here, although its implications extend beyond a discussion of the tone of the court, because it is important to establish early that, helpful and mediational though it may have been, this court's decisions were also at times apparently circumscribed and modified by considerations other than restoring the peace or investigating administrative dislocations, and to show how this affected its tone.

(6)

The five members elected to the land advisory board of Lekhala's village came before the court to complain that their Headman, Lenkoro, was allocating lands without conferring with them. They had brought no witnesses, but were there to ask whether their Headman was acting within the law. They also mentioned that there was a man called Sekho who stirred up trouble between them and their Headman, for although he was of no position in the village, he was the Headman's right hand in all he did.

In reply, Headman Lenkoro simply denied that he had allocated lands without consulting his land advisory board. It would be for the court, he said, to decide to find out whether or not he had allocated lands without them. He had brought no witnesses.

After summarizing the statements made by the parties, the court concluded that, in the absence of evidence from witnesses, Headman Lenkoro was not guilty of allocating lands by himself.

In interviews I had with the members of the land advisory board, they alleged that they had gone repeatedly to ask Leboea, who presided over this case, to tell them whether their Headman was acting within the law, and that Leboea had failed to satisfy them, but always sought to find reasons to excuse the Headman. They had asked him, they said, to let them see the Principal Chief, but were fobbed off with the excuse that the Chief was not in, and that Leboea did not know when he would be. They could only see the Chief after Leboea had done so, he told them.

The Headman made no effort to justify his actions or to present himself in a reasonable light. He simply denied the allegation, saying that perhaps for some reason the land board wanted to bear false witness against him. His off-hand throwing the onus for investigation upon the court, without offering corroboration, speaks perhaps of a confidence in the indecisiveness of this forum. Also to be noted is the court's handling of the case. The decision was rooted in a close adherence to a letter-of-the-law view of evidential and procedural demands. The investigatory functions of this court are firmly based on its recognition as an administrative court, and to give as a reason for decision the fact that no evidence was led was tantamount to ignoring the problem deliberately, and, if the board's statements to me are to be believed, Leboea persisted in turning his head the other way. The court then selected (one can only assume, purposively) a formal, objective manner of handling the dispute, which also served to impede any arbitrational impact its decision might have had. Although it ended with the conciliatory formula, 'Go and keep peace at home', nothing in its handling of the matter had paved the way for rapprochement.

This land board's predicament was not an uncommon one. A complaint by her land board against Chieftainess 'Mampho, the head of Lichaba's, resulted in their being directed by the court to see the Chieftainess herself to complain rather than coming direct to the Principal Chief's court. Once again, the complaint was treated with strict regard to observing proper channels and formal procedures. This instance points to a difficulty that presents itself when dealing with administrators: how to evaluate their decisions when they are called upon to investigate the actions of fellow administrators. This complaint against the Chieftainess placed the Principal Chief's functionaries in the unenviable position of having to scrutinize the actions

of an authority over whom they technically had review capacity, but who, in terms of the commonsense power relations of the ward, still commanded a strong power base. The court's non-committal direction stemmed from the ambiguity of its position, for the Principal Chief himself had no duly elected land board at that time to consider appeals and grievances about land and its allocation. Moreover, its 'Catch-22' type of reasoning seems to reinforce a strong impression that this court did not want to investigate certain administrative complaints any deeper than was unavoidable.

In the case against Headman Teko for failing to attend a vigil, Leboea put off those who went for a letter to have the case opened in the Local Court. As they described it in an interview, he told them that he could not give them the letter until he had looked up certain things in the Chieftainship Act; ⁽⁷⁾ when they returned he said he first had to interview the Principal Chief (who was away); when they came again, he said he had forgotten to see the Chief over the weekend; finally he said that the copy of the Chieftainship Act was missing and might have been taken by a former clerk--he would send for them when he found it.

These examples point to how the court could act to distance disputants and petitioners in several ways. It could, instead of allowing proceedings to take an informal, arbitrational or investigatory course, effectively stop a case short by imposing a more formal line. It could mystify or block people by denying them access to channels or sources of information. By so doing, it confined such disputes and contentious issues within its own sphere of competence, and sometimes unwarrantedly. Not to be discounted here is the element of bureaucratization that served to make life complicated for those who could get no satisfaction at this level but who did not know how to circumvent it. An instance was described in the opening statement of a plaintiff in the

Local Court in a case which revealed an administrative bungle (or worse) which resulted in one land's being allocated to two people.

'I charge Phiri for ploughing my land in ... area. He sowed wheat without my consent. I went to Phiri to ask him why he had done this, and in reply he said that he did not plough my land, but his own land. That was on 8 March 1969. He said that the land was allocated to him by the Principal Chief. I also said that the land was allocated to me by the Principal Chief. ... I went to the Chief's office, and there I found Thipa. I asked him whether I could see the Principal Chief as I had found Phiri ploughing my land. He said the Principal Chief was not in the village. I then handed my Form C to Thipa. He took the land register book and found my name on page 20. Phiri's name appeared on page 38. My form states that I am allocated the deceased 'Majoel's land, and Thipa said that Phiri was allocated the deceased Gauda's land, on 8 December 1968. Thipa rewrote my form; he wrote something in English on it, and he did not tell me what he had written. He told me to go. On the following day I wanted to see the Chief and again I found Thipa. Thipa lost his temper and said I was to go home. "I am the one to see the Chief, not you!" After that I tried several times, even though he had asked me why I kept trying to see the Chief, but each time I was chased away. Then I came to the Local Court.'

But in spite of some bureaucratic emphasis and the other ways in which court members could seek to distance common folk, the overall impression was that this court has remained a relatively familiar one, within the encapsulated system, still serving a necessary function. Its approach, less formal than the official judicial courts, is expressed in a tone that facilitates the thrashing out of ramified grievances: disputants could talk, could discuss, could negotiate. Its continued vitality emerges in its flexibility of tone because, although the old traditional forms of community debate and consensus might be absent, nonetheless people could interact with the court. Reflected in its tone is one of its most immediate functions, to help people arrange and sort out their affairs. The other side of its face, its retreat into officialese, is a reminder that it is a court with connexions in two systems.

PROCEDURES

Discussion is not confined here to court procedure as such, but covers how grievances come to court, its relations with lower dispute-settlement channels, what discretionary leeway is open to it, and how it functions as a clearing house for litigation proceeding upwards; all this in terms of the actual running of cases. Procedures generally were more flexible than in the Local Court for which they are largely specified in legislation. Perhaps the very fact that the Chief's court's activities are not covered by a detailed official warrant allows it greater latitude in its handling of disputes and investigation of complaints. Certainly its procedural forms were sufficiently wieldy to allow it to adapt its methods to the problem in hand, to follow the 'logic' of the case. This redirects attention to the court's being embedded still in the going relations of the community, for its members could cast their net widely in sorting out affairs. It also points to the continued utility of the court, for one needed no special skill to present a case there. To a large extent, the court was there to do it for one.

Bringing a grievance

One of the things that fundamentally distinguished this court from the Local Court was that judicial processes here start at a less precise or specified level of formulation of dispute. Indeed in order to direct the court's attention to one's problem it was not necessary even to charge or accuse (ho qosa--transitive), but simply to complain or be dissatisfied (ho belaela--intransitive). Thus:

1. People from Lerata's village in Lichaba's sub-ward came to complain (8) that a certain faction of their village had gone to Lichaba's office to have their Headman, Labone Lerata, demoted. They wanted it on record that that group's decision lacked legitimacy for it had not been taken in public pitso, nor did it express the wishes of the whole village. If Lichaba's office forwarded the other faction's representation to the Chief's court, they wanted the Chief's functionaries to be forewarned.

2. A man complained that his Headman and land advisory board had told him to stop ploughing his mother's land after her death. He was told to return to them and inform them that he was responsible for the debts incurred by his mother's death, and to ask them to allow him to plough the land that year to enable him to pay those debts. The following year he was to hand the land over to them; if he still wished to go on ploughing it, he might exchange it for one of his present lands.
3. Chieftainess 'Matanki of Pholo sub-ward complained, through a representative, that a subordinate authority of her sub-ward had captured and impounded, wrongfully, cattle belonging to one of her villages. After keeping them a week, some had been sent to Chief Molise, another subordinate of 'Matanki's, who wanted to sell some of the stock (presumably to defray costs; there was antagonism between Molise and 'Matanki). The representative had brought the stock owners with him, and asked the court to help them retrieve their stock, which had done no damage. The court read from the Chieftainship Act to indicate that the Chieftainess had the authority to compel Molise to obey her orders; if he failed to, or obstructed her, she had the right to charge him. Her representative was told that the matter was in her hands and that she had already delayed unduly.

Such complaints are clearly marginally part of the judicial process. They do not involve calling witnesses or answering a charge. They are dealt with concisely and do not necessarily call for any probing investigation of the evidence. Most of them engage the administrative rather than the arbitrational aspect of the court. They are included to show the variety of tasks facing the court administrators and how the court remains useful in sorting out problems and directing local grievances.

Slightly more formalized were the complaints that follow, for they resulted in investigation and presentation of evidence in a way that must be described as a hearing, if not a case. I have abstracted these examples from my material as complaints rather than as cases only to indicate how dispute-settlement might be initiated at this level.

1. The representative of Chief Motiki of Lichaba's sub-ward brought two of his subjects to complain that one Mthembu had turned up the wheat on their lands. Also present was Chief Motia to testify that he knew the two men; they had also complained to Lichaba's office, which had decided that Mthembu's provocation was criminal. The court ordered that Mthembu be called to appear on a certain date.
2. Khothatso came (with a letter from a neighbouring principal chief) to ask for assistance in locating his wife who was believed to be living

in a nearby village where the Headman had given her a house. This Headman and Khothatso's wife happened to be at the administration that day (it was rumoured to apply for a site for the woman), and the court held a hearing at once to investigate Khothatso's claim that his wife had stolen their child. The court then sent the couple home, adjuring them to live in peace.

3. A phala of 'Mampho's complained that the 'Mampho's Headman, Mpho, had refused to assist him, as the police had ordered, in driving a flock of sheep and goats to the police station. Mpho was called and taken before the Principal Chief. After discussion (from which Mpho was excluded after having stated his defence) he was told to get a letter from Rametse to go to the police to ask for pardon.

4. Two men of Koma's complained that if the Principal Chief did not intervene, there would be bloodshed in their village because of the carelessness of their Headwoman, 'Making, and the leboella (reserved pasture) caretakers. A hearing was scheduled and held. (9)

5. Headman Mohlomi came to complain that his neighbour, Chief Motiki, was claiming that some of Mohlomi's people were living in his area and ought to leave. Motiki was called and he asked to be allowed to discuss the matter at home with Mohlomi. He said he had not expected Mohlomi to go straight to the Principal Chief on receipt of his letter, but to see him first. It was agreed that they be allowed to return home to settle the matter privately.

6. Albert from Koma's brought his aunt, the widow of his father's younger brother, Lebusa, to complain that Lebusa's son, Thobe, was trying to do her out of compensation for her husband's death by trying to convince the authorities that he was Lebusa's sole heir. Thobe happened to be at the administration about the matter of Koma's leboella, and he was found and a hearing held. Albert was given a letter to take to the DAS's office to clear up the question.

These lists give some idea of the diversity of complaint handled by the court administrators and of the numerous channels they might use to effect a solution. They also offer insight into the sifting function of the court at this level of the judicial process, for it is in a nodal position at which several distinct avenues for redress intersect, and one of its functions is to direct complainants towards the channel most likely to suit their needs. Complaints that were investigated in hearings or cases were an evident part of the judicial process, and what is of greatest interest about them at this stage is how flexible procedures were in handling them. For example, defendants were also summoned by more formal means, but in those instances when they happened

to be nearby, they were simply called in to answer the complaint against them. With the complaint against Thobe, for instance, it was Albert who mentioned that Thobe was at the administration in connexion with the complaint about Koma's leboella. Thobe tried to disappear, with people shouting for him, but someone was sent to look for him and he was brought back.

Another less formal aspect was the lack of insistence on witnesses. Such a hearing might draw in only the two parties concerned, to answer questions and make comments as the court deemed necessary. The presentation, of course, depended largely on the parties themselves. The complaint about Mthembu was given quite formally, with Chief Motiki's representative introducing the men whose lands had been turned up, each man speaking for himself, and finally a statement from an informed person, the Chief who knew the men, the lands, and the outcome of the complaint in Lichaba's office. Basic and commonsense procedural forms persisted; for example, that each side be allowed to present its case. Nonetheless, the demarcation between plaintiff and defendant was less rigid here than in more formal judicial situations. The men who complained about the tense state of affairs at Koma's were not so much charging the people involved, as asking for a general investigation and a solution to their village problems. Sometimes the complaint was not even directed specifically at anyone, but aimed more at eliciting assistance or investigation. This was the case with Khothatso's search for his wife and child. There was no real formulation of a charge, as is necessary in 'opening' a case in an official court. Statements of complaint could be rambling, discursive and vague as to what exactly the complainant wanted done on his behalf.

Channels

Having established one of the more important ways in which litigation might be initiated at the level of the Chief's court, let us now discuss actual cases in terms of the relationship between the court and the lower channels through which dispute passed up to it. Although here, again, procedures were sufficiently adaptable as to allow individuals to come directly to this court without necessarily following such intermediate steps as the family or headman's court, the Chief's court relied on lower arbitration courts to carry their burden of dispute-settlement and, reciprocally, endorsed the legitimacy and status of those channels.

Likoebe and Moseme were the sons of two brothers, of whom Likoebe's father was genealogically the senior. Moseme came to court because Likoebe had erected a building on their grandfather's site which Moseme considered to be his. Although junior to Likoebe, Moseme was older in years. Their witnesses, with one exception, were men of their family. After the two cousins and their witnesses had spoken, the court recalled one witness who had supported Moseme and questioned him closely about the relative seniority of the two, making him spell out himself that Likoebe was senior. This man then told the court that the dispute had come before them without ever having been discussed in family council or in their Headman's court.

The court decided that it could not continue with the case because it had not been heard at these lower stages. But before calling upon their Chief to take them back to his court to determine whether it ought to go before the family or the Headman, the court expressed its own view that Likoebe was to be considered the senior, although younger in years.

The Chief thanked the court: 'My Chief, I will be pleased if in future you will work as today. Although ... we return today, you have shown us the way to take.'

Apart from endorsing lower channels to the extent of returning a case if the parties were agreeable, the court checked to see whether certain cases had gone through preliminary hearings. A Headman bringing to court a woman who had insulted other members of his village was asked, for example, whether he had heard the case in his court. He had, he replied, and found the case to be a criminal one (and thus destined ultimately for the Local Court, which is empowered to deal with such

cases, if the Chief's court agreed with his assessment of the situation). It is interesting that in both these cases the lower courts were used as a normative defence. In the first case, the plaintiff's witness, thrown on the defensive by having to admit that the man he supported was junior to the defendant, drew the court's attention to the dispute's not having been heard previously by family or Headman. In the second case, the defendant said in her response that she had asked for a family gathering to discuss the difficulties in her relationship with one of the women she was accused of insulting, but that no such hearing had taken place.

Implicit in the court's endorsing lower channels is the possibility that suspicion might be aroused by bypassing the 'proper channels'. Thus a group of people coming to ask that their late Headman's son be installed were rejected because they had not presented their decision first to a pitso of their whole village, nor was village opinion represented in their group; most importantly, they were not led by the more senior Headman under whose authority their area fell. These were not, of course, the only reasons for not accepting the proposed candidate, but the circumstances were sufficiently suspicious as to indicate that other complications--about which the court was fully informed--had not been resolved and would act to obstruct peaceful relations in the village and its relationship with its superior authorities.

The passage of dispute along the 'proper channels' served to reinforce political ties in the administrative hierarchy. As the previous example indicates, a failure to observe correct procedure pointed the court towards an awareness that the group were trying to convey their lack of fealty to their superior by excluding him from their decision. This was illustrated again in a case brought by a representative of the Palane sub-ward Chieftainess, 'Mantapo, against two of her subordinates for failing to

elect a land advisory board. Upon investigation it was found that the Principal Chief's office had on record a list submitted by one of the defendants of the board his people had elected. Thus the court decided that he not be taxed with failing to elect a committee but with failing to submit their names through the proper channels, for this list had not gone through his sub-ward Chieftainess. Chief Leboea interrupted the proceedings to refer to the Gazette listing of administrative authorities ⁽¹⁰⁾ in order to bring home the point that no authority had the right to bypass his superiors in this sort of matter. Once again, the flouting of channels communicated political tension, for this defendant insisted that the case had been framed against him by those who were after his position.

Passage of dispute along 'proper' channels demonstrates the continued integration of tribal dispute-settlement. It is an index that the organism is functioning, that people can pass upward along the linkages until some solution is arrived at. Often there is no need to bring suit in an official court. More than this, one can see here the sheer utility of this court and those below it. One of the services it can provide is to show people 'the way to take', to direct them to the solution or channel that will best serve their needs. Often, those channels are tribal ones.

But not always. The Chief's court's view of channels was conditioned by its relationship with agencies of the encapsulating structure as well as by its place at the apex of the tribal hierarchy, and sometimes this generated its own tensions. In a disputed succession, for example, the Principal Chief, under pressure from the Government to submit the name of the successor, instructed the head of the family to let him have a decision within a week. Back came the family head before the Principal Chief to complain that the Government's haste violated

traditional procedures and tribal processes. The Chief's court here was under pressure to hurry through a decision because of its place within the channels conduiting to Central Government, which could thus make its own demands on how certain cases were handled at this level. Similarly, derelictions might be exposed in the Local Court which could point to delays or incompetence in litigation funnelled to it.

The logic of the case

We have seen how, in this court (in contrast to the Local Court), people were free simply to come and 'complain'. Similarly, a plaintiff might come to court with the most general and ramified grievance to air against the defendant. Thus,

Headman Labone of Lerata's village brought before the court a young woman, 'Mapuso, and members of the mokhibo (11) dancing group of his village. His complaint was that the women, and especially 'Mapuso, were causing trouble in the village. 'Mapuso used abusive language in his village about members of the BNP. He then described how he had called her before him and asked her why she was insulting people:

'She said she had never referred to anyone, but was merely talking. I said, "That means you were insulting me then", and she replied, "No, I was merely talking". She said, "If you think that I have insulted you, will you please pardon me". I said, "I am sorry, I am not prepared to pardon you, and I won't. You seem to be making a nuisance of yourself here. Since you arrived in this village there has been friction among my inhabitants." She said, "Please pardon me, I will not do that any longer".'

The Headman had told her to leave his lekhotla and had come before the Chief's court about the matter.

It transpired that the Headman also considered the young woman to be disobedient and lacking in respect for her elders; moreover, she had defied the Headman in a difference of opinion about the mokhibo group. 'I told her,' he told the court, 'that I would find out, between her and me, who was the head of the village.' Another consideration was that she had allegedly threatened him: if the Headman tried to stop the dancing group (whose activities had involved his village in a political furore), she would invite thieves to steal his livestock. He mentioned that recently a woman who had quarrelled with 'Mapuso had lost her sheep to thieves; 'Mapuso had also threatened this woman.

All these statements emerged gradually in the course of the case, in

response to questions and conciliatory attempts from the court. Although the Headman made an opening statement, his fuller grievances were not confined to it, but piled up, as it were, against the woman's requests to be forgiven as the case proceeded. There was no attempt to contain his displeasure within any specific charge; he simply went on raising one point after another against her to illustrate why he felt she should not be let off easily.

One of the consequences of presenting one's grievance in this way is that statements tend to become circumlocutive, the speaker digressing to bring in events he considers relevant, or describing conversations closely, as Labone did, all in an unhurried, narrative fashion. Without a specified charge, it was not always easy to pick out the central point of dispute from the diverse stream of general complaint, and the court sometimes had to question a plaintiff closely to discover what it was he wanted the court to do for him, as in the case between Mopeli and Mokhele.

Procedural elasticity in presenting one's case is related to a less legalistic approach in other ways too. For example, in the case in which Chieftainess 'Mantapo charged two subordinates for not electing land advisory boards, the court decided to rephrase the charge against the first man: he had elected a committee, but had not submitted the list of names through her. The case was not dismissed, however, but the grievance was examined fully. We shall see that this sort of flexibility did not obtain in the Local Court. Similarly in the case between the two cousins Likoebe and Moseme about who had the right to build in their grandfather's yard, even though the court returned the case to be settled at a lower level, it expressed its view of the matter before sending the disputants home, as if it were dealing with, and not as if it were dismissing, the case.

One might say then that the case proceeded according to its own logic in this court: the way each case was handled seemed to depend upon the circumstances leading up to litigation and the way the case unfolded in court. Very generally, the procedural pattern allowed for both parties to state their cause and present their evidence if any, the plaintiff leading off and the defendant responding; generally the court took the leading part in examination. The most striking differences with the formal, almost invariable procedure that was followed in the Local Court were related to the way the court called forth and examined evidence. Witnesses, who were not always excluded from cases as they were in the Local Court, were not necessarily called or questioned in any strict order, but might well be called and recalled according to the way evidence emerged. Examination was relatively unconstrained in that the court could create confrontations to test veracity or could force people to answer challenges to their testimony as they arose. At its simplest level, this participant examination of evidence was to be found in questions such as: 'Is this really what X said?' (to women involved indirectly in a dispute who were not called upon to give statements); 'Between you and Y, whose word must the court respect?' (to a defendant, a headman, referring to a decision in his sub-ward chief's court); 'Come Z. Do you hear what B has just said? Do you agree?' (to a defendant or witness after a statement made by the other party or his witness).

To illustrate a more complex level of court participation, let us refer back to the case between Mopeli and Mokhele. I noted there how the court questioned as a team, taking over from one another in questioning and picking up each other's points in an effort to shake Mokhele's assertion that his daughter, 'Matli, was free to return to her mother. I want now to look more closely at the way the Headman inter-

rupted to state what he knew about the luggage that formed part of Mopeli's case against Mokhele, and how the court made use of the interruption to force the various people involved into a revealing confrontation. The court had just asked Mokhele why, if the parcel opened in court was 'Matli's luggage, it contained only clothes bought by her mother and none bought for her by him.

- Headman: ... Excuse me, my Chief [for interrupting]. This morning when we saw 'Matli's clothes, 'Matli said to her mother, 'Take your luggage! I don't like the clothes. I have my grandmother and my father who will buy for me--if you are after your clothes!'
- Rametse: Come, 'Matli. What do you say about this your Headman has said?
- 'Matli: Yes, I said it because I don't like her.
- Rametse: Why not?
- 'Matli: Because I've never seen her. This is the first time I learn today.
- Rametse: What do you mean?
- 'Matli: I mean that she has never brought me up.
- Rametse (to the mother): 'Mantapo, just ask this child a question: she keeps saying she does not know you.
- 'Mantapo: Don't you know me?
- 'Matli: I do not know you. Have you brought me up? Did you ever buy me a thethana?
- 'Mantapo: Who always clothes you?
- 'Matli: There are your clothes! You can take them!
- 'Mantapo: Were these the first clothes I bought you?
- 'Matli: If I want clothes, my father will pay for them. I want nothing from you. I cannot leave my place and go to your place.

Notice how the Headman came in as an official witness, offering his evidence at the opportune moment, and not necessarily as part of the case of either party, for he appeared in his own right as the official who was called to witness an event in his village and who accompanied the disputants to the Chief's court. Even more important was the way the court called first one person and then the other, not so much as witnesses who could give statements for either side, but rather to force them to comment on each other's attitudes and by so doing, reveal their relationship more fully. It was an effective tactic that allowed the court to take

advantage of the heated exchange of the moment in a way that a court following a more rigid procedural schedule could not.

Discretion

Perhaps the most signal distinction between this court and the Local Court is that it still falls largely within an inquisitorial rather than an accusatorial system of justice. It was shown how the court administrators assisted some of those who complained to them in examining their problems, and how sometimes hearings resulted from such complaints that were, to all intents and purposes, cases. It was also shown how disputes came before the court often in a loosely formulated way, as yet unmoulded, as it were, into legalistic shape, with unspecified causes of action, and how the court often had to question litigants to discover the central issues of contention. The court was not constrained, in the same way as was the more formal Local Court, to pursue litigation to its logical conclusion. Once the court discovered, for instance, that a litigant was guilty of an offence, it seemed not to consider itself bound to see that justice was meted out in terms of the letter of the law in an official judicial court. I have mentioned, for example, that Headman Teko was not forced to face charges in the Local Court for failing to attend a vigil in his village.

The court member who saw to that through his repeated refusal to part with the information necessary to prosecute this Headman was, I will argue, exercising a form of discretion, and the discretionary leeway open to members of this court was wider than that open to an official judge precisely because this court did not operate in an accusatorial way. It was the same court member, Leboea, who quashed the attempt by Lekhala's land advisory board to question their Headman's right to allocate lands without consulting them, and again one must indicate that he exercised discretion in refusing to investigate the matter. In that case one

might note that the land board presented their case in such a way as to invite investigation, instead of the legalistic finding that the court handed out, for they made it clear that they were not so much charging Headman Lenkoro as asking whether he was within his legal rights not to refer to them. Thus the case took place at two mutually exclusive levels, as it were, for the board presented an unformulated, non-specific case (i.e. within an inquisitorial frame of reference) while the court dealt with it in a formal, objective, letter-of-the-law fashion, emphasizing the absence of witnesses (i.e. accusatorially). Nor did the court make an effort to postpone the case so as to summon witnesses.

Hamnett makes the point that discretion, 'suggestive as it is of a polarity between rule-governed (sc., judicial) behaviour on the one hand and power-based (sc., political) activity on the other' (1975:18), is not a term happily applied to the absence of constraint or the flexibility observable in decisions of the chief's court. He agrees with Gluckman (and probably with Moore) that judges rationalize their decisions by the normative constructions they present, and that the reasons given for the outcome of a case need not correspond to the reasons for the outcome. However, he prefers to emphasize the legitimacy aspect of such variability, and says, 'Gluckman's own striking phrase about the certainty of the law being maintained through the chanciness of litigation puts the emphasis more squarely where it belongs' (1975:18). Hamnett insists that the entire process 'is one of law', although he later qualifies the point to include political considerations introducing an ambivalence into the equation:

It is certainly the case that a Sotho chief must keep within the circumscription of his particular office and authority; but it is not the case that all his acts within that circumscribed area are surrendered to a 'discretion' fettered only by the rules of judicial review. Legality enters into his decisions as well as bounding them, and these are in principle open to challenge on their merits. Conversely, it is not the

case that legality itself is constrained by 'decision-inevitability' in such a way as to imply a unique outcome. The 'rules' of customary law reside in concrete but general norms, whose ambivalence, or ambiguity, permits a variety of possible outcomes, each one of which can be formally proposed and argued for as 'legitimate'. It is true that one face of this is that what are in effect 'political' outcomes receive a factitious and post factum legitimation derived from norms that would justify almost any decision. This is the point at which the ambivalence in all Herrschaft is found, and it is here that the current dilemma of chieftainship has become explicit: the folk-ways, and the ways of the folk in power. But a facile reductionism only obscures the contours of all legitimacy, obliterating the discontinuities of consciousness and offering in their place a platteland of undifferentiated 'interests' that falsify the empirical reality while purporting to explain it. (1975:113-14)

Certainly one recognizes that Leboea was concerned with the legitimacy of his decisions. He put off those seeking to prosecute Headman Teko with excuses that, on the face of it, were valid reasons for holding up the case. Nor could one argue, legally, with his dismissing the complaint against Headman Lenkoro on the grounds that it was unsubstantiated. But one must not stop there with the assumption that, because the process was packaged in terms of legitimate norms, it was either apolitical or disinterested. Perhaps it is impossible to point to any one factor in the process and say that that was the definitive one, but one can throw up some possibilities that might be associated with that particular outcome. For example, there was a rumour concerning one of these headmen that he and Leboea were friends--that they 'ate together'--with all that implies. There was certainly the fact that the administration as a whole was under fire for slackness; perhaps fuller investigations into cases such as Lenkoro's would have rocked the boat. Both these factors point to a political 'interest' that cannot justly be excluded, and while I agree that the uncertainty of the law leads to variability in decision, and that the presentation of a decision is closely related to the business of legitimizing it, I should prefer not to dismiss the political implications of decisions such as these on

the basis that we are dealing here with a process of pure law simply because the decisions can be legitimized.

Let us return now to look at the actual process of the operation of discretion in a less 'loaded' case in this court.

Headman Boyce, an important Headman in the village of the Palane sub-ward Chieftainess, 'Mantapo, was charged in her court by a neighbouring Headman, Molaoli, for allocating a land to one 'Malesole in Molaoli's area without his consent. Molaoli lost his case there and appealed to the Chief's court.

It emerged that Boyce had taken a land that had been allocated to one of Molaoli's subjects, Khaketla, and reallocated it to 'Malesole. Boyce claimed that the land was situated in his own area, but that he allowed Molaoli to allocate some of his people lands there because Molaoli's own area was small. It transpired that Molaoli was in the right, and the court established that Boyce was lying, his subject not even having the requisite Form A. The court adjourned and the following discussion took place.

Lesole: I don't want to waste my time on this case. It seems to me that Ntate Boyce is sick. Some time back, earlier this year, he was warned before the police not to keep fiddling with other people's areas. On that occasion, he was fiddling with Mokhoara. Now he's fiddling with Molaoli. My plea is that Ntate Boyce ought to be taken to gaol. He is doing these things outside the law. I say this because he allocated 'Malesole a land without Form A. It is quite clear that there is bribery about this land, according to what Ntate Boyce said. I have nothing to add.

Lejapoli: Truly, I encourage the Chief that Ntate Boyce should be charged. I can't understand in January this year, when he was before the police, why they did not charge him for breaking the law. He will get used to doing this. I confirm what Lesole has said.

Litaba: I see things as the last two speakers have said.

Rametse: Oh, my Chief ... I agree with the speaker who said Ntate Boyce is old and half insane ... Do you agree with me that the land belongs to Khaketla? Because Khaketla has got two lawful forms, A and C, for this land. 'Malesole can only produce a Form C. Order Boyce to go and allocate 'Malesole another land. Even in that allocation, he must see to it that 'Malesole has a Form A.

Most importantly, Rametse indicated that there ought not to be two judgments brought against a person in one case. He was thus directing attention away from any charges to be brought against Boyce, towards the central issue of the case--to whom the land belonged. We shall see in due course what sanctions were brought to bear against Boyce, but he was not handed over for prosecution.

One can project several probable lines that influenced the court

in their failure to have Headman Boyce charged. Firstly, there was the purely judicial point that the case before them concerned a land, and that they would be exceeding the scope of that case to 'judge Boyce twice' for the same act. That was also incidentally the legal norm chosen to rationalize their not presenting him for prosecution. Secondly, there was the consideration that a man of Boyce's age would be distressed by incarceration, as Lejapoli was to mention in the judgment. Finally, there were the various political considerations about which one can only speculate: the added strain on the administration of a scandal, the possible hesitation to judge harshly a fellow authority, and so on. The point here is that the court was sufficiently unconstrained as to consider, firstly, the possibility of taking further action against a Headman whose derelictions were revealed indirectly in an appeal in which he was involved and, secondly, to decide not to 'take him before the law'.

One can discern in this example something of the continued autonomy of the tribal order. The court seems to maintain latitude in deciding when and how to sanction offenders. Letting the inveterate Boyce off with another warning might not go far towards creating an efficient administration, but it does signify the court's belief that such troubles can be smoothed out without necessarily appealing to the outside structure. It also offers insight into one reason for the court's ineffectiveness: how, lacking the power itself to impose penalties, it must either turn to outside agencies 'of law' or save face in legalistic hair-splitting and/or whatever threats it can muster. But simultaneously, both its flexible running of cases and its discretionary leeway are an assertion of the endurance of the tribal sphere.

The court as clearing house

A procedural distinction exists in the Local Court between civil and criminal action. In the Chief's court such distinct procedural con-

straints do not exist, although the possibility that a case might proceed to the official courts in either category sometimes influenced the actual manner of handling it. The court, by the advice it gave litigants whose affairs were obviously going to proceed to the Local Court, recorded its awareness that cases, once out of its hands, would have to conform to the procedural constraints existing in that official court. It acted then, as it were, to 'encode' for the litigant, in terms of the demands of the Local Court, which formulation would best serve their needs.

I am concerned here mainly with one type of investigation, that of reviewing a criminal case preparatory to presenting the offender for prosecution in the Local Court. One of the foremost objects of such a case is to examine the evidence to discover whether or not it would stand up in a formal court of law.

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Mohasholane, a village chairman, on behalf of his Headman, brought a woman called 'Mafilemon to court, saying that she had been slandered by one Mohatlane. Mohatlane allegedly said that 'Mafilemon was encouraging his wife to take lovers. He had threatened to assault 'Mafilemon and stab her to death. This, said Mohasholane, Mohatlane had admitted in the Headman's court. That court was passing the matter on because it had no power over such cases. (abusive language was generally considered a criminal offence; the Headman was thus passing the case to the Chief's court for review and then for passing on to the Local Court, should they agree with his assessment and consider the evidence to be sufficiently strong.)

Both witnesses admitted that they had only hearsay evidence to present, having been told by the Headman that Mohatlane was insulting 'Mafilemon. Mohatlane himself denied everything and said he was not even drunk when the affair was said to have occurred.

In the absence of evidence, the court held that there could be no case against Mohatlane, but it warned him to behave better in future and told him that when he was drunk he ought to go home and sleep, rather than go about insulting people.

One might note here the distinction drawn between proof in a court 'of law' and this court's acceptance of the Headman's case as presented without corroboration. Despite the court's finding that there was 'no

case', it still went on to warn the defendant to mend his ways.

Hamnett records that the authority whose court he studied saw his function as being that of an 'impartial adviser', bound to assist a disputant 'with the procedures connected with "opening the court" and preparing his case' (1970:139). I discuss in various contexts how the court advised those who came before it. We are now looking at this role of the court, that of preparing cases, from another angle, and here the court was at its most objective in evaluating evidence and assisting in bringing an offender to book. Its approach to such cases was markedly different in tone and objective from the cases I have hitherto discussed, for its object was neither conciliation nor the same sort of investigation that followed a complaint. Indeed, it entered the domain of 'accusatorial' justice and had the task of assessing evidence in terms of that system. The two insult cases that fell into this category were handled in much the same way as cases in the Local Court. Absent here were the court's more usual cross-questioning techniques of juxtaposing and confronting witnesses with each other, for example. Instead, the cases came prepared, as it were, with statements from the people who had been insulted and with witnesses giving their statements largely unprompted by questions. The only notable differences were that the accused were not invited to cross-examine, and that the court, in one case, called for the accused's husband and her Headman to make a statement, statements that were not, as it were, part of the prepared case, but that related to the accused's relations with the other members of her village. The non-emphasis on conciliatory measures, and the greater formality of the court, marked these two out as being somewhat different from the usual run of cases in this court.

The third case in this category was slightly different in that it had not come from the Headman prepared already with substantial

evidence and a decision from his court that it ought to be passed upward as a criminal case. It was thus more directly an attempt to help the plaintiff 'prepare' his case against the defendant, and the court seemed to go out of its way to assist him.

Nthai from Lekhala's told the court that a woman called Anna had caused trouble at his home one Saturday afternoon when she came to demand money from him for beer he had had from her some days before. She was willing to accept either cash or grain in payment, but threatened that if she were not paid, she would kill him. She pushed him towards his house where his wife tried to reason with her, whereupon she drew a knife and threatened them both. His wife ran for help to the Headman, Lenkoro, and when Anna saw that he was coming, she went outside the yard and walked up and down scolding. The Headman remonstrated with her for wanting to fight, reminding her that the law was there to help her claim her money from Nthai. Nthai asked the Headman to hear the case, in which Anna denied that she had acted violently. In that case the Headman made no mention of the language she had used towards Nthai and his wife, although the Headman had been present when this happened.

Nthai produced as witnesses only his wife and a man called Sekho, who had been in the Headman's company when he came in answer to Nthai's wife's call for assistance. Sekho had not seen Anna threaten Nthai and his wife. Two other women had been present, but neither had come to court to offer their testimony, nor was the Headman there.

Nthai said several times that he and his wife were hated at Lekhala's village, and that people there were unwilling to help him in his case. His first wife, he said, had been stabbed to death there, and no one had come forward to give evidence for him. He warned the court that he was fed up with the village: 'If they come again, as Anna came, I am telling you, I will do what I think best'.

To this the court (Leboea) said: 'I would advise you not to do what you intend doing. Although you have made a serious point before me, I have the hope that when you ask your Headman he will come and give evidence which will help you.' The case was postponed so that Nthai could gather witnesses.

When the case resumed, Headman Lenkoro testified, like Sekho, that he had not heard abusive language from Anna, nor had he seen her threatening Nthai and his wife with a knife, nor pushing Nthai or trying to fight with him. He had heard Anna scolding and seen her waving her arms, and that was all. The case was postponed once more and one woman came forward to offer evidence in support of Nthai's allegations when the hearing resumed. She had seen the knife and the threats and heard the insults, but the accused had hidden the knife and the Headman had not made her produce it.

The court said in judgment: 'Now what shall I do? This court cannot help you, since Anna denies having a knife, and the Headman denies having seen the knife, and this court has not seen the knife, as we were not there. What we'll do to help you is this: we will send Anna to the Local Court because she has insulted you ... That is all this court can do ...'

In this case again there was no attempt at conciliation, but rather the case was investigated with a view to finding evidence that would stand up in a criminal case in the Local Court. Although Anna was invited to cross-examine Nthai and his first two witnesses, she was not asked to make a statement. The case then centred around the plaintiff, with no attempt being made to challenge his evidence rigorously or to discover what the defendant had to offer by way of defence, but simply the object was to assist Nthai in bringing a case in the Local Court against Anna with solid evidence. Clearly, the court had to help him in this way because his Headman had failed to do so, in contrast to the two Headmen who had taken the trouble to present in court the insult cases I mentioned above, ready-formulated, as it were, for passing on to the Local Court.

What, briefly, are the implications of the court's function in sifting and preparing evidence and passing on cases in this way? Firstly, one must see it in terms of how it modified the tlhopho or arbitrational aspect of the court's duties. Its object was still to assist one of the parties in prosecuting his case, but it was no longer concerned with repairing or restoring relationships. Nonetheless this service is vital to the judicial process for many litigants lack the skill or the opportunity to formulate their own cases adequately. In Nthai's case, the court tried to assist him by postponing his case to enable him to call witnesses, witnesses he had not managed to persuade to appear on his behalf before he went to court. Moreover, it could evaluate their evidence and finally pass his case on to the Local Court with the reasonable hope that he could substantiate his cause.

It is interesting that the two insult cases, which did not require assistance from the Chief's court as Nthai's did, came to this court first before going to the Local Court. Theoretically there was nothing

to prevent their going directly to 'the law'. Yet this court could, with its experience in litigation, assist greatly in evaluating evidence, and perhaps part of its function was thus to prevent litigants from presenting badly formulated or thin cases in that court. It would also shield the Local Court to an extent from such cases and bear some of the burden of litigation at the local level. In some measure it also bestowed a type of endorsement or legitimacy on litigation that was passed upward to the Local Court.

This type of judicial function seems to fall into a special province. It is tied in with the more traditional idea of the chief as adviser and mentor to his people, assisting them at many levels with their everyday affairs. It also has political implications in that, to some extent, it serves to affirm the authority of the court and its intermediary position in the judicial structure. It shows how the Chief's court was called upon to ratify action taken by the Chief's subjects and how, at least in part, it remained informed about what was happening at village level. However, there were relatively few such cases in the sample I recorded.

Notwithstanding the points made above, the 'passing on' function reflects as well on the weakened position of chiefs and their courts. No longer can the chief 'eat up' or decisively punish directly that which is offensive to the community. The Chief's court must pass criminal cases to competent agencies, so indicating its declined role in the judicial process.

PROCESSES OF MEDIATION AND ARBITRATION (13)

Arbitration remains one of the foremost tasks of this court. It is in cases where the disputant seeks out this forum to hear and perhaps to settle his dispute with another that the court can reassume

something of its former judicial status. The very fact that people still address their appeals for assistance there contributes greatly to the court's standing and to its capacity to exert its authority. When it can, by suggesting compromises, by persuading a disputant to accept its decision, succeed in resolving conflict, it offers a valuable service to the community. And it is not only actual settlement that demands attention here: related to this function are also its intercession within the tribal field on behalf of petitioners, and the way it can untangle an assortment of problems. Lokisa includes both meanings: 'repair', and 'arrange'.

The case brought by Headman Labone against the mokhibo dance troupe member, 'Mapuso, is a classic example of how arbitration can proceed in the Chief's court. After Headman Labone had given his initial statement, as I described earlier, the case proceeded as follows:

'Mapuso: I did not notice that I was hurting my Headman with my tongue, but as I've noticed now that what I said hurt him, I believe that I have committed a certain crime. But I plead before you, my Chief, please to be merciful and ask my Headman to pardon me. I will no longer go and do such things. I am also frightened because my Headman said that if I continue, he will break down my hut [make her move out of his village].

Rametse (to Labone): Can't you be kind enough to pardon her?

Labone: I am not prepared to, for these reasons: firstly, this woman has been boasting that if I mean to stop [the mokhibo group] from dancing in my village, she will invite thieves to come and steal my livestock. Just recently one woman who quarrelled with her has lost her sheep; although we did not see who stole the sheep, 'Mapuso had said she would invite thieves. Do you want to tell me that's the one you say I must pardon?

Rametse: 'Mapuso, what the Headman has just said you said--did you say that?

'Mapuso: Yes, Chief, those are my words. But I was just talking, just making a joke, trying to frighten them. This does not mean I did invite the thieves to steal the sheep. I still ask you to plead for mercy. I believe I am wrong. Please may my Headman excuse me for what I have said.

Labone: My second reason is this: this woman is very disobedient. She does not respect even old people. She does not respect me as the head of the village. She does not respect anyone older than her, and she does not want to listen when given ad-

vice. She even said that she would go on dancing [in the mokhibo group] and see what I could do about it. I told her that I would find out, between her and me, who was the head of the village. That's why I came before you, Chief; I still repeat that if I am your phala in Lerata's village, would you like me to become disobedient to you? Would you like me to use abusive language, such as 'Mapuso used to me and my village?

Rametse (to the other women present): Is this really what 'Mapuso said?

They said that those were her words.

Rametse: What advice did you give her when she was talking like that?

Answer: We did not give her any advice.

Rametse: Didn't you notice that the head of the village was already cross with 'Mapuso for her talking as she did?

Answer: We did notice, but we were already afraid. Should we have followed 'Mapuso's advice, I think we would have been in real trouble, because when the Headman said we must no longer khiba in the village, 'Mapuso said we must khiba. So we refused, and said she would have to khiba by herself.

Rametse: Did you say that, 'Mapuso?

'Mapuso: Yes, I did, but please pardon me.

Rametse: Headman, I do understand that you have met difficulties in your village, and that they were caused by one person only, the woman 'Mapuso. Where is her husband?

Labone: He is in South Africa.

Rametse: 'Mapuso, what do you say about the charge before this court?

'Mapuso: Please, Chief, pardon me. I have done wrong. I won't do that again.

Rametse: Labone, what do you say now?

Labone: As I am not against any subject in my village, I agree that I will say I pardon her. But as I told you that this woman is a troublemaker, I will come [to court with her] again.

Court's decision: 'Mapuso, you were brought before this court as a notorious woman. Your language, as I understand, was [such as] to cause trouble and bloodshed. About what you have said before this court, as you said you were repentant, and that you would not do it again, I only wish you really would repent. But if you don't repent, and if you appear before this court again, drastic steps will be taken against you. I have learnt from your Headman that you are a new arrival in the village, and this office never has any trouble from Lerata's village. We never had complaints from there. But you, a mere woman, you even said that you would invite thieves to come and steal. I am going to investigate, although you have denied actually doing this, to find out about those thieves from the village. And if anything is missing from the village again, drastic steps will be taken against you, 'Mapuso, and your company. We cannot allow you to steal people's livestock just because you are lazy to work for yourself. Go home and be obedient to your Headman. You have learnt that your Headman was not prepared to pardon you. We have noticed the difficulties he mentioned when I pleaded that he should pardon you. Had you been

brought before the Local Court, you would have been sentenced to gaol, or fined a certain amount, and where would you find that? I have already said, go home and keep the peace. As I learnt that you don't respect people there, I say repent, and try to honour people from henceforth. Chief Labone, take your people, let them khiba in your village, but if they cause trouble again, especially 'Mapuso, you ought to bring her back. This court will deal with her very severely.

The conciliation process is characterized by compromise and the modifying of one's position, by the transactional give-and-take of winning ground and losing ground. Success can be measured by an apology, a repentant attitude, or even by a willingness to reconsider one's position. The eliciting of an admission that one's opponent has a point (however minor), is a step towards finding a mutually acceptable solution, and it is in this direction that the court bends its efforts when acting as arbiter. Concern of this nature underlay the court's approach to many cases, and examples of it have appeared in other cases in this chapter. Labone's case serves better than most to illustrate what constitutes an arbitrational approach in this court.

The participant tone of the court is the first to note, for it contributed greatly towards creating a forum in which one could discuss and argue one's position with a narrower distance existing between the parties, and between them and the judges, than in a more formal court. I refer here to the court's remarks to Labone: 'Can't you be kind enough to pardon her?'; 'I do understand that you have met difficulties in your village'; 'What do you say now?' But I refer also to Rametse's questions to the other women: 'Is this really what 'Mapuso said?'; 'What advice did you give her?' and 'Didn't you notice that the head of the village was already cross with 'Mapuso...?' The intimacy of engagement argues that the court is merely one of the participants in a concerned discussion, albeit the leading one, and that the parties involved would be led to accept a solution to the bad relations that

plagued their village.

Similarly, the inquisitory, rather than accusatory, handling of some cases ensured that grievances could be given a wider airing than they might when presented as a narrowly formulated cause of action. I commented earlier on how Labone's statements against 'Mapuso developed in the course of the case, building up a generously relevant picture of how she was vexing her Headman. The flexibility of procedure, the ambience of dialogue and debate, the fact that court members brought their personal knowledge and attitudes to bear on cases ('... this office never has any trouble from Lerata's village ... But you, a mere woman, ...'), all helped to create the sort of circumstances in which reconciliatory gestures become possible. The steady persuasiveness of the court was noticeable in Labone's case, as it was in several others, among them the case in which Headman Mafa was coaxed into agreeing that, while his point had validity, he had to recognize another even more convincing principle that bore on his having deprived the plaintiff of her land.

The court also participated in other ways not evident in a more formal court: it was not, for example, always necessary for the plaintiff to spell out explicitly his intent in bringing a case; Labone could rest assured that he did not have to ask the court in so many words to teach 'Mapuso a lesson. Much of the actual mechanics of formulating one's case rested upon the court, as other cases have illustrated, to the point of leading witnesses and cross-examining evidence, and in this way the task of litigation was greatly facilitated for those who chose to use this court. Moreover, the court's being able to exercise discretion in settling or remitting litigation to another court was significant, for one was then able to go and chew over grievances without necessarily having to select and specify a cause that would stand up to less adaptable

examination. All these factors, to my mind, are associated with arbitration.

Reconciliation effected along traditional lines in the traditional lekhotla would depend for part of its effectiveness on communal sanctions. In this case the court drew attention several times to the responsibility of the community for maintaining good relations among its members. The women present were asked what they had done towards curbing 'Mapuso's tongue, and they had to admit that they had done no more than try to dissociate themselves from her activities. Then the court asked where her husband was, for he would be the one finally responsible for his wife's behaviour. But 'Mapuso's husband was away working in South Africa. Again, in the judgment, the communal weal was emphasized: Lerata's was a village from which they had had no complaints before 'Mapuso arrived to settle there. The threat levelled against 'Mapuso in the event of further thefts in Lerata's was pointed also at 'her company': another way of applying social pressure to ensure continued good resolutions on her part. The tone of the court in this case was consistently placatory and persuasive towards the Headman and severe towards the young offender, and one came away from this case with the impression that the court's sanctions could be effective--as they were, when dealing with this chastened young woman. She did not give them occasion to bring their final weapon to bear on her, to take her 'before the law'.

The court's strong endorsement of this Headman's position, and its constant recognition of lower judicial avenues in other cases, were in some measure a reinforcing of continued, healthy relations among people and between people and their rulers. They imply that disputes can be settled without recourse to courts such as the Local Court if one makes the effort to do so, if one defers to the head of one's family, one's village, one's ward, and makes use of the channels that exist

there to ventilate discord.

Equally, ongoing relationships might be disturbed by irresponsible conduct on the part of a headman:

There is a committee in 'Mampho's to run a water scheme used by those living in the central section of 'Mampho's itself and by one of its sub-sections, Sekobotong. The committee includes representatives of both these neighbourhoods; it fell out about the hiring of a man to supervise the pump, and came to the Chief's court for adjudication.

It transpired that the Headman of the entire village, Mpho, was on the committee, and siding with the 'Mampho's faction.

The court examined him closely about what he deemed his function to be: how, they asked, could he reconcile his duties as Headman of the village with taking an active part on a committee? His primary responsibility was to the village, to be detached from sectional commitments so that he could be disinterested, should he have to hear disputes.

This case, the court decided, was not in their competence to decide; it should go to Community Development channels or, a settlement not being effected there, to a judicial court. But, the court said, its advice to the disputants was, 'to work peacefully together. You are the people of one village, the people of one Headman. Why are you like cattle in the kraal? I think that as people, you ought to think carefully ...'

This case illustrates the arbitration process too: by calling attention to the disputants' place within the community, in relation to each other, in relation to their Headman, in relation to that agency most directly concerned with water schemes in villages, the court was preparing the ground, as it were, upon which the disputants could meet to discuss and reconcile their differences of opinion. Only as a last resort, those other channels for rapprochement having failed, the court would assist them in bringing their case to the judicial court.

The enduring vitality of traditional dispute-settlement, based on the arbitrational mode, stands out here, as does the sheer necessity of having a forum like this one to which villagers can turn when their disputes have not yet 'hardened' to the point where an official verdict must be sought in a formal court. There can be little doubt of the utility of tribal courts in regulating and channelling the flow of social

intercourse.

For this court was still in a position to express concern about the quality of going relationships in the community. In one insult case, for example, one of the women who had been insulted was asked these questions by the court before being invited to give her statement:

Leboea: Where do you stay?
 'Matsilu: I stay at Khafung with my parents.
 Leboea: Where were you married?
 'Matsilu: I married at Lekhala's.
 Leboea: Where is your husband?
 'Matsilu: He is in Johannesburg.
 Leboea: How long has he been there?
 'Matsilu: He has been there two years.
 Leboea: Why have you been at your parent's place so long?
 'Matsilu: I went to my father as I fought with my husband.
 Leboea: Have you notified your people-in-law that you are before this court?
 'Matsilu: No, I did not tell them.
 Leboea: Don't you think that after the case is over, they will say you did not notify them, and that you'd better go back?
 'Matsilu: I don't think they will do that.

This is an example of the court's taking the trouble to investigate the background of a witness that had no direct bearing on the case, which was to be sent on to the Local Court as a criminal case. Partly this might have been to establish the bona-fides of the young woman as a witness in terms of her social background, but there is also in it an element of helpfulness and advice, a gentle reminder of the norms of marital respect, that points to the court's concern to maintain good relations among its people.

Such care appears again in the case between the cousins Likoebe and Moseme when the court did not stop with having uncovered the central issue, and simply rule which cousin was the senior: it allowed the case to return to the village whence it came for a final solution in the family or Headman's court; more than this, the court dwelt upon the quality of the relationship between the two parties:

' ... This court has learnt from Likoebe that, should he have been consulted by his 'brother' Moseme, he would not have hardened his heart; but he was told to get out of the yard as Moseme did not recognize him. He despised Likoebe because Likoebe was born after him. He forgot that even if Likoebe is a young man, in custom he is older than Moseme.'

Thus, even though the court allowed the case to return to a lower channel for a final decision, it indicated both the lines to be followed in such a decision, and how the relationship ought in future to be between the disputing cousins. The norms selected to amplify the decision are a pointer to the court's mediational role. Also to be noted is that the rights and duties of both parties towards each other were raised: from the junior was to come respect, while the senior ought not to 'harden his heart' against his 'brother'. I view this facet of the court's decisions, that both parties are mentioned in terms of their rights and duties, errors and praiseworthy conduct, as characteristic of the processes that are the subject of this section. (14)

These intercessionary functions show the court's roots in the community at their most viable. This links up with a leitmotif that has been developed before: that the tribal sphere is still cushioned by courts such as this, and that in turn, their usefulness serves to augment their continued authority simply because, while they can proffer working solutions, they will be used, recognized and even obeyed.

Of relevance is the way the court could act to intercede within the tribal structure for people appealing to it against ill-usage by their superiors. Thus Chief Molise came to this court when Chieftainess 'Matanki deprived him of three of his lands. During the case, 'Matanki asked him why he had come to charge her about the lands before they had talked the matter over at home. 'Because I spoke to you several times,' he replied, 'and you paid no attention to me. Two people to whom you allocated my lands have already ploughed them. Where will I plough now?'

Furthermore, the court could act in defence of the relative autonomy still enjoyed by the tribal sphere. Another dispute between Chief Molise and Chieftainess 'Matanki concerned cattle captured on a leboella; there were mutual accusations that the captured cattle had been retaken by men armed with spears, sticks, and even (so it was alleged against Molise) with a rifle. Chieftainess 'Matanki had seemingly sent the police to Molise's village about that rifle. This point was taken up at once by the court: Chieftainess 'Matanki's representative was asked what right the Chieftainess had to call in the police without consulting the Principal Chief's office. Why had she done so, if she had no right? It seemed, the court said, that her plan to get Molise into trouble with the police having failed, 'Matanki was now using the Chief's court as a stalking-horse in her schemes against Molise.

Here then, in arbitrating and mediating, we see the tribal field operating with integrity, its credibility and capacity to contain friction functioning through relatively familiar machinery, seeking consensus based on customary principles and mechanisms.

One cannot, however, conclude this section without raising the question of how effective the solutions offered by the court were. There are various factors that work to circumscribe and obstruct the court's power to arbitrate and these must be mentioned in brief. If we return to Headman Labone's case, for example, we must take into account his finally voicing his misgivings about the court's decision. 'Mapuso had shown herself to be irreverent towards authority before, and had caused him a good deal of trouble. Nor had the case gone entirely in his favour because the compromise asked of him in the judgment was that he allow the mokhibo company to continue dancing in his village, and it was this company that was the root of the conflict, as Chapter Seven will show.

Without actually bringing someone 'before the law', the court had to depend for a viable solution on the parties' willingness to resume former relations. Without really being able to enforce its decisions, and with its credibility and authority undermined on several fronts, the court lacked a 'stick' to put force into the norms it invoked and the suggestions it made.

I have indicated before that the political dimensions a case might assume could obscure and interfere with arbitrational processes, for certain cases were between authorities in the administration and peasants, and real trouble was seldom resolved simply by the court's enjoining the disputants to 'Go home and keep the peace'. Much of the stuff of Labone's case centred on ambiguity concerning status relations. Labone said, for example, 'This woman is very disobedient. She does not respect even old people. She does not respect me as head of the village. She does not ... want to listen when given advice. ... If I am your phala ... , would you like me to become disobedient to you?'

The court relegated 'Mapuso to the subordinate place in which 'a mere woman' should customarily contain her role: she should not involve herself with thieves because she is 'too lazy to work'; her husband should be the one to control her; she 'and her company' should learn to respect people. But status relations are no longer so easily defined in a changing society. Already her husband is caught up in the South African migrant scene. It is no longer simple to teach someone 'between her and me, who is the head of the village', because the headman's position has been undercut by change to the point where challenge from his people is no longer uncommon. 'Mapuso could not even be controlled by her parents-in-law. She was a young, aggressive and politicized woman. She had contacts with the BCP and indeed, some of the wrangling in the village was a direct result of her commitment to

the party-political sphere beyond the village world. Party politics is a solvent force. The tribal field cannot easily sustain its authority against the often variant goals and priorities of politicians and their supporters, and challenges thrown out against the customary ranking order often take life from party ideologies.

The status of women in Lesotho has changed and is in a process of continuing change. I was startled at their relative emancipation. They do not conform to the expected stereotype of Southern African black rural women. A long tradition of migrancy has forced them to assert themselves and they have grabbed educational opportunities. They are important in both the tribal and the party-political world and their role is recognized, wryly, as such by men. Thus when the court attempts to bind 'Mapuso to a framework of norm expectations with the derogatory and trigger phrase, 'a mere woman', they are asserting the continuance of an outworn tradition. Women do make their own decisions, do challenge male dominance. The case arose out of the very fact that 'Mapuso is not a 'mere woman'. The invocation of status oriented customary norms, although in this case the immediate crisis was settled, does not seal the breach that structural strains have the capacity to reassert.

The effect of arbitration depends greatly on commonly shared assumptions and normative consensus, but community sanctions do not operate in Lesotho as once they did. The small community no longer has the relative autonomy it had, and its interdependencies and interlocking relationships have been disturbed by the economic and political pressures of modern life.

So although arbitration in this court harks back to the integrity of the tribal fabric, the efficacy of the process has become compromised as too many of the necessary balances have been canted in the encapsulation of the tribal universe.

SANCTIONS

The case between Mopeli and Mokhele about custody of the girl, 'Matli, ended as follows:

The child was seized by the wrist and pushed towards her mother. Then the court ordered Mokhele to hand 'Matli over to 'Mantapo. The court explained to Mopeli that, if their orders were not effective, he had the right to charge Mokhele before a court of law, the Local Court. That court had the authority to impose a judgment: if the girl did not go to her mother after it had ordered her to do so, the Local Court could execute its judgment. The Chief's court was not empowered to execute a decision. Mopeli thanked the court and said he was going to bring suit in the Local Court.

There in essence is a summary of the powers of the Chief's court. Unable to impose fines as it once could, and divested of its official recognition as 'a court of law', the court was of necessity largely a locus for out-of-court settlement of dispute. To say that it lacked sanctions altogether is misleading however.

Firstly, it was pivotally placed between offenders and the judicial courts or other agencies 'of law' and could thus use the sanction of 'the law' with some effect. The decision in one insult case was:

'This court finds you, Sebueng, guilty of insulting your sister-in-law ... and this court heard that after you insulted her, you and your husband went and asked her to pardon you and she refused. This court has heard the language you used towards her. No one can pardon you when you have insulted him as you insulted her. All that remains is to bring you before the law. People who use such language as you have are always to be brought to law. Only the law can cure such people. This case is forwarded to the Local Court, which is the only one to bring you to judgment. ...'

The court messenger, Lesole, led Sebueng, her husband, their headman, and those involved in the case to the Local Court where Sebueng had the option of paying a R20 admission-of-guilt fine. Unable to do so, her case was scheduled to appear before the Local Court which sentenced her to R30 or three months in gaol, of which R18 and two months were suspended.

The sanction of 'the law' was also used to threaten offenders.

The way the court referred to 'the law' almost as though it were something that was not to be found in their court is revealing about their position, for although this court obviously dealt in 'the law' as much as did the Local Court, the law as they administered it lacked 'teeth'. Nonetheless their access to 'the law' by virtue of their being in a position to pass cases along to other agencies was one of their most effective disciplinary powers.

In other ways too the law itself was used as a sanction. The administrative actions of authorities are subject to review in terms of certain legislation such as the Chieftainship Act, and the court on occasion used this as a threat. But its effect was impaired in that I recorded no instance of any administrator's being charged with offences under it. The court's effective hold over authorities has now weakened, since it cannot fine and its coercive ability has been curtailed. With the Chief's court administrators apparently reluctant to subject fellow authorities to penalties, the court in fact had little power to bring its subordinates to heel. There were instances of authorities, both the lesser and the more senior ones, simply defying the court.

Headman Mohale, for instance, refused to appear for a case in which his villagers were to lay complaints against him. The court was obviously embarrassed by his stalling in and telling them in no uncertain terms that he would not be there for the case, but although they tried to placate him and persuade him that he was bound to appear, they could not--or would not--force him to do so, and he did not.

The case about lands between Chief Molise and his sub-ward Chieftainess was another. The Chieftainess asked for a postponement so that she could summon more witnesses and also because the case had affected her emotionally. Chief Molise objected, saying that once she was permitted to go home, it would not be easy to get her to reappear.

'I know her,' he said, 'She is my Chief. But as the Principal Chief our father says so, then let her go.' She did not appear on the date scheduled for the next hearing, but wrote a letter to the effect that she would not come before that court again because it had allowed Chief Molise to insult her with impunity. The Principal Chief was consulted and he advised sending a chief to fetch her, but instead Rametse asked the DAS to assist them by asking the police to bring her to the court. Even they failed, however, for she told them she was too sick to travel in their Land-Rover. The Chief's court seemed unable to deal with this sort of intransigence.

Perhaps the best example of the defiance of lesser authorities occurred in a series of cases in which the chieftainship charged seventeen headmen for having failed to report their annual quota of thatching grass to the Principal Chief. Five headmen failed to appear in court after being summoned for the first time; after a second call, two of the five attended the proceedings. The remaining three did not appear at all, to my knowledge, nor did I hear of their being charged for ignoring the court's demands. The two who did appear after a second call were not reprimanded in court for their earlier absence. Among those who did not appear at all were Headman Teko and Headwoman 'Making, who both figure prominently in the next chapter. Nor was it only the office-holder who failed to respect the authority of this court. I came across numerous references in the Local Court to defendants not attending cases in the Chief's court (one had failed to appear four times).

As we have seen in the section on arbitration, one of the sanctions remaining to the court was its capacity to wield a normative armoury. The force of many of these invoked norms derived from their accepted foundation in customary expectations. Some of the members

of the court could be impressive in their praise or reprimand. To illustrate, I quote from the judgment in the case against Headman Boyce who allocated land with such disregard for 'proper procedure' and his neighbour's boundary; first Lejapoli spoke, and then Rametse:

'In this case ... Molaoli took an appeal from Chieftainess 'Mantapo's court because that court treated him badly. In the first place, you must know that here in Lesotho, there is only one person who can allocate land: ... the chief, that is, the King. Under the King are his junior brothers, the chiefs. And under the chiefs are some headmen. But both the chiefs and the headmen cannot dispute with what was done by the King. I say this, or the court says this, because in this case before the court Molaoli produced a Form C issued by Palane's court, after Khaketla had placed before that office his Form A. What right then has Boyce got to stop Khaketla ploughing? This court suspects that it might be that Boyce did not, as he has already said, issue a Form A to 'Malesole. He said there were no Form A's left. If anyone comes and says this is nothing but bribery, this court will believe him. You, 'Malesole, you forget that land. The land is not yours. It belongs to Khaketla and it belongs to him lawfully; he has two lawful forms to prove it.'

'As for you, Ntate Boyce, ohohle, motho oa Molimo [please, person of God], we beg you not to interfere with such cases. You are old now. If you continue to do as you have done, you will be sent to gaol. This court is sorry that you are old, and the gaol might treat you badly. Go home and find somewhere to allocate 'Malesole a land. As for the land which is in the valley where Khaketla was stopped from ploughing, forget it altogether. It belongs to Khaketla, a subject of Molaoli. Go home and keep the peace.'

'Should all youngsters be like you, Molaoli, Lesotho, or [our Principal Chief's ward] would be an exemplary [place] where the administration is concerned. You are still young, and you did not think of your friends when you looked at Ntate Boyce, seeing he is an old man; you thought in your heart, "He wanted to fight me physically; I'm going to fight him lawfully". When you said these words, you knew that you had the law in your hands, with which you would defeat Ntate Boyce before the courts. Apart from that I notice that you have beside you young men. They are also like you, it seems to me. They did not think of their friends, but laughed at Ntate Boyce and said, "The law is there".

'Ntate Boyce, may I say to you: to be gazetted does not mean you can go and take some other people's areas only because they are not gazetted. There's no such thing. You had better bear in mind that in their areas, their power is the same as yours. The last speaker giving the judgment here said that Lesotho belongs to the Basotho. But it belongs to Basotho through the King. Under the King are the chiefs, and under them the headmen. Now both of you are headmen. Why do you dispute about the ground, when you know it belongs to the Chief? What you will have to do yourself is only to allocate lawfully, not unlawfully, lands and sites to your people. I also say go home and keep peace.'

The court drew here on normative principles underwritten by both the judicial and political structures to which tribal authorities should submit. It is worth noting that, although sanctions arising from the possible contravention of the law were implied, the reference was oblique and unspecified: Lejapoli simply mentioned the threat of being sent to gaol. He did not spell out in so many words the legislation concerned. Rather, the court's address was framed in traditional norms; scant attention was paid to the modern, bureaucratic sanctions of government and legislation, and the duties of a headman towards that system.

Let us draw out briefly the normative strands of the judgment. The most striking is the norm of the 'reasonable headman'. Earlier, the court specifically asked Boyce why, as a just man, he had not notified Molaoli that he was taking back his lands. This was amplified in the judgment. Boyce's age was emphasized: he did not behave with the rectitude to be expected of someone of his age; he invited violent retaliation with his arbitrary and provocative actions; he failed to respect a fellow authority, inviting in return a lack of respect; he was irresponsible in a way not expected of an elderly and experienced man. Conversely, the young Headman was showered with praise for his restraint in the face of provocation; he did not look to his strong young friends for physical redress, but trusted to the law; his conduct was exemplary in every way; he respected Boyce's age; he did not take the law into his own hands. In the course of the case, the court satisfied itself that Molaoli had carried out all the correct administrative procedures in allocation; now it concentrated on the more traditional, less specified values that set apart the good headman. In fact, the bureaucratic standard of being gazetted was used merely as a springboard for a discussion of legitimate behaviour: more than the rights, the court made explicit the obligations of being gazetted. One has to act legitimately,

as Molaoli did, to earn respect as a headman; being gazetted is in itself nothing like enough. There is a reminder here that legitimate power resides in just conduct, not merely in official recognition. The effect of so much praise balanced against such reproach is not inconsiderable. The hierarchical placement of the two disputing Headmen was emphasized and, more importantly, that hierarchy includes the position of the court. They are all part of one system and their power derives ultimately from the people, through the King, their head. Again, implicit here is that one's power only functions when one acts, not only in terms of one's rights, but in terms of one's duties too. They enjoy power only because they are part of the system, in which they are not autonomous individuals, and therefore they cannot step outside the system to act whimsically as individuals. The most important suggestion here is that the Chief's court members represent the force of the system as a whole: they are superordinate to Boyce and Molaoli, and only immediately beneath the King. This is one of their strongest inducements.

Thus in this judgment we see the court's sanctions brought forcefully into play. Rather than place reliance upon one official hold they have over authorities, the legislation through which they can be prosecuted, they attempt to deploy the authority that resides in the traditional concept of chieftainship. They draw on position and legitimacy residing in hierarchical placement, but manifested in just and exemplary conduct.

But no matter how powerfully such rebuke is phrased, it holds no guarantee for exacting obedience in the long term. As with all moral injunction, its effect depends upon the credibility and authority of the enjoiner, and here the chief's court was subject to the limitations of lessened powers.

The status of chieftainship itself has been under attack in Lesotho for some time. Political currents set up by commoner organi-

zations have had a platform from the early years of this century, (15) and the role of the chieftainship in Sesotho society has thus been under continued scrutiny. The very fact that the people have been invited to cast their vote with a party that sees--or does not see--the chieftainship as vital to the future of the country, has had a debilitating effect on the authority of chiefs.

People's faith in the court directly affected its sanctional power, for its normative force alone was effective only in the degree to which the people concerned subscribed to it, and its authority extended only as far as the people concerned submitted to it. When people voluntarily seek out and invoke the authority of the court, when they go there prepared to find a solution, the court's full force of investigation, arbitration and normative endorsement or criticism can still be deployed with effect.

The Principal Chief himself was occasionally called in to use the weight of his presence as a sanction, but again, the success of this approach depends largely on the man. A neighbouring Principal Chief, I was told, could command obedience because of his personal forcefulness and because, so it was rumoured, he had not hesitated to fire a shot at the feet of a man who resisted his authority. I have mentioned the limitations of the Principal Chief in whose ward I lived. There were many who supported him, but their allegiance may have derived more from a traditional veneration for chieftainship itself than from respect for the person who presently filled the office.

The personality of the members of the court influenced its sanctions. Thipa I remember as being impressive when overriding a dissident voice with a firm 'Mamela, Ntate' (listen, my father), but again one must question the extent to which their forcefulness in court was not compromised by rumours about their bias, their responsibility towards their

work, their political allegiances, and so on. The very fact that these men could be discussed in terms of such rumours must again have contributed towards stripping them of authority through suggestions that they were less than infallible.

The reputation of the court as a forum which could effect solutions was directly related to the efficacy of its sanctions. There were those cases which ended on an exemplary note, such as the one between Likoebe and Moseme, when the Chief of the disputants thanked the court and said, 'Although we return today, you have shown us the way to take'. But equally there were those cases in which it was obvious that the disputants were no nearer a solution than when they arrived. Thus after the judgment with which I opened this section on sanctions, Mopeli thanked the court, but said he was, as the court had suggested, going to charge Mokhele in the Local Court. Here was clear recognition that the court's injunctions would have not the slightest effect in making Mokhele return 'Matli to her mother.

One of the consequences of such an enforcement lag was that the court might become a vehicle for the playing out of personal vendetta. Chieftainess 'Matanki and Chief Molise, for instance, carried on a series of skirmishes in this court, each case representing a minor triumph for one of them in an ongoing wrangle to which the court was powerless to put an end. The series of incidents in 'Making's village, described in Chapter Three, provides detailed illustration of this type of disputing. The lack of forceful sanctions imposed a sort of inertia on the court, an immobility of purpose and lack of drive that might have had something to do with the court's reluctance to disturb the status quo by delving too deeply into administrative disorders. This interfered with its seeking energetically for solutions or remedies and inevitably its indifferent power led people to bypass it when the

urgency of their troubles drove them to seek more binding solutions elsewhere.

ADJUDICATION AND ADMINISTRATION

For the purposes of trying to analyse how the court operated, I stated earlier that I would not distinguish between judicial and administrative action, but would discuss dispute-settlement as it unfolded in actual cases, with administrative and adjudicative elements fused inextricably, as they are, in concrete terms.

Our primary consideration here is, as Hamnett points out in his discussion of decision-making in the traditional system, that the entire process 'is--ideally, at least--informed by law' (1975:62).

Hamnett says of law not yet codified that

its origins cannot be determined by any particular human act to which a date can be given; it is regarded as issuing from God himself, or as having been delivered by a founding ancestor, or (rather less simply) as secreted by the society itself over immemorial time. (1970:296)

Law, for a society as litigious as the Basotho, has not become divorced from their daily concerns, an arcane body of knowledge left in the hands of a few specialists, which only touches their lives briefly, if at all. Rather, the 'customs and laws of the Basotho' compose a living concept, and are a proud possession, a set of standards by which most intercourse is regulated and measured. Even in the most trivial arrangements of everyday life, there is the awareness that 'the law is there' to sustain, to protect, to sort out misunderstandings and to provide redress. And to a very large extent, the interpretation of law, the declaration of rights and duties, the advising and assisting of disputants in preparing and adjudicating their cases, and the applying of normative standards, as well as the creation or extinction of rights, are vested in the (ideally) experienced hands of a chief and his subordinates. Law at

this level is inextricably tied up with the office of chieftainship. Whatever the chiefly task he is performing, whether it be 'administrative' or 'adjudicative', the chief is expected to act in accordance with the law, and should he fall short of his legitimate obligations, there is appeal to a superior authority to bring his decision under review (Hamnett 1970:300-1). Thus to an extent the legitimacy of chiefly conduct is safeguarded by the traditional political system that still administers the living law at village level. Nor has this become a predominantly bureaucratic normative system, despite the disaffection, alienation and complication I have described, and shall continue to reiterate throughout this work. The interdependencies and interrelations between chiefs, headmen and commoners are themselves part of the stuff out of which a large body of custom has arisen; they are part of the rule system on which the society depends, and the cornerstone of the regulation of social intercourse, in the same way that its law is seen as an expression of the nation's identity.

Most Basotho regard their customary law not merely as one of the major assets in their cultural heritage but as virtually indispensable for the continued ordering of their society. People often state quite bluntly that without their law they would no longer exist as a nation. (Poulter 1976:vii)

Even in its exercise of discretionary authority, the court seldom exhibited an arbitrary and non-legitimate authoritativeness. It was not enough to say, 'You will do so because I say so', but rather, 'You will do so because the law says so' (see Hamnett 1975:62). Legal principles, rules and norms were very much to the fore in the court's explanation of its reasoning, and were the mainstay of legitimizing its decisions. A large part of the court's task was the selection and arrangement of normative priorities, and it was not only in actual decisions in settled cases that one was aware of the pervasiveness of normative expression and reference. In the dispute between the cousins Likoebe

and Moseme, for example, although the case was left for lower courts to settle, it was abandoned only after the normative pith had been laid bare, and the court had indicated 'the way to take'. Similarly, the advice given to the riven water committee, although theirs was not a dispute the court would undertake to settle, read something like a 'sermon' (see Gluckman 1955b:49). There have been repeated examples in cases in this chapter of the court's taking the trouble to explain its logic and amplify its decisions with reasoned references to existing principles, but none shows better how the court's adjudicatory interest exceeded its warrant as a puso court than the decision that ended Khothatso's appeal to the court to help him find his wife (see pp. 58-9).

'This is not a case ... We got a letter from Chief Masimong [a neighbouring Principal Chief] which said that we should help Khothatso look for his wife.

'Khothatso, here is your wife. Go with her, please, and go in peace.

'You, Willy, as you are Chief Masimong's messenger, see to it that we don't learn of anything bad happening along the way between Khothatso and his wife.

'Manapo, here is your husband who was looking for you. You must go and obey your husband. If you want to be a whore, then you won't pay any heed to what we are saying here. It is quite clear that you have been away without your husband's consent. But as I notice, I think you still love your husband. But I notice also that you are misled by others among your companions. I can see that you have bad friends. They are the ones who are influencing you to cause all this trouble. Instead of Khothatso being able to work for his children [as a clerk on the Braamfontein station], he has to keep running back and forth. You have just yourself told us that you go about without his consent. Don't you think it's now time you made an end to this bad system? Go in peace. I for one, if I should hear that you have been here again, looking for a house as you did with Headman Sebotama, I will send you to gaol. It is Chief Seeiso's decision that he would not like to see women going about here in the village without their husbands. Not only our Chief, but the law of this country says so. And women who go about in the villages without their husbands when they are not widows ought to be driven from the villages. If she persists in staying in the village, she ought to be taken before a court of law, which will bring a criminal case against her. I don't mean that you cannot visit your people here. I know that your sister lives here, and your grandfather, but once you come here, you ought to consult your husband first. Go and keep peace with your husband. Let your husband find you being a new woman.'

The court makes the important point that 'this is not a case'. It was a purely administrative matter, a request from one Principal Chief to another for assistance for one of his subjects seeking his wife. The administrative business was dealt with fully and formally. Khothatso had his wife given into his care, and the messenger of Chief Masimong was told that he was responsible for seeing that the couple reached home without further mishap. Had that ended the court's views on the matter, the business might well be classified as purely administrative. But Lejapoli went on to exhort the wife to mend her ways, and his exhortation was fortified by anything but bureaucratic or administrative norms. A good wife obeys her husband, consults him for permission to leave their home on visits, allows him the peace of mind necessary to hold down a job in a foreign country to provide for their children, chooses respectable companions, and does not run about like a whore. This is what is expected of a wife not only by her husband, but by the Principal Chief, who has the power to punish offenders. It is also prescribed by the law, and an offender risks criminal prosecution. These expectations are neither unreasonable nor forbidding; 'Manapo has valid reason to visit Chief Seeiso's area, but only if her husband knows and approves of where she is.

So even in an instance where the court itself made the distinction that it was dealing with something that was 'not a case', the entire process was so reinforced and underpinned by considerations of law, by the attempt to go beyond the superficial administrative demands of the situation to aim at repairing a damaged relationship, that it enters the domain of judicial activity too. By going into such detail to define and explain the rights of the husband and the duties of the wife, the court was reminding the participants that the one was in the potential position of a plaintiff and the other, of a defendant; that the situation was not one that would render a verdict of 'not guilty'.⁽¹⁶⁾

The court's statement illustrates also how perfectly the business of 'being a chief' blends the administrative and judicial aspects of the role of the chief, and how the intercourse between chief and chief, chief and chief's messenger, chief and subject, husband and wife, spring from interrelationships that are connected to the normative fabric of the society.

Disputed succession throws into relief one point where administration and adjudication intersect and fuse. Several such disputes had come to the notice of the Government through complaints from the villages concerned because the installation of new incumbents was being delayed in dispute. Chief Seeiso was instructed to sort out these cases by Chief Mohao Seeiso, employed by the Government. Before the Principal Chief could comply with the purely administrative directive to install the successors and notify Government of their names, he had to thrash out the disputes in his court to choose the most legitimate contender. It was there that the priorities were selected that would dictate the final decision, there that the dispute was judged and the final choice of incumbent ratified. This is but one illustration of how the adjudicative and the politico-administrative go inextricably together in the process of 'being a chief'.

Statutory sources provide for judicial review of administrative acts and in this sense, the discretionary role of administrative authorities is subject to restraint. I have examples of the court's explaining to office-holders the laws to which they were expected to conform, and it often had occasion to instruct in the particulars, the procedures and the specified details that were laid down for administrators to follow, for, as Fallers puts it, 'If chiefs acted as both judges and administrators, they not infrequently had occasion, as judges, to consider the legality of each others' acts as administrators' (1974:12).

But beyond this more bureaucratic instruction, nowhere was there

more evidence of how the living law and legitimate expectations underwrote administrative action than in the consistent and more general pattern of the reasonable headman that was developed repeatedly in the cases I recorded. Central to this role is the imperative that he behave in an exemplary fashion, because 'respect' works reciprocally: being disrespectful invites disrespect from others. The injunction goes beyond reinstitutionalizing the hierarchy of authority of which the court forms the apex; it reminds that the rights and obligations at every level of authority are reciprocal.

The notion of law as a source of stability and as indispensable to the process of regulating social intercourse is also central to the concept of the reasonable headman. For example, Headman Molaoli was congratulated in glowing terms by the court for not taking violent action against Headman Boyce who had provoked him thereto by interfering in his area; he had remembered that he 'had the law' in his hands, with which he 'would defeat Ntate Boyce before the courts'. The behaviour expected of a reasonable headman thus exceeds simple bureaucratic directives, because the conduct of men in authority is the pillar upon which the whole system rests. When a headman was reminded in this court of his position in the hierarchy, and enjoined to fulfil his tasks more adequately, he was not simply being reprimanded in terms of strict administrative standards. Implicit in reprimands given in this court, and at times explicitly formulated, was the idea that the sound working of the society hinged on successful fulfilment of chiefly and administrative roles. Only if these roles cohered, it was suggested, could the web of customary expectations knit together.

CONCLUSION

Although the court exists ostensibly largely for administrative

business, its concerns and tasks still spring from the real needs of the community. It is still sufficiently tied in to the tribal world to take trouble and time over relationships, local problems, protecting traditional prerogatives, and it still works to a large extent within the framework of customary expectations.

Its capacity for success is curtailed by its problematic position: its teeth have been pulled; it can no longer feed those present out of fines and demonstrate in this way the communality of its enforcement mechanisms; it is poised uneasily in the transitional phases of shifting statuses, growing governmental and political demands, and the impoverishment of the tribal zone, and itself uncertain, it often fails to mediate satisfactorily between the two systems that give it life.

Nonetheless, much of the old flavour and identity of traditional dispute-settlement persist. In spite of its problems and real weaknesses, people--many people--do still go before the court daily. In several ways it has more to offer than the Local Court: it is a poor man's court, where it costs nothing to 'open' a case, and where there is no risk of a fine. It is less public than the 'Government' court, for local derelictions can be shielded from official scrutiny there, and its members are known and thus, in one sense, more to be trusted than a Local Court President from another area. The court can be used in a variety of ways: there one can ventilate a grievance, or arrange to have one's case taken to an official court, or appeal for assistance against an unjust headman, or test one's case, or display a point against an opponent, or seek help in building up a case, or strike an acceptable compromise with another party, or demonstrate a state of relations that one wants publicized, or simply ask for advice. To a large extent then, it is still a court for popular matters, and in this lies its continuity.

However, channels from this court run outside the tribal theatre:

upwards and outwards, its traffic must take cognizance of the encapsulating system. More particularly the court, as representative of the chieftainship, now derives its mandate from the State, from the Government. Much of its authority thus comes from above, where once it was based in substantial measure on legitimacy bestowed from below. In consequence, it has come to be identified in part with the interests of the outside structure.

The following statement was made by the head of a family, one section of which ruled over a headmanship in the Lichaba's area. The Headman there had died, and the Principal Chief was under pressure from the Government to name his successor. The delay had been caused in part by a dispute about the succession, but as his statement will show, the family head considered Government haste in the matter to be unseemly. I exclude from his statement the details he gave about the succession question, and give only some of the comments with which these were interspersed:

'My Chief, I have received your letter. I thought that I had done my duty. I was surprised to notice that I had not carried out your orders. I know that nowadays whatever the chieftainship does, the Government is behind the chieftainship. So it may be that is what has caused you to write a letter to me to report myself today.

'Although I have reported myself, I may say, my Chief, that although we are led by the present Government, we have now been forced by the present Government.

'According to our custom and tradition, we have never done things before the Principal Chief in this fashion. Although you force me to report now who the heir is, I am not ready yet. My Chief, I am still coming to comply with my law. ...

'I comply with your order, but according to my custom, I am still to come. I cannot do away with the law of my forefathers, and that law cannot be changed by the Government. ... Our forefathers' custom must be followed. It is not my aim to cast away our tradition.'

Here is a revelatory instance of how the Chief's court was in the position of having to administer and comply with the demands of the Government it

serves, and sometimes at the cost of being seen as betraying local, traditional interests.

Movement towards centralization, which did not end with colonial rule, but has steadily continued to gather under Government control many of the former powers and prerogatives of the chieftainship, has had the effect of distancing the administration from the influence of local and traditional concerns, and of estranging the chieftainship in substantial measure from the people. Combine these trends with the continued erosion of the chiefs' authority, their inconclusive power to sanction, and the difficulties posed their administration by having to translate between two systems, and it becomes apparent that their lack of credibility is the outcome of a cumulative process. Clearly the foundations that underpin the successful operation of intercession and arbitration on the part of the chieftainship have been undermined at critical points. It is hardly surprising to find that there was a discernible trend of bypassing the court I studied to seek solutions from other agencies when definitive decisions were necessary. As Hamnett comments,

much depends on the individual chief, and on the general effectiveness of chieftainship in the local area. Where chiefs are lazy or incompetent, people will seek their justice where they can find it. (1975:96)

Chapter Three
THE CHIEF'S COURT:
LAW AND POLITICAL CHANGE

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Law and the social context in which it operates must be inspected together. (Moore 1973:719)

Clearly, every dispute is affected not only by the rules and standards that are relevantly applicable to the behavior and statuses involved, but also by external factors and forces that in one way or another can be brought to bear on the matter, and on any participant, to influence the settlement. (Gulliver 1969:23)

INTRODUCTION

It is hardly necessary any longer to present a case for the interdependence of law and its social setting, nor to point out that a judicial system can be viewed profitably in relation to other institutions and the varied processes of social interaction. The previous chapter indicated the extent to which dispute settlement in the Chief's court has been affected by those changes which have limited the power of the chief and chiefly institutions in Lesotho. This one seeks to analyse how law and dispute-settlement at village level are conceptualized in relation to, and are connected to, influenced by, and make use of, the presence of law as represented by agencies of the outside structure. The notion of 'legal levels and multiplicity of legal systems' (Pospisil 1971:97-126) has relevance, for as Moore observes,

between the body politic and the individual, there are interposed various smaller organised social fields to which the individual "belongs". These social fields have their own customs and rules and the means of coercing or inducing compliance. (1973:721)

I am concerned here with the relationship between 'smaller organized social fields to which the individual "belongs" ' at local level in Lesotho, and legal resources at national level, and seeking to account also for the way in which the Chief's court enters

into and is used in this relationship.

Moore (1970) emphasizes that dispute-settlement cannot adequately be analysed without detailed consideration of the political environment. Her presentation stresses that Chagga chiefs manipulate norms according to the vicissitudes of their political circumstances, and that their judicial decision-making is aimed at consolidating their political position. She suggests that three variables in the process of dispute-settlement should remain analytically distinct, these being 'procedures (judges or other), the reasons for outcome (norms or other), and the political implications (strength of parties, relation to political setting)' (1970: 323). It is the changing interrelationship among these variables which leads to the 'definition of the judicial situation'. With her Chagga material, Moore showed how a change in one of the variables (the chief's political security), brought about concomitant change in the other variables (the chief's role in dispute settlement, and his strategy in giving reasons for his decisions). Her outline will be relevant to the material of this chapter, the case study of a prolonged confrontation between two structurally important individuals, a Headwoman and the chairman of her land advisory board, played out only partly in the dispute-settlement forum of the Chief's court. It will be shown how options open to the disputants were defined by changes in the relationships among the variables Moore suggests. Change will be seen then as modifying choice in the process of conflict resolution, and as inclining individuals towards one course of action rather than another.

It is not only the immediate political setting of the Chief's court that is important here, nor only the interaction between villagers and tribal processes of dispute-settlement. Rural

communities are encapsulated within a wider framework and this has implications for individual villagers as well as for chiefs and other authorities. This chapter deals with the relations between a small, tribal community and the encapsulating structure, and with how the enclosed field operates in relation to innovation and possible inputs or pressures from outside.

Small communities embedded within larger frameworks have been termed 'parapolitical'; they are 'those which are partly regulated by, and partly independent of, larger encapsulating political structures' (Bailey 1968:281).⁽¹⁾ It is this sort of community, or, to use her own, less restrictive term, 'social field', that Moore identifies also in terms of its degree of autonomy:

The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance. (1973:720)

A good deal has been written about the relationship between the small community and the wider society that encapsulates it.

Moore terms her own conceptualization of it,

a way of defining a research problem. It draws attention to the connection between the internal workings of an observable social field and its points of articulation with a larger setting. (1973:742)

One such 'point of articulation' is the Chief's court itself: a large proportion of its function consists in mediating, translating and facilitating dealings between the encapsulated and outer structures. Other, less institutionalized, channels of articulation exist too. There are occasions, however, when individuals within the encapsulated system 'opt out of' it and have recourse directly to the outside structure, when they ignore recognized channels to mobilize actively the resources of the encapsulating system or to use in a less

overt fashion their potential ability to do so in their dealings with each other.

It will be shown how members of a tribal, rural community may, in conflict situations, neglect to use the tribal courts, and seek solution to their problems by making direct appeals to the wider administration and its resources. In the process leading up to acts 'bridging' the gap, the Chief's court sometimes becomes more of an 'area of operations', constituting a tribal medium and arena for negotiation and transaction, and less of a direct point of connexion with the outside system.

Bailey (1968) documents how, in Bisipara, the Untouchables activated normative inputs from the encapsulating world, joining up previously disparate structures or fields, so as to mount an attack on the caste system. By mobilizing the resources of the outer structure, by creating linkages, their 'bridge actions' changed radically the rules of the political game at village level, and brought forces stemming from the encapsulating order increasingly to bear on the previously closed orbit of village life.

Elsewhere, Bailey says that social change 'must be conceived of not as the replacement of one total structure by another, but by changes in sub-structures within one or another field' (1960:241).

Central to Bailey's model is the notion of actors making choices within the logic of their situation. This coincides and can helpfully be seen in conjunction with Barth's analysis (1966) of how values and norms can be generated in transactions, for he is concerned with the extent to which patterns of social form can be explained by assuming that they are 'the cumulative result of a number of separate choices and decisions made by people acting vis-à-vis one ano-

ther' (1966:2). His transactional model is one, he suggests, 'whereby one may generate forms according to the rules of strategy, given the parameters of value' (1966:5).

The parallels between Bailey's and Barth's approaches are evident. For Bailey, social change can be gauged by observing how men progressively disregard one alignment and invoke another type of alignment in order to gain a particular end, while Barth maintains that

Through repeated transactions ... the values applying to those prestations which flow between parties becomes systematized and shared. They become systematized because when, and only when, we are faced with the repeated necessity of choice, are we forced to resolve dilemmas and make some kind of comparison between, and evaluation of, the alternatives with which we are presented. They become shared, or institutionalized, because in groping for a solution to the dilemmas, we prefer to use other people's experience as our guide rather than risk the errors implied in a trial-and-error procedure. (1966:14)

The transactional model has relevance because we are interested in 'areas of autonomy and modes of self-regulation' (Moore 1973:743), but it is the issue of semi-autonomy that distinguishes my approach from the purely transactional. As Moore points out-- and Bailey also illustrates this-- rules do 'evolve' cumulatively out of a series of singular choices and transactions, but, she says,

norms are also legislated by governments, or dictated by administrative and judicial decisions, or imposed in other intentional ways by private agencies. These impinge on semi-autonomous social fields which already have rules and customs. (1973:723)

Moore distinguishes then between rules that have been generated discretionally and 'spontaneously' out of social interaction and those 'consciously made by legislatures and courts and other formal agencies to produce certain intended effects' (1973:744).

Like Barth, who is led 'to seek the explanations for change in the determinants of form, and the mechanisms of change

in the processes that generate form' (1967:668), Moore also would identify 'institutionalization' rather than 'innovation' as the 'critical phase of change' (Barth 1967:668) :

the various processes that make internally generated rules effective are often also the immediate forces that dictate the mode of compliance or noncompliance to state-made legal rules. (Moore 1973:721)

We look at our village then to see the degree to which it absorbs or 'domesticates' rules originating outside its boundaries, and how these rules might alter its internal balances.

THE ENCAPSULATION PROCESS IN LESOTHO

The "other Chiefs" and the Gazetted Headmen form the executive of the Ward Chiefs, and are in close touch with the Village Headmen on whose services they are themselves obliged to rely. The recent extension of the social and economic activities of the Government ... tends to place an increasing burden on the "other Chiefs" and Headmen. (Hailey 1953:106)

The case study on which this chapter is based covers a series of confrontations that took place between 1969 and 1971 in the village of Koma between the Headwoman and some of her villagers. The tensions underlying the events recorded were not peculiar to that village alone, but were rather symptomatic of more general strains arising largely out of the changing position of the headman in Lesotho today. In order to indicate that 'Making, the Headwoman of Koma's, was not simply idiosyncratically bloody-minded in her administrative carelessness and her opposition to some of the men of her village, one must record how the headman, even more than the chief, has been progressively stripped of security and certainty in the encapsulation of traditional tribal society, and how bureaucratic demands intensify his unease.

The Sesotho term for headman is ramotse, which means

'father of the village'. Under the traditional system, he allocated his subjects land to plough, settled their disputes, helped the sick and needy in time of hardship, represented his people vis-à-vis more powerful authorities, looked after visitors to his village and often undertook its ritual protection. His position was (and is) hereditary, and he was ideally succeeded by the first son of his first wife. His authority derived, through the chiefs superior to him, ultimately from the Paramount Chief at the pinnacle of the traditional political order.

The demands made on a headman in the service of his people were not rewarded only in income, in the fines levied in his court, for instance, but were reciprocated in that he could expect obedience and political deference from the men who lived under his jurisdiction. Backing him up was the full force of traditional authority. His actions were subject to review in that there was appeal to higher authorities in the tribal hierarchy, but he was also answerable to his people. The burdens of office did not fall on his shoulders alone; his trusted men would assist him and share the task of decision-making with advice and endorsement.

After Lesotho's borders with South Africa were fixed, the country came to suffer a shortage of arable land. It had been the custom that 'places' be found for the sons of the chieftainship. Given a fixed amount of land, there was soon a proliferation of petty authorities ruling over smaller and smaller areas. More powerful chiefs began to place their sons over lesser chiefs, who, in turn, placed their sons over headmen. This led to tensions within the tribal hierarchy and the British, in an attempt to rationalize the situation, started a series of political reforms in the 1930's. These resulted in the gazetting of a limited number

of chiefs and headmen only. Ungazetted authorities do still administer areas in Seeiso's ward today, but their status is less clear.⁽²⁾ The reforms thus undermined the security of lesser chiefs and headmen as the selection of who was to be gazetted was not always standard and predictable according to fixed criteria.

Under the terms of the reforms, only gazetted authorities were empowered to hold courts and levy fines. More importantly, today they have more autonomy in land allocation. The benefits of political office were steadily whittled away, and at that stage it was the lesser chiefs and headmen who suffered greatest loss.

The encapsulation and centralization process went a step further with a series of reforms that limited tribal authorities in the exercise of their judicial function. To compensate chiefs and headmen for the loss of revenue from fines, which now went to the National Treasury, an income from Government was substituted. Hailey records that the apportionment of grants was disproportionate and unequal, and that many headmen, even those gazetted, had good cause for dissatisfaction with the scale of remuneration (1953: 103-7). During this period the right of traditional authorities to dispose of stray stock was removed, and revenue from this source was also to go to the Treasury.

The headman, an emasculated executive of bureaucratic policy, was still expected to fulfil his former tasks--as he is today--even in those areas, such as arbitration in disputes, which no longer offered direct reward or endorsement of his status, but now without the relative autonomy he had once enjoyed and without much recognition or remuneration. Impoverished and insecure, neither a trained and adequately salaried bureaucrat, nor able to enjoy as before relations based on reciprocity and patronage with his subjects, the

headman had little incentive to discharge his duties diligently. Headmen strove to shore up their shaky position by any means that presented itself, and Jones (1951) attributes the widespread outbreak of liretlo murders of the 1940's and 1950's on the part of lesser authorities largely to a desperate bid to stem the draining of their power. (3)

Nor have more recent developments in Lesotho eased the pressures of holding tribal office. On the contrary, it is not only the bureaucratic aspect of the encapsulating structure that now threatens to loosen the headman's hold on traditional prerogatives. One of the most obvious and important influences has been the emergence of party politics which has created an alternative power structure to that of the tribal order, and which has profound effect at village level. In rural communities the stature of the headman is often confronted with that of influential men of the party-political structure and he may well find himself challenged by them.

These new forces are demonstrated by the question of land advisory boards, elections to which have become a vehicle for party-political strife, in some instances tending to polarize villages (see Chapter Four). If a headman's land board is poised against him in terms of national political alliances, there is potential for discord. Where a land board includes educated, politicized men, they may prove a stumbling-block to an illiterate old headman.⁽⁴⁾ Co-operating with an elected board is a far cry from taking advice from trusted counsellors, and headmen resent the implicit slur on their ability and the curtailment of one of the few areas of relative independence remaining to them. Some simply do not work with their boards at all, and there is confusion in the administration as a whole about the exact degree of power to be wielded by the boards.

New rules drawn in from the outer structure provide fresh resources in village game-patterns, and the headman's latitude in office has become more constrained by bureaucratic regulations. As an administrative official, he must report and hand over stray stock (his herds cannot easily grow unaccountably); he must consult with his land board (it is getting difficult to do friends or clients favours). In a word, the resources a headman formerly had available to be converted into political potential have to be accounted for more carefully.

One of the few resources remaining to the headman is the leboella. Pasturage is extremely limited in the lowlands, and villages jealously guard their maboella. To some extent, this resource is still under the control of the headman in that he regulates grazing on it and might receive a percentage of the thatching grass it yields. Since the leboella has to provide thatching grass in those areas where it grows, it is open to grazing only for certain months every year, and the headman is also responsible for its preservation when it is closed. Yet even this sphere is becoming more circumscribed because Government, aware of the dangers of overstocking and overgrazing, is trying to exert closer control of its management.

Perhaps migrancy best illustrates the dilemmas facing headmen. Hailey comments,

in Basutoland, where so large a part of the population is continuously in receipt of wages on the relatively high scale obtaining in the Union, it is not reasonable to expect efficient service from Headmen who, although Gazetted, receive no emoluments at all or only [a] pittance ... (1953:106)

Limited in income at home, the headman is subject today to all those forces which make men opt for work in South Africa, yet leaving his incumbency exposes the position to petty factionalism

and strife.

When speaking of traditional Basotho society, it is possible to suggest an as if model of balanced reciprocity existing between a headman and his subjects; the subjects rendered respect and dues to the headman who, in turn, looked after their interests in a paternal fashion. In the Lesotho of today, the elements of the model have become skewed. In many cases the headman still demands respect from his village and tries to establish a degree of authority over his subjects, yet, put very bluntly, he has little to offer them in return. And they are growing progressively more aware of this.

A Government Commission visited 'Mampho's in 1970 to invite comment from the people about the political condition of the country after the Prime Minister's seizure of power. One headman, Headman Teko (who appears again in the conclusion to this chapter), had this to say at the pitso convened for the Commission:

'Morena, you said how you see things and asked how we see things. I, for one, I no longer have full rights to my people in my village. Whenever I tell them and ask them to stop their wrongdoings, they always tell me that I am not gazetted, and they have nothing to do with me. That is what we experience with your Government. Can you give me a remedy? ... Today I am ungazetted. When are you going to help me?' (5)

The Chief's court showed instances of headmen balking at surrendering relative autonomy, and a later chapter will reveal holding action in the field of land litigation in the Local Court. Cases in these two courts give some idea of the range of tasks expected of a headman in the litigation process alone. It is against this landscape, then, that one must view the figure of the headman in Lesotho, a figure put-upon and, were he conscientious, overworked, a political agent in the traditional structure who has been hamstrung.

CASE STUDY: THE VILLAGE OF KOMA'S

Tsie li jana seropong (Sesotho proverb to the effect that locusts confined in a basket devour each other; comment passed by my field assistant on the conflict at Koma's.)

Antecedents of conflict

To delineate the sources of conflict in Koma's village, it is not adequate merely to point to a Headwoman plagued by, and resisting, the forces of change whittling away at the range of powers she considers hers by right of birth and position. Genealogical history illustrates that 'Making of Koma's is not, to quote a phrase that was repeatedly used to qualify her position, the 'rightful headman' there, and a brief review of her career shows up her determination not to relinquish control of the headmanship. The recent history of this village also throws some light on the strains that mark her relationship with Albert, her late husband's kinsman; it was primarily conflict between these two individuals that motivated the events to be described.

It is said of Koma's that since the death of Mokhifa, a previous Headman and father-in-law of 'Making, 'there has been no peace in this village'. According to Albert,⁽⁶⁾ Mokhifa arranged that his son, Sera, take over the administration of the village some time before his death to gain experience; he nominated Albert to be Sera's chief assistant and chairman of the village. Albert and Sera thus ran Koma's together until Albert went to work in South Africa. On his return, Albert found a changed situation and, in time, Sera's attitude started to change towards his father under, it was said, the influence of his wife, 'Making. He made free with his father's possessions, treated him with disrespect and even tried to wrest the headmanship from

him before his death, encouraged always by his wife. Albert traced 'Making's dislike of him to the position he had enjoyed under Mokhifa; why, she reasoned, when the village was to be her husband's, did he have to be led and guided by Albert? The older men of the village had reprimanded Sera for his filial disrespect, only to be called fools and chased away by 'Making. 'From that time Sera's friends were few,' and it was said that his ancestors starting worrying him in dreams, and were to punish him by seeing to it that he did not rule long.

Mokhifa died in the late 1950's and Sera succeeded to the headmanship, a position he enjoyed for only a few years before his death. It was at this time that the myth of 'sudden death' started to surround the Koma headmanship. Sera's only son did not outlive his father, but he left a son to continue the line. It was decided by village consensus that 'Making would act as regent for this child, her grandson, and this was ratified by the Principal Chief. 'Making 'inherited' her husband's counsellors, some of whom had worked for Mokhifa as well, but they were not happy with the way she carried out her duties, and most of them resigned. Then 'Making's grandson, too, died.

It was then that people began to whisper that 'Making was a witch. It was rumoured that it was dangerous to have aspirations to or connexions with the headmanship of Koma's. These rumours were fanned when, after the death of the child, 'Making declared that, as she was now regent for a dead child, she would rule until her death.

The village was not satisfied with this and, led by Albert and another man, they went before the Principal Chief to ask that the headmanship be handed to Mokhifa's second son, Tsietsi, who was duly

installed. But he did not rule long before he, also died.

Mokhifa's third son, Pesa, refused to take over the headmanship which had 'killed his brothers', and Tsietsi's wife refused to allow her son, then about eighteen, to risk his life by becoming headman. When she was invited to act as regent for her son, she insisted that she had already lost her husband and wanted to go on living herself. She suggested that 'Making be installed as regent Headwoman again and this was done. When the boy came of age the village met again to consider installing him, but his mother was adamant in her resistance, and once again, 'Making was confirmed in the headmanship.

'Making is a woman under pressure, finding herself embattled on a number of fronts. Not only has she resolutely resisted the onslaughts on her legitimacy wrought by her reputation for clinging to power firmly and her not being the 'rightful' incumbent, but she continues to act as if change has not circumscribed the former autonomy of the position she occupies.

Focus of conflict

It is predictable that her stubbornness in the face of change crystallized in conflict over those resources which still provide some source of power and authority in the headman's sphere of influence, the allocation of land, and control over grazing and stock. In all these areas, Albert, her chief antagonist, can make his presence felt. Firstly, he is chairman of the land advisory board elected in the village, a position from which he can push, should he so desire, complaints against 'Making. He is the poundmaster's assistant, another platform for control of village affairs connected with the contentious issues of stray stock and stock impounded for damaging grass or

crops. Albert utilized both these positions in his negotiations with 'Making.

In other areas too Albert draws upon strong resources. He is an influential BCP man. 'Making, on the other hand, belongs to the splinter UDP, seen as shading in support towards the Government. Albert is also a cattle broker and trader, whose business takes him as far afield as the Republic. When 'Making confronts Albert, then, she is not dealing with a subservient peasant who is inexperienced in manoeuvring to maximize his resources. Albert was trained in the administration even before 'Making and was already making use of structures surrounding his immediate social field by means of his membership of the land advisory board, his party-political activities and his economic mobility.

Albert and 'Making clashed, in the series of cases that follows, primarily about grazing. It is disagreement over leboella which most clearly reveals the factions competing in the village. And it was here, too, that was situated the main area for negotiation between 'Making and Albert: the former strained to keep under control the management of the leboella and the procedures through which cattle-owners who violated it were punished, while the latter needed grazing for his cattle.

Disputes in the village often spilled over into complaints and cases in the Chief's court which constituted the main forum for confrontation and negotiation. To return to Moore's formulation, we can identify two semi-autonomous social fields, that of Koma's village itself, and that of the wider local community, including interaction between Koma's village and the Principal Chief's court. These fields interpenetrate at several points, for the processes that

delineate them, as will be seen, often concern the rule-making capacities of the encapsulated local order as opposed to the outer structure. A semi-autonomous social field

is defined and its boundaries identified not by its organization (it may be a corporate group, it may not) but by a procedural characteristic, the fact that it can generate rules and coerce or induce compliance to them. (Moore 1973:722)

The Chief's court occupies a vital nodal position between the enclosed order and the encapsulating structure, but it was used less in these confrontations as a medium for translating between the outer and the inner structures than for assisting in the process of defining and modifying the rules governing conflict in Koma's village. It will be seen however that the court fails to forestall an escalation, despite appeals made to it by members of that community for decisive action to avert bloodshed. Its political situation is such that it seems unable to intervene compellingly. It pays lip service to the new rules, while it does not convincingly sanction arbitrary actions on the part of the Headwoman. By not supporting either camp conclusively, it obscures rule priorities and succeeds only in compounding frustration, and finally the people concerned are forced to turn to other rule-enforcing agencies, outside the traditional field, to wring out a solution to their urgent problems. Once more in Moore's terms, one must remain aware of the interaction among the variables 'procedures', 'reasons for outcome' and 'political implications' in the various dispute-settlement processes that will emerge in the cases to follow.

The pound

In Koma's, stray stock and stock seized on the leboella or in lands is impounded; the elected poundmaster is Pesa, also the vill-

age secretary and supporter of Albert. Pesa is an elderly man and, when he was elected, he agreed to take on the task only if Albert, as assistant poundmaster, would take most of the work off his shoulders. Thus although Pesa bore the title, it was Albert who controlled the pound. The first two cases revolve around this arrangement.

'Macecilia's cow grazed wheat in Samuel's field, causing damage estimated by Samuel at R2. Samuel had the cow impounded pending payment of the compensation and the required pound fee. 'Macecilia asked Albert to release her cow, but he refused to do so until both these fees had been paid. It seems 'Macecilia was reluctant to pay the pound fee to Albert because, as a friend of 'Making's, she did not regard him as having the right to control the pound.

Accordingly 'Macecilia appealed to 'Making for assistance in having her cow released. Both claimed in the case that followed in the Chief's court that 'Macecilia paid 'Making R1 to cover the damage to Samuel's wheat, an amount to which 'Macecilia said Samuel had reduced his initial claim, and an amount for which 'Making had a receipt issued.

'Making summoned Albert to make him release the cow and Albert, Pesa and Samuel met with the Headwoman and 'Macecilia at the Koma lekh-otla where an altercation ensued. 'Macecilia accused Samuel of having set his claim for compensation as high as R2 simply to spite her because she did not want to pay Albert the pound fee. When offered the R1 note as compensation by 'Making, Samuel refused to accept it, saying that if Albert were no longer respected there as the assistant poundmaster, it would seem that 'Making had usurped the function of poundmaster. Albert, too, refused to take any responsibility for the note, which he ordered 'Making to give to Samuel herself, saying 'You do it--don't ask me to do it--since you are the new poundmaster!'

'Making then had 'Macecilia's cow released. Both pound fee and compensation were still unpaid. Since matters were deadlocked, Samuel went before the Chief's court on 22.10.1969 to claim his compensation and to complain of how the matter had been handled.

'Making had made several bad mistakes, as the court pointed out: she had neglected to send men to estimate the extent of the damage done to Samuel's crops, and so arrive at a true compensation claim; she had issued a receipt illegally to 'Macecilia and the receipt had been wrongly filled in; she had had a cow released from the pound before the pound fee was paid. All these were serious offences, said the court, but it was clear that 'Making had been 'misled' by 'Macecilia, who had convinced her that Samuel only wanted R1 after all, and by Samuel, in allowing him to set his own compensation. The court reprimanded 'Making for these administrative mistakes, but told Samuel that charges were not to be pressed against his Headwoman.

No attempt was made to clarify the central point of dispute, Albert's position of control over the pound.

Going before the Chief's court thus was a preliminary skirmish: there was negotiation about the pound but, for 'Making, no resolution about curbing Albert's influence over it. Two days later, 'Making charged Pesa in the Local Court for failing to comply with her orders to release a goat belonging to 'Macecilia from the pound. This case paralleled the one in the Chief's court, involving the same people and very similar events, but it was formulated in such a way as to place under legal scrutiny Albert's part in pound decisions. The President noted in judgment that 'Making was not entitled to order an impounded animal released without payment of the required fees, and that today the word of the chieftainship was not final, as it once had been. But, he said, no doubt she had been prompted to act as she did believing, quite rightly, that pound fees ought not to be paid to an unauthorized person such as Albert. Albert had no legal rights whatsoever over the pound; even Pesa was merely a functionary in 'Making's administration and therefore bound to obey her. Most interesting was his observation that this case clearly arose out of a background of confusion and friction in the village of Koma's.

It is the grinding out of petty differences such as this to establish status which provides the opportunity and meat for competition in Koma's. Because the pound offers Albert a potential for patronage, 'Making faces him down over it and, once in litigation, his understanding with Pesa holds no water because the arrangement was extra-legal.

Land allocation

The next stage in the confrontations between 'Making and Albert of which I have record occurred nine months later, on 31.7. 1970, when Koma's land advisory board went to complain to 'Making

that she was allocating lands and sites without them. They wanted to know whether another board had been elected without their knowledge. Albert was the chairman of the land advisory board; the other members were Steyn, Qalaka, Thobe (all of the Koma lineage) and Moepa (not related). Apparently there was an argument with 'Making in her house, where the board had gone to see her in preference, so they said, to making their complaint public in her lekhotla. It was reported that 'Making's attitude towards the land advisory board was both insulting and contemptuous: she stated that as Mofumahali (Chieftainess) of Koma's, she had the right to call upon any of her people to go and allocate a land or a site on her behalf. They had no right to 'interfere' in her work, and she had 'no time' to listen to them. She called them 'Congressites' who were making trouble in her village. Albert reportedly asked whether she would like them to go before the Principal Chief with their complaint, to which her retort was, 'Do as you please'. The board complained to the Chief's court and a headman was deputed to instruct 'Making to listen to her board because they were her lawful advisers. It was reported subsequently that she agreed to work with the land board.

Leboella

The breach in relations between 'Making and Albert widened with a series of confrontations over the leboella. Koma has a fine leboella, known as Sekhutlong, enclosed on three sides by cliffs and bounded on the fourth by a donga beyond which lies a good pasture known as Thotaneng. On occasion Thotaneng is declared leboella along with Sekhutlong, but this was not the case in 1970 when the following incidents started. The leboella is guarded and regulated by babehi or caretakers, of whom there were five elected that year by the men of Koma's, and including Thobe and Nkhasi (the

latter is not of the Koma lineage; a friend of Albert's). It must be noted that both 'Making and Albert had their supporters among the babehi. Ideally, the headman has the goodwill and cooperation of his administration. Administration of the pound and the allocation of land were loaded against 'Making in this increasingly factional conflict. The babehi were chosen during an illness she suffered and the list of names was submitted to her for endorsement by Albert, Thakalo Koma and Mashapha, a friend of Albert's. It was thus predictable that there would be keen negotiation over rights to leboella.

Some four months after the land board had seen the Chief's court, on 26.11.1970, 'Making noticed some of Albert's cattle grazing at Thot-aneng. She set out to seize them herself, in the company of Thobe, Nkhasi and Mashapha, for the other men present refused to assist the babehi in going after the cattle. When my assistant, Litaba, arrived in the village, people drew his attention to this unusual sight, for it is not expected of a headman to involve himself in the duties of his subordinates. To see an elderly Headwoman setting out to capture cattle was a subject of astonishment and dismay.

As the group approached the cattle, Nkhasi and Mashapha stopped, but 'Making and Thobe went on and drove the cattle back to the village where they were closed up in a kraal. The herdboys had run away at the approach of the angry Headwoman and at sight of her companions, armed with sticks. All the way, 'Making was scolding and shouting; at the herdboys: 'You are proud like your father. You have come to graze my leboella here !'; at the people watching her: 'You think much of yourselves, you people of Koma's. Since my father-in-law and husband died, you no longer respect the headmanship of this village. You despise me because I am a woman. Just look, even the men of this village, Nkhasi and Mashapha, when I ask them to go and drive the cattle from the leboella, they turn back along the way. I am going before the law to teach them what law is !'

Meanwhile, two men, Thakalo, 'Making's kinsman and senior adviser and member of the village committee, and Qalaka, also an adviser and member of the village committee, had rushed up to the Principal Chief to report that 'Making had gone to the pastures herself to drive the cattle. If a case resulted, they said, who would preside over it? Besides, they feared that 'Making might be injured by the herdboys defending their cattle.

The Chief's administration sent a messenger, Lesole, who arrived just as 'Making was closing the gate of the kraal, still muttering about Albert and telling my assistant that the leboella was hers, just as her land was hers. 'Now Albert has grazed my leboella. It's the same as if he grazed my land.' Lesole handed her a letter from the Chief's office and when she had read it, Albert also arrived. She explained to Lesole that she had gone to seize the cattle in

anger, that two of her men had turned back, and that others had refused to accompany her.

Lesole reprimanded her for going to the pasture herself. 'You must know that you are the property of the Principal Chief. If it happened that the boys had injured you, what would the Principal Chief have done with Albert?' She had a responsibility to her village, he said, not to abandon it without a head. She had the right to instruct people to do such tasks for her. If they refused, she could call upon the Principal Chief to send men to help her, and she could lay a charge against those of her subjects who disobeyed her orders. This Lesole also told the people present.

'Making apologized and explained that she had been so angry at her people's disobedience that she forgot herself. 'But,' she continued, 'I'm tired of this person Albert. He is the one who grazes my leboella every year.' The same Thakalo who had called for help from the Principal Chief was another offender. Although these two men seemed to think that she was hated by her village, some of her people, she said, would still support her, and if she set them on Albert and Thakalo, they would fight for her. It was to avoid violence that she had gone herself.

Albert told Lesole that he had not believed his herdboys' report, but had thought that his cattle must have been grazing the thatching grass at Sekhutlong. He had thus come 'trembling' to have his Mofum-ahali tell him where she had captured his cattle.

Thakalo explained that he and Qalaka had gone for help because they feared blood would be shed at Koma's. Nkhasi and Mashapha had stopped before Thobe and 'Making reached the cattle 'because Albert's cattle were not on the leboella, but on Thotaneng, which has not been declared a leboella this year'. Thus the others who would not go after the cattle had also done so because there was nothing to prevent the cattle grazing at Thotaneng, where everyone's cattle were allowed to graze that year.

An even more important point made by Thakalo was that 'Making was his older 'brother' and Albert his younger 'brother'. It was his duty to tell 'Making if in his view she was doing something wrong. He had not called in the Principal Chief because he wanted to charge either of them, or support them against each other, but to avert trouble, because the cattle had not been captured on the leboella. He told Albert not to try to claim damages from 'Making for driving his cattle unlawfully, for he would have no part in assisting Albert in a case that furthered the feud in their village.

Lesole told the people of Koma's to work peacefully with their Headwoman and to advise her if she did wrong. If she ignored their advice, they were to report the matter before it went further.

I have reported this incident in some detail to show something of the extent of strain and tension surrounding the leboella issue, and to emphasize the depth of 'Making's personal involvement in a feud with

Albert. Despite the attempts made by Thakalo and Lesole to cool the situation, confrontations about the leboella reached the point Turner identifies as 'mounting crisis' (1957): the conflict either had to be resolved, or lead to a breach.

A week later, on 2.12.1970, Thakalo and Qalaka again asked the Principal Chief's court to intercede in Koma's affairs to avert bloodshed. The complaint was that 'Making and her babehi were being careless in their management of the leboella, and that certain people were allowed to graze their cattle freely on it, while others were excluded.

For her part, 'Making and a 'mehi said that people sent their cattle to graze at night, when it was more difficult to capture them. Among the main offenders she named as having been fined were Albert, Thakalo, Qalaka, Samuel and Steyn.

Thakalo in turn once more told the court that unless leboella management was made less biased, there would be bloodshed, for some cattle were allowed to graze without hindrance. When 'Making challenged this statement, he related how Thobe, a 'mehi, allowed his own cattle to graze at night and tricked the others' herdboys in order to capture their cattle on the leboella. Even in daylight, he said, 'Making only captured cattle belonging to 'Albert, Thakalo, Steyn, and the rest'.

Albert and Nkhasi too stated that in the face of biased leboella management, they would be forced to take steps to protect their own interests.

The court gave a placatory judgment that did nothing to resolve the cause of the conflict. Of note however, was their pointing out that 'The leboella of today is not the leboella of yesterday'. This statement referred to increased Government interest in the rational control of natural resources.

But the question of the leboella was not yet resolved. Two days later Albert was again at the Chief's court to ask them to intercede for him with 'Making who was charging him too much for his cattle which had grazed the leboella the previous night. Thakalo and 'Making first wanted R10 from him, which Thakalo reduced, when Albert pleaded for lenience, to R6. That was still too high, Albert said. 'Making justified the amount claimed by stating that Albert deliberately and habitually freed his cattle to graze on the leboella. She was not concerned, she said, with the law which, the court reminded her, govern-

ed leboella compensation, and under which Albert, in this case, could not be charged more than R3.30. Although Albert warned that he was prepared to continue the feud, the court ended the case with no more than a conciliatory formula.

It was less than a month later that Albert was to challenge 'Making again about the leboella, and so precipitate the climax to their protracted conflict. He had noticed Thakalo's cattle grazing undisturbed on the leboella, and he went to ask 'Making why she did not see to it that the cattle were apprehended. He also drew her attention to a cow among those belonging to 'Macecilia, which he knew was a stray that had been in the village for more than six months and which had not been reported to the Principal Chief. 'Making had sold the cow to 'Macecilia for R5, so Albert alleged, had paid sixty cents of that to the owner of a land which had been damaged by the cow, and had kept the rest, as far as he knew, for herself. In reply, 'Making seemingly accused Albert of wanting to take over the headmanship of Koma's for himself, so intent was he on interfering in her affairs. This was Koma's, she said, where she was both 'the law and the Government'. If he persisted, she would denounce him to the police. This threat sparked off the crisis, and marked the point at which the conflict ceased to be part of an ongoing series of confrontations within the rules of the local game.

Albert went the following day to the Principal Chief's office where he reported the stray cow. Lesole was sent to investigate the matter, and when Albert's assertions were verified, the police were called in and 'Making was arrested and charged with being in unlawful possession of stock. She pleaded guilty in the Magistrate's Court, and was sentenced to R60 or six months' imprisonment. (7)

ANALYSIS

Once one admits that what we empirically observe is not 'customs', but 'cases' of human behaviour, it seems to me that we cannot escape the concept of choice in our analysis: our central problem becomes what are the constraints and incentives that canalize choices. (Barth 1966:1)

Explication will revolve around the various mechanisms for dispute-settlement that were available as options for the people of Koma's to forestall and control the escalation of conflict in their village. To this end, I recall the reader's attention to Moore's analytic distinction of three main variables in the dispute-settlement process which demand consideration: 'procedures (judges or other), the reasons for outcome (norms or other), and the political implications (strength of parties, relation to political setting)' (1970:323).

I shall deal with the ongoing conflict in Koma's in terms of each of these aspects in turn, attempting to show how the changing interrelationship among these variables served to define and modify the 'constraints and incentives' that led the actors to opt for the alternatives they did.

'Political implications'

'Making and Albert circled around the resources that constituted the village 'fund', vying with each other to signal their relative positions. This tug-of-war, straining for a toehold to achieve and maintain influence over the distribution of limited means, has a patent political dimension, thrown into relief by the factional alignments behind the two main contenders. Thobe, for instance, seemed to oppose Albert consistently, as was evident in the allegation that he had trapped Albert's herdboys into taking

the chance of driving cattle to leboella at night, while Albert's friends backed him against 'Making. That personal antagonism and loyalty ran high was shown, for example, in the case about 'Macecilia's cow, in which payment of a pound fee seemed contingent upon recognition of Albert as Pesa's 'herdboy' assistant.

'Making's actions took on an edge that can only be described as desperation, an urgency that flowed logically out of her own strained political situation. For it was there that lay 'Making's dilemma, it was this that operated most decisively to 'constrain' and 'channel' her alternatives. All that has been said about the unfortunate situation in which the minor political authority finds himself in Lesotho is true of her case, with the additional uncertainty of not being the 'rightful' head of Koma's. 'Making is ungazetted and thus has an even more restricted say in land allocation than do gazetted authorities, for applications and grants of land to her subjects have to be directed through her superior chief. Because of her relatively small village (157 taxpayers in 1969/70), she is far from financially independent; in the year 1969/70 her gratuity amounted to R16.45. ⁽⁸⁾ If she then appropriates income from, say, the sale of stray stock, her action is far from inexplicable in economic terms. Indeed, it is arguable that such actions on the part of petty authorities do not constitute extraordinary offences in the normal course of events, or are not considered to be so by villagers who know well the harsh realities of life in so poor a country as Lesotho. There was a strong impression that many villages expressed their awareness of the headman's predicament by allowing tacit accommodating arrangements to develop by which a headman could ease his financial dependency. The fact that the cow for which 'Making was finally convicted had been in her village for some

six months without its presence being reported, would support my argument that such adjustments are part of the ongoing compromise and negotiation that regulate village life.

A headman is still dependent upon his people for much of his actual power and perquisites. With their backing and tacit acceptance, he might well come to augment his income with such things as revenue from stray stock and enhance his patronage potential through such prestations as land grants and the extending of favours in respect of say, grazing, firewood or the release of impounded stock. It is his people who, in the first place, can sanction positively or negatively his share and, without their cooperation, it is difficult for him to maintain a semblance of legitimacy in this grey area of extra-official transaction.

Now while there is much to indicate that there were conventions of this sort in Koma's, 'Making's level of personal opposition to Albert seemed recurrently to unbalance going arrangements, and required repeated readjustments and negotiation, for she pursued a course that brought her into conflict with a man in her village whose influence in just those areas of transaction could muster support against her. And this was another aspect of her dilemma, that she seemed unable to reach a viable arrangement with Albert, so threatened was she by any influence he enjoyed in the administration of the village, and that this in turn created disturbances in village relations which she was unable to control.

She seemed thus to overreact, driven into behaviour that would suggest an attitude or a conviction that her authority was neither contingent nor circumscribed by bureaucratic edict, as if her will were enough to effect whatever decision she wished to implement. Thus she is reported to have said to her land board, ' I am

Mofumahali here', as if that meant that she could allocate lands as she saw fit. Again, she reportedly told them that she could 'call any person to come, and instruct him to go and allocate a person a site or a land', as if land allocation were not now prescribed and subject to legal bureaucratic directives.

Not only did she try to maintain control over resources in the face of challenge from within her village, but her resistance to the questioning of her authority was directed upward as well, to judge by her apparent attitude towards the Chief's court and the intervention of the Principal Chief's deputies in her affairs. From our description of the Chief's court in the previous chapter, we know that she was one of the authorities who simply defied that court in the matter of explaining why her thatching grass quota had not been reported. In other ways too she was openly contemptuous of the court. When it asked her, for example, in the case about 'Macecilia's cow, why she was willing to accept R1 as compensation when Samuel had asked for R2, she exclaimed, 'You can do whatever you like! I can see that you want to charge me, you, Leboea! Go ahead and charge me ! ' and she continued in this intractable reaction, despite the court's conciliatory efforts.

Because her income is limited, she must augment by other perquisites; because she feels her legitimacy to be threatened, she needs to be in a position to dispense favours. The paradox of her dilemma lay in that she needed to negotiate compliance and what's more, such negotiation, to be effective, had to include Albert, a concession she was unable to make. Reminded of the locust analogy this village called forth from my assistant, one must weigh the circle of dwindling alternatives open to 'Making against the blunt fact that there is not enough to go around in Koma's unless painful

compromises can be struck: it is only in terms of these strains and needs that 'Making's actions take on intelligibility.

Having set up some of the constraints and options that influence the political role of traditional authorities, let us now widen our view of the local semi-autonomous social field to include the Chief's court against a political perspective. We know that the power of the Chief's court has become enervated. Notwithstanding, it still played a vital role in facilitating the arrangements of those who invoked its assistance. The last phrase is important, for as Moore observes, it is 'the parties themselves [who] endow the arbitrator with decisive power' (1970:340).

It is not far-fetched to postulate that parties enter into a transactional relationship with a court. What the court has to offer is a resolution of conflict or a definitive statement; what the court receives in return is the placing of an individual under its jurisdiction. Speaking loosely, the individual surrenders himself to the court and signals his acceptance and endorsement of its authority;

must one not say that in a judicial proceeding in addition to the sifting of the dispute between the parties, there is simultaneously a demonstration of the authority of the judge or court? ... There is thus a political dimension to all judicial proceedings. (Moore 1970:322-3)

The Koma petitioners repeatedly enlisted the aid of the Chief's court, but that body failed to offer them a decisive resolution. When finally the court was powerless to protect Albert against 'Making's ultimate threat, he employed sanctions from beyond the court because that was the most effective option open to him. I shall argue that Albert's choice is symptomatic of an observable trend. The sustained political impoverishment of the Chief's court has forced people to open up alternative channels. In turn, this bypassing may

further weaken the legitimacy of such tribal agencies, and impede their mediational vantage.

Throughout this conflict, the Chief's court managed to contain the options it offered petitioners firmly within the tribal sphere.⁽⁹⁾ It referred to possible activation of the outside structure only in cautionary terms: for example, it warned 'Making that, by not seeing to it that cattle were sent behind the mountains after ploughing, she was exposing herself to prosecution in terms of the laws of the outside structure. Yet it made clear the fact that, of itself, it would not offer 'Making for prosecution in terms of the laws she had contravened. The solutions it offered for resolving conflict were traditional ones: it enlisted a fellow headman to inform 'Making that she was bound to work with her land board; it sent a messenger to investigate complaints in Koma's; it exhorted the parties to keep peace in their village and to keep the court informed. This sort of arbitrational approach, given that the court still enjoyed the authoritative stature once accorded to this level of tribal dispute-settlement, might well once have contained the kind of conflict Koma's offered, but political changes have introduced too many variables, qualifications and options for it to be effective now. Although Fallers is discussing change in the colonial context, what he says has relevance to the situation in Lesotho today too:

The adjustment of differences created by rapid and uneven change is often made more difficult by the lack of generally accepted 'referee institutions'--institutions for the resolution of conflict. Courts and councils, whether traditional or European-introduced, are often inadequate for this purpose because their own authority is questioned by one or another section of the community. This, indeed, is from the social point of view the nub of the problem of colonial development: to maintain, through a period of rapid change, some body of agreed-upon rules and institutions so that the conflicts which

change inevitably produces may be resolved before they reach disastrous proportions. The customary courts are of crucial importance in this regard, but they can successfully play the part of referee only if they contrive to move with the times and yet retain the confidence of the community. They must be adaptable and yet maintain a degree of consistency. (1956b: 139-40)

Another aspect of the court's political matrix is its position midway between the encapsulated and the outer structures. The court was not used in this extended conflict as a link to the outside, except in the final instance, when Albert's report of the stray cow being misappropriated by 'Making could hardly have resulted in another course of action but to see that she was prosecuted. Rather, as I have stated above, appeals to it were handled within the encapsulated order. As a political agent then, the court was in a position to 'sit on' directives and laws originating outside the enclosed field; it could distort, fail to relay, neglect to implement or otherwise deflect the force of outside demands seeking to alter the status quo within the enclosed order. In this sense, it had a material effect on defining the degree of semi-autonomy of the social field for which it constituted a point of articulation with outside agencies. Thus its failure to prosecute those authorities who had offended in terms of Government legislation cannot be viewed only as negligence: there was a direct interest involved too, in determining the degree of autonomy to be enjoyed by the encapsulated field. For the authority of the Chief's court derives in some measure from the traditional structures that gave birth to it; when it undertakes to settle disputes, it is asserting the continued legitimacy of that sphere.

The discretionary leeway exploited by the court in this context must partly be interpreted as its own resistance, at the level of a prominent apex of authority in the traditional order, to

encroachment on its own domain of autonomy by Central Government, and an assertion that tribal mechanisms of dispute-settlement are up to the task of keeping their own house in order. Referring specifically to the class of petty authorities, Hailey's reservations about the long-term effectiveness of relying on the traditional structure for administrative decentralization seems to anticipate something of the predicament the tribal order would face in trying to mediate between local interests and outside, bureaucratic standards:

The present arrangement in regard to this class of subordinate Native Authorities represents a compromise between two policies--the endeavour to secure efficient executive agents by the payment of remuneration for their services, and the desire to avoid any drastic change in the personnel of local authorities recognized by old standing custom. Such compromises often have their use in tiding over the difficulties caused by an alteration in system, but sooner or later it becomes necessary to come down squarely either on the side of efficiency or on the side of tradition. (Hailey 1953:106-7)

Attention must now be drawn to the crucial political event that so radically restricted and channelled the alternatives open to the protagonists, namely, the emergency of 1970. It was primarily this change in the outer structure that abruptly altered the rules of the political game at local level. 'Making was reported to have asserted that now, with this circumambient change, she was 'the law and the Government' in Koma's. She had asserted her right throughout to be regarded as 'the law' of the village. Thus she had exclaimed when driving Albert's cattle from Thotaneng, referring to the men who had failed to accompany her, 'I am going before the law to teach them what law is ! ' She had also gone before to the outside structure to prosecute her feud with Albert, in reporting him to the police for alleged dagga and stock theft offences on several occasions. But the consequences of such steps had been

altered completely by the advent of Qomatsi, as the emergency and especially the reign of terror it exploded was called by my informants. Before, such a step would subject Albert to normal investigatory procedures and, unless evidence was found to incriminate him, he had nothing to fear from the law. But under Qomatsi, the consequences could be brutal. The fact that 'Making could now draw on her association with the ruling party that had seized power at the polls, and was in a position to activate punishing forces against her opponents, was the decisive factor, for it neutralized any previous support Albert might have drawn from his Opposition connexions. Indeed it had become a positive handicap to be known as a BCP supporter. In this time of emergency too, the Principal Chief and his court could not mediate between their people and the strengthened powers that Government had assumed. Police did not work through the 'proper channels' of the Chief's administration. This limiting of the effectiveness of the Chief's court further underlines its diminished place.

'Procedures'

Social order is created, and, unless it is maintained with extreme force (and probably even then), it is a negotiated order; it is one which may be relatively persistent but which is always ultimately fragile. The negotiation of this order occurs not once but continuously in two major arenas of social and cultural conflict: disputing and politics. (Tanner 1970:398)

It was fairly obvious that petitioners could have little hope of an objective approach leading to a solution of their problems in 'Making's own lekhotla, for she herself was committed against certain members of her village to the point of abandoning nearly all semblance of impartiality. When the conflict threatened to go beyond whatever other local processes of settlement and arbitration there

might be activated, mediation was sought from the Chief's court.

What were these 'other local processes'? One might usefully bring in again the concept of mutual accommodations serving to arrange rules and regulate potentially discordant intersections of social intercourse. Thus a stray cow remains unreported in Koma's for months prior to its being sold to 'Macecilia. No local benefit would have been derived had the cow been handed over to a faceless Treasury. Not all such arrangements are to the gain of the village head; the process spreads out to the profit of other village functionaries, like Pesa, who administers the pound for 'Making and pockets the pound fee, and to the babehi, who get their cut in thatching grass and perhaps other perks. In turn, the collective administration can use its position to extend favours to other villagers. This sort of latitude extends to several other areas illustrated in the series of cases I recorded. For example, Samuel was himself allowed to assess the damage to his wheat by Macecilia's cow; no messengers were deputed by 'Making, as is the official procedure in such events, to provide an objective assessment. And 'Macecilia's going to him privately to ask for a reduction in his demands again indicates how the neglect of official procedures lends itself to a local, interpersonal, transactional arrangement being struck to suit the people concerned. Again, Koma's leboella was used more in the breach than in the observance, it would seem, of the rule that maboella be closed to grazing entirely during certain months. There were seemingly standardized conventions for ensuring illicit grazing for one's cattle: the cloak of darkness encouraging competitive herdboys solicitous for their charges, the kraal unaccountably opened at night, or the tale that the cattle had broken out unobserved to make their way to the pastures.

Adaptations such as these offer a meeting ground upon which the negotiations of village relations can be adjusted; they are the market stalls for interpersonal bargaining. For this reason an insecure village head like 'Making cannot afford to allow key loci such as the control of impounded stock to be drawn under the regulation of someone who might use their patronage potential as a springboard for influence to her possible detriment. And here rests an indicator too as to why so many headmen stubbornly obstructed the introduction of working land advisory boards in their villages. Adjustments and negotiation in such areas proceed by a subtle and complex process of communication, signalling and display, and this process of who-will-or-will-not-pay-whom-what is contained within a well worn set of rules which, to render working compromises possible, must be both consensual and reasonably honoured.

It is at these points of interest intersections that the semi-autonomy of the social field becomes perceptible. Some of the arrangements observable in Koma's were excluded from the ken of the Chief's court, and many were in direct violation of outer-structure rules about village management. It is precisely this private and, at times, extra-legal quality of local procedures that makes these areas rich in possibilities for bargaining.

However, the balance and resolution potential of Koma's inner procedures were impaired by 'Making's intense resistance to Albert. The two men who emerged as local mediators, Qalaka and Thakalo, both experienced advisers, both members of the village committee and both apparently concerned, were unable to stem what they feared was a build-up to violence. When Albert's cattle were captured on Thot-aneng by 'Making and Thobe, Thakalo stated emphatically that he was not prepared, even though Albert might have just cause to charge his

Headwoman, to help him in a case against her. His refusal to take sides was a measure of his view of himself as a mediator, working to keep peace in the local community. Yet even these two men, who appeared to seek conciliation and who repeatedly called upon the Chief's court for intercession to prevent bloodshed in their village, had their mediational stance undermined by 'Making, and were unable to curb the escalation of conflict.

Once eruptions of the discord entered the orbit of the Chief's court, they came under a new level of negotiation, a less personalized form of confrontation than the face-to-face dispute that took place in Koma's itself. For a start, the parties were placed in a slightly more formal, more impersonal, locus of debate, whether they were explaining their actions to a messenger of the court sent to Koma's to investigate, or whether they were actually summoned to the morenenq to speak before the court. The manner in which conflicting allegations were phrased was no longer subject only to the rules of the village game of dispute and competition, but entered a wider, less localized complex of procedural and normative demands, requiring a slightly different mode of rationalization.

But although the court did not operate as a mediator in terms of the rules governing village interaction, it was not so distant from that social field as to bring a wholly altered set of rules to bear upon the conflict. Indeed, many of the village rules were endorsed and tacitly accepted by the court, even those in violation of outside directives. This was evident in the fact that, although the court repeatedly mentioned the laws governing pound maintenance, leboella and cattle management and land boards, it did not offer to prosecute in agencies of the outside structure those who had violated those laws. Once it was established

that the procedural alternatives opened up by dispute-settlement at this level did not necessarily include being passed on to the outside structure for prosecution, dispute in the Chief's court followed an almost stylized pattern. In this sense then, the court cases offered a display forum for continued negotiation and point-making, an extension of the rules that regulated debate within the semi-autonomous social field of Koma's, and in some measure, an acceptance of those rules.

This reiterates my point that the Chief's court must be seen as acting to conserve the authority of the traditional sphere, to assert that inner procedures and mechanisms are sufficient to the task of controlling conflicting interests within the semi-autonomous social field represented by the court.

But one must not lose sight of the fact that the outer structure exists, and that the actions of Koma's disputants do invite scrutiny in terms of the administrative standards and rules laid down by that order.

The Chief's court is nodally placed to undertake and direct continual mediation between the outer and inner structures. Thus, for example, although it did not expose 'Making to the consequences of her administrative derelictions by seeing that she was charged, it did spell out how her conduct fell short of bureaucratic standards, and instructed her as to the law governing the various procedures whence conflict stemmed in her village. But its methods were inconclusive, as the Koma's study shows, because it succeeded neither in resolving the conflict in terms of the inner rules nor in translating the outer rules in such a way as to introduce them effectively to the encapsulated procedures. Nor was this ultimately indifferent approach illustrated only in the Koma's conflict; rather, it

was symptomatic of a more general malaise within the local sphere occasioned by a failure on the part of the Chief's court to come to terms in any meaningful way with such social maladjustments and the strains of conflicting value systems.

Yet, however diluted the court's application of outer rules, it did (although not, perhaps, in every instance) invoke the relevant directives and laws and measure conduct in terms of them. A secondary consequence here was that the court was giving some form of instruction in the procedures and rules deriving from the outer system; it was providing information that aware members of the encapsulated order could exploit in their dealings with each other. Thus Albert learned from the court that any person had the right to capture cattle grazing on prohibited pasture, and he warned his opponents that he would make use of this new weapon. 'Many legal rights,' observes Moore, in the context of the semi-autonomous social field, 'can be interpreted as the capacity of persons inside the social field to mobilize the state on their behalf' (1973:728-9). A number of people already have the necessary knowledge to take their litigation directly to the Local Court, without passing through the tribal channels, when it suits their ends to do so. In the same way, people who seek for it will find the information relating to 'mobilizing the state on their behalf', both in their bargaining with each other and in seeking alternative channels to the tribal ones. Albert's report to the court of the stray cow that 'Making had sold was presented in such a way as not to invite arbitration from within the encapsulated semi-autonomous field, but to force the court to deal with the issue by reporting it. Going through the court to achieve this was no more than activating the court to endorse a report to the police.

A very clear distinction can be drawn between the procedural

and political implications of seeking mediation in (or extending one's negotiations into) the Chief's court and inviting authoritative decision from the Local Court. The former was concerned in great measure with 'the reiteration of persisting relationships that obtain in the society quite outside situations of dispute' (Moore 1970:340); its involvement in the disputes mirrored both its connexions with the tribal field and with the outside structure of Central Government, and its legitimacy derived both from political submission from below and from endowment from above. The Local Court, on the other hand, has its political and authoritative roots in the outside order;⁽¹⁰⁾ its existence is an official creation and its procedures are specified in legislation. The judgment of that court about control over the Koma's pound spelled out clearly that its concern was not with the ongoing, private and non-official arrangements arrived at by the Koma's villagers: Albert's name did not appear on any official listing of pounds in the area, and so he could not be considered to have any real right to make decisions about pound affairs. It is significant that 'Making chose to look here for sanctioning of her status in pound administration when the Chief's court failed to clarify the issue, firstly, because she was bringing in outside rules to lend force to her bid for power, rules that were not directly part of the local game, and secondly, because it illustrates how deeply the encapsulating structure can, and has, penetrated local-level affairs.

Looked at from the inside, ... the social field is semi-autonomous not only because it can be affected by the direction of outside forces impinging upon it, but because persons inside the social field can mobilize those outside forces, or threaten to do so, in their bargainings with each other. (Moore 1973:729)

But procedures in the Local Court hardly lend themselves to bargain-

ing in the way that is possible in the Chief's court. Rather, what that court could offer was a definitive statement about her status, a statement that owed nothing to the intricately negotiated balance of power that had been thrashed out over successive confrontations about pound management in Koma's.

'Reasons for outcome (norms or other)'

It is not always possible to demarcate hard-and-fast analytic boundaries among such essentially interactional processes as Moore put forward for the analysis of judicial settlements. The political matrix and implications of dispute, it was seen, exercise an influence on its procedures and its outcome, which in turn feed back on the status and reasoning of the actors and institutions involved. Thus much that was said under the preceding headings might equally have relevance here. To illustrate: the fact that the land advisory board first went to see 'Making in her home rather than, as they stressed it, in the public forum of her lekhotla, indicates something about the sort of procedures that were used in village conflict resolution. It also constituted a normative signal, a gesture to suggest that discussion was to be regulated by the rules of the inner game, and that 'Making was to be given a chance to decide the issue without outside pressure. The procedure adopted suggested that the confrontation could be contained within the family, so to speak; the land board were pushing 'Making for a definition of their status, and were not necessarily trying to have her charged. My interest is less with the actual norm-invocation of participants, and more with pointing out that the presence and influence of, and the tension between, various rule systems had an effect on the course and outcome of dispute-settlement in the Koma's conflict. Equally,

the place of rules (both legal and non-legal, enforceable and non-enforceable), was central in the non-conflict arrangements of Koma's.

The rules of the local game do not necessarily coincide with--indeed they often conflict with--rules originating outside the encapsulated field. The semi-autonomy of the social field becomes discernible in that it has the capacity to generate its own rules, values and symbols internally, and that it commands mechanisms for eliciting compliance.

The semi-autonomous social field can use the rule system of the outer structure in various ways. An individual or group might wish to activate the legal rules directly, as 'Making did in going to the Local Court to charge Pesa for not obeying her orders, and as Albert did in reporting her misappropriation of the stray cow. Or the field might offer resistance to the outer system by rejecting its rules, as Opposition members did during the emergency who held underground courts to settle their differences rather than wash their linen in a Government court. Local resistance need not be so clear-cut: the Chief's court was no more than dragging its feet about presenting offending authorities for prosecution.

But another way exists in which the laws of the encapsulating order might be exploited. Koma's villagers persistently 'broke the law' in their ongoing negotiations. Again, we are back to the point that the local field has different rules from the outside, but always remembering that where internal rules conflict with or contravene outer laws, one has a situation of transaction, of displaying trust or of competing, of exposing the jugular, of taking or giving away advantage. It is not merely a question of local rules indicating local solidarity, of cocking a snook at the encapsulating order and those of its rules which most threaten the auton-

omy of the local community. It is precisely because the laws exist, because action is in violation of them, that negotiation in these areas becomes possible. A bargaining ground is opened up precisely because the laws exist and can be bindingly invoked.

CONCLUSION

One of the most usual ways in which centralized governments invade the social fields within their boundaries is by means of legislation. But innovative legislation or other attempts to direct change often fail to achieve their intended purposes; and even when they succeed wholly or partially, they frequently carry with them unplanned and unexpected consequences. This is partly because new laws are thrust upon going social arrangements in which there are complexes of binding obligations already in existence. Legislation is often passed with the intention of altering the going social arrangements in specified ways. The social arrangements are often effectively stronger than the new laws. (Moore 1973:723)

What we are looking at in the Koma's conflict, is a case study of social change: 'It is only insofar as law changes the relationships of people to each other, actually changes their specific mutual rights and obligations, that law effects social change' (Moore 1973:734). For Barth, the problem is 'to understand how any degree of systematization and consistency is established and maintained between the different values that coexist in a culture' (1966:12). This chapter has contended that the disparity of values, the internal, local and often tribal values at variance with the outer, legislated and bureaucratic values of the State, provides a 'grey area' for negotiation at community level, an area where the semi-autonomy of the enclosed social field is demonstrated and where mutual statuses can be tested. Land allocation is but one spotlight on the torsion that exists at the intersections of interest represented by the inner and outer rule systems. Here

is one example of headmen hanging on to their old prerogatives of power, with land board legislation offering a vantage to villagers seeking to put forward their own challenges.

Barth maintains that 'values become progressively systematized as they are used to mediate the comparisons of prestations in transactions' (1966:14). Further, he says,

values become progressively shared by being made known through transactions ... Finally, ... where patterns of behaviour are generated from a set of shared values, the resolution of individual dilemmas of choice by the construction of over-arching principles of evaluation will have a feed-back effect on the shared values. (1966:14-15)

Translated into the Lesotho sphere, this would suggest that if enough people successfully resolve dilemmas by negotiation in the encapsulated social order, the effectiveness of State legislation and hence intrusion can be contained and diluted. But we have seen that the local order has difficulty in resolving conflicts of interest where parties are pushing for advantage in terms of changed and ambiguous status relations, and we have seen that, to trump a trick in terms of the rules of the outer order, one has to apply direct to agencies of that order. The feed-back lies in that, put very simply, individuals will come to greater fluency in activating State resources when the solution to their dilemma lies beyond the encapsulated value system, and as it comes to be known that the bureaucratic structure might be able to handle things faster, better and more decisively than the tribal structure.

The processes described in the case study of Koma's were not singular ones, nor, despite her personal aggressiveness, was 'Making acting in a peculiarly idiosyncratic way. Her dilemma was, it is true, exacerbated by the particular problems her village presented, but they served merely as catalysts. Ultimately, it was the

frail and uncertain political position in which she found herself that created the conditions for her resistance. And it is in this respect that 'Making can be seen as representative of the unhappy struggle of petty tribal authorities in Lesotho to maintain some degree of independence.

Chapter Eight will mention how, in land competition, headmen may cooperate with certain of their people to lay false claim to lands in litigation before the Local Court in an effort to further their political status. In concord with that sort of arrangement, there were indicators that intruded upon public awareness of headmen acting venally and vindictively, extorting money or other perks from their villagers, taking bribes, and falling out with bodies, such as land advisory boards, that challenged their relative autonomy. There was the strong impression that, in order to sustain his role, as with 'Making, a headman might easily embark upon non-legal ventures that, unless he could maintain a satisfactory balance of transaction in his village, made him vulnerable to those he might antagonize.

'Making was perhaps not typical of the average headman, but hers was not an isolated case either. While her conflict with Albert was playing itself out, another village, within a few kilometers of hers, was embroiled in a parallel series of flare-ups. I give an abbreviated account below of events in Malimong to throw into relief the plurality of forces working to generate new forms, accommodations and alternatives in headmanships. 'Making and Headman Teko undoubtedly exacerbated matters by their political ham-handedness and personality clashes, but their cases are a concentrated focus of the sort of problems peculiar to headmanship in Lesotho.

Headman Teko of Malimong, like 'Making, was not the 'rightful' head of the village. The heir to the incumbency was reluctant to press his claims; the previous claimant, about to take over the headmanship, had died unexpectedly; his claims had been challenged by Teko. Teko was ungazetted. His gratuity for the year 1969/70 was R12.95; the taxpayers under him numbered just over 100. (11) With the exception of his few supporters, Teko was unpopular in his village.

Opposition to him was spearheaded by his land advisory board who, in one instance I recorded, showed him up as a liar before his immediate superior, the Chief of Lichaba's, when he was summoned by her to apportion vacant lands in his area. When Teko was invited to explain why he and his land board did not agree about the number of people needing lands in his village, he exclaimed, 'Who am I to explain! I am the Chief of Malimong.' What, after all, he asked, were his land board? He could not work with them, he said, because they 'played baasskap' in his village.

The leboella of Malimong was one of the focal points of conflict. My assistant obtained an account from the villagers of Malimong that indicated that Teko allowed a certain notorious stock dealer from another village to graze his cattle on their leboella. When cattle belonging to this man were captured by a 'mehi', Teko ordered him to release the stock at once. When the poundkeeper and other men present started arguing with Teko about this, the stock-owner told them that he was not to be trifled with for it was he who gave their Headman his daily meat. Unless they were prepared to feed their Headman themselves, they could not turn his cattle away from their leboella.

Like 'Making, Teko seemed contemptuous of higher authority.

The Chief's court was called upon by villagers in their cases against Teko. One such case, when Teko was charged with stealing his brother's yoke, was passed on to the Local Court. Before that case, his villagers 'drove' Teko up to the moreneng, armed with knobkieries. Another case was the one brought against Teko for having failed to attend a vigil in his village one night. It emerged there that Teko was suspected of being in cahoots with thieves who had been plaguing the village. That case, as I described in the last chapter, was to have gone up to the Local Court, but the Principal Chief's court representative delayed matters so long that nothing came of it. During that case Teko stated that he thought the Principal Chief's representative at the vigil had come only to 'interfere' in his village affairs. The court thus failed to act decisively against Teko, and he continued in his efforts to impose his will upon his villagers.

Some of the men of the village sought advice from Litaba, my field assistant and one of the Principal Chief's advisers. Since the court would not help them, they told him, they were thinking of taking things higher, perhaps going to see Local Government to seek help there. Litaba advised them not to go over the Principal Chief's head thus, but to try first to see the Chief himself. If they found no assistance from that quarter, only then should they resort to appeals outside the tribal order.

The final crisis was sparked off when Teko slaughtered and ate a stray goat which he had not reported to the Principal Chief's administration. Teko barricaded himself in his hut and would not appear to account for his actions to the men of his village, but they got him out and he was wounded on the head. He escaped and became a fugitive and while he was at large, these events were reported with interest throughout the area. When he was found, his own villagers drove

him straight to the police in the District administrative centre, beating him with sjamboks along the way.

Although Teko was clearly more corrupt and arbitrary than 'Making, he was also in a more desperate situation. He had alienated by far the majority of his village, who suffered theft, blatant favouritism, the ignominy of their leboella being grazed openly by cattle belonging to the man who had 'bought' their Headman, and the difficulties of a badly run village, all because their Headman could not manage to run his village well and also live as he felt he was entitled. Teko was not a young man; he was unable to manage administrative matters with any success, and he was too stubborn to be guided. The Chief's court failed to create any sort of resolution in what was a protracted course of dissatisfaction and conflict and, finally, the villagers tired of seeking solutions within the framework of tribal rules. They sought and found an opportunity to have Teko sanctioned in terms of the outside structure, reaching for a more decisive solution to their problems.

Chapter Four
THE ADMINISTRATION

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LAND: POLITICIZATION

Introduction

Without land, there is no insurance against starvation. Without land, there is no food:

... A man eats from his land. He feeds his family from his land. A job is only sometimes and can only bring you money. Land is always there and gives you food. It is security.
(Wallman 1969:107)

Lesotho suffers from land shortage. The land cannot feed the people, who pour from the country to work on the mines, industries and farms of South Africa. The lowlands are scarred with dongas and denuded of protective plant cover: testimony to the pressure placed by hungry people on a scarce resource. Although Basotho have the alternative of seeking wage employment in the Republic of South Africa, that apartheid dominated country sees them only as migrants and places limitations on their acquiring residence rights.⁽¹⁾ Thus although wages earned in South Africa are a palliative to the existential problem of the Basotho, they are not a solution. For South Africa classifies Basotho as 'foreign Bantu', and a man's working life in South Africa always has the restricting horizon that no matter how well he does, nor how hard he toils, he must one day return to Lesotho. The migrant is not usually entitled to transfer his family to the country that exploits his labour and so his roots are embedded in Lesotho; it remains the country of his birth, where his rights of residence and, in the tragic South African context, his rights as a man, are to be found. Thus the quotation from Wallman underscores not only the subsistence importance of land, but also the symbolic dimension it must assume in the life of a migrant. Land is something to come home to, and assures a man of a place to live.

Control over the allocation of this scarce resource is an indispensable adjunct to political authority in Lesotho. Land, and the fight to retain control over it, is one of the central themes in the history of Lesotho. Basotho and Boers clashed in what was essentially a struggle for territory on which to graze herds and flocks and grow crops. The Basotho survived this armed struggle only at the cost of much of their most fertile land and their nascent state was forced to develop within the confines of attenuated borders. A preoccupation with land is thus ingrained deeply in the historical consciousness of the Basotho, and is overlain with symbolic perceptions, the residue of a long and hard conflict to survive against the pressures and predations of the developing Afrikaner nation.

Moshoeshoe was prescient in his awareness of the dangers of alienating land to the whites. He did not make outright land grants to any European. Missions, trading posts and schools were built on sites 'loaned' by Moshoeshoe, and land remained an inalienable commodity over which he maintained control as trustee. Guided by the tensions of the past, the Basotho have jealously guarded their rights in land and indeed, even in colonial times, did not materially loosen their grip. Also,

colonial interference with the actual administration of land by the traditional authorities was kept to a minimum. ... The regime of parallel rule, and later indirect rule, guided the country with a very light, if also neglectful, hand. ... (Palmer and Poulter 1972:257)

Land is traditionally seen as belonging to the Basotho nation: 'Every member of the Nation has certain vested rights to the land' (Sheddick 1954:6). Married men regard themselves as having the right to a site for a dwelling place and a garden, the right to grazing for their livestock, and the right to arable land for cultivation.⁽²⁾ It is incumbent upon political authorities to provide land for their subjects and Ashton draws attention to this traditional tenet embodied in the Laws

of Lerotholi (1922 edition, number 8),⁽³⁾ that ' "All chiefs and headmen must by law provide people living under them with land to cultivate" ...' (1952:144).⁽⁴⁾

Traditionally the Paramount Chief was regarded as the trustee of the nation's land. In principle, he controlled all the exploitation and distribution of land, but its actual administration was entrusted through a process of decentralization to the hierarchy of chiefs, sub-chiefs and headmen. So a principal chief is in charge of land allocation within his ward, yet responsibility for the process is delegated to the hierarchy of political authorities under him.

The system of land allocation was somewhat formalized under the series of reforms instituted in the 1930's and 1940's under British rule. These reforms, which aimed in part at checking the proliferation of petty authorities under the 'placing' system, demarcated carefully the powers of allocation. Previously any chief or headman could allocate land; the reforms confirmed tokelo ('the right to apportion land') as a prerogative only of gazetted authorities (Hailey 1953:106, 116-17). The dissatisfaction of those excluded from the Gazette listings has been ably documented by Jones (1951). The right to allocate land is one of the most important pillars upon which the political legitimacy of tribal authorities rests. Any curtailment or encroachment is an indirect attack upon or threat to the nature of the office itself:

power over the land is the main, and probably the last, bulwark of Chiefly power; and it is not unnatural that the custodians of the tradition should seek to guard it with something of the spirit which made the early Roman law the monopoly of a priest-craft. (Cowen 1967:58)

Control over the allocation of land has ceased to be the exclusive province of tribal authorities in that it is becoming increasingly democratized and bureaucratized. The formalizations introduced by the British have been carried further by innovations introduced in the post-indepen-

dence years. These changes are synonymous with the trend of Central Government bringing into its jurisdiction rights and powers formerly falling squarely within the tribal orbit. The implications of innovations such as these are immense: a diminution in control over land erodes the basis of traditional legitimacy; it also confers on Central Government another arm by which to reach to the local level. It is my intention to view changes in the system of land allocation from village level and to explore the crucial political and symbolic perspectives of such changes.

Because land is so scarce a resource in an economically strangled country, and because it has such powerful connotations, its control and allocation have inevitably made it the focus of strong political interests. It was a particularly urgent issue during the time of my fieldwork. The country was beset by a crippling drought and land and crops were topics that sprang readily to most people's lips.⁽⁵⁾ For land is an issue that strikes a deep chord in the heart of every Mosotho; it is suitable grist to the politician's mill and an emotionally loaded platform from which political rivals may vie. This dimension, the politicization of land, is inextricably connected with the moves of Central Government to regularize land administration under the specifics of innovative legislation, and the manner in which its policy is implemented has made possible a new range of political strategies in the local arena.

Land advisory boards (6)

'I pass on to Section 90 [of the Constitution] which has caused quite a lot of unrest in the country, this deals with the village Boards on land. This particular item is extremely important because it deals with the fundamental issue of land. But the Present Government has shown great lack of interest in the carrying out of the requirements of this section. On the question of allocation and removal of land from the people, long discussions took place in London and also in Maseru. This was considered to be one of the basic issues in the pre-independence Constitution and also in the subsequent constitutions. And yet when this Government had taken over, in the first place they took a very long time before these village land Boards were elected. After

the elections, some people, have been deprived of their land even outside the law. And when these boards were to be appointed, the Government declined their duties. They completely [sic] left this in the hands of the Chiefs, most of whom had clearly expressed their non-acceptance of these committees during discussions here, and during the discussions of the Report of the Commission. The Government left this very important item completely in the hands of such people. Chiefs had expressed dissatisfaction that that is their responsibility and should continue to be. They were not keen to support boards which are elected are [sic] vested with some powers. The result of leaving this in their hands, Sir, was that a lot of injustices were perpetrated all around the villages. The result is that there have been some fights all over the country on this question of boards. In the villages, there is an unhealthy spirit prevailing over the question of the allocation of land. In some instances these committees were appointed with a lot of interference from Chiefs. In those cases in which by luck the National Party people were elected into these committees, there was no noise, and even though such elections were questionable, the appeals to the Minister of Local Government were frustrated. In those instances where the committees became constituted out of the members of the Opposition groups, the Chiefs, especially those belonging to the Government party, appointed their own committees, a classical case is that of Kolonyama where a chief called Moramang 'Nena, a very staunch National Party member, after his people had lost the elections of the Board to Basutoland Congress Party appointed his own which is still operating up to this day. Efforts to report this to the Principal Chief were made. The Principal Chief told the Chief that the right committee would be the one appointed by the people. He told the Principal Chief that he, Moramang is responsible to the Government not to him. So that illegal allocation of land to people is continuing up to this day. It is not only in this village that this happens Mr. Speaker but all over the country one finds the same story ...' (National Assembly, Official Report of the Debates, 21 April 1966, cols 203-4; N. Mokhehle)

The introduction of land advisory boards stemmed from investigations carried out by a land tenure research team who prepared in 1963 'Recommendations and Reflections on Some Problems of Land Tenure in Basutoland' (see Palmer and Poulter 1972:177 ff.). Although at one time this report became 'a secret sequestered document' (Cowen 1967:58),⁽⁷⁾ some of its recommendations were incorporated in the Constitution. Poulter states that the recommendations did not call for a new land law, but for a streamlining of the procedures for allocation and deprivation, and the ensuring of a more equitable and just apportionment (Palmer and Poulter 1972:179).

Chiefs and headmen have always allocated land in conjunction with advisers. They sent out functionaries to inspect lands and bring back information concerning vacant lands. Chiefs then ideally did not act alone in allocating or depriving their subjects of land, but it should be noted however that their advisers were not elected to office by formal democratic procedures. Rather, they were the chief's trusted matona (right hands) in allocation and his close associates.

The recommendations made by the report and adopted in the Constitution were given tangible force by two pieces of legislation. In 1965 provision was made for a system of land advisory boards to assist all chiefs and headmen in the allocation of land by the Land (Advisory Boards Procedure) Regulations (No. 15 of 1965). The Land (Procedure) Act (No. 24 of 1967) repealed and superseded the earlier Regulation and was in force at the time of fieldwork. The 1967 Act contains the essential features of the land reform that has had such wide repercussions:

Section 3 (1) of the Act states that 'every Principal or Ward Chief and every Chief and Headman shall cause a pitso of all the adult inhabitants of the area of his jurisdiction to be held for the election of his advisory board'. The Act contains penalties for the non-election of such a board (section 3 (4)). Section 4 deals with the procedure for the election of members of a board while section 5 sets their term of office at three years, after which a re-election is to be held. The most important part of the Act enjoins chiefs and headmen to act in consultation with their land advisory boards; those who violate this provision 'shall be guilty of an offence and liable on conviction to a fine not exceeding thirty rand or to imprisonment for a period not exceeding three months or to both such fine or imprisonment' (section 8 (7)).

From the perspective of the village, these changes introduced from above assume important dimensions. Even allowing for parliamentary

rhetoric, the extract from Ntsu Mokhehle's speech presages and identifies some salient features of the impact at the local level of this legislation. Mokhehle points, for example, to the resistance of the chiefs, most of whom he claims were opponents of the reforms. Control over the allocation of land has always been central in defining the role of the chief, and as the power of chiefs has dwindled, so has the importance increased of their allocatory powers. It is indisputable that many chiefs and headmen resented the formation of boards with whom they were required to consult while performing their land duties. In this respect I quote the opinion of Chieftainess 'Mampho herself:

'... the land belongs to the chief, and he is the only right one to allocate lands ... Today, since a new law has been passed, people are allocated land by five committee members elected by the nation. They advise the chieftainship in allocating land. In previous times the chieftainship was already being advised by the people, and many people at that, on the question of land, to enable the chiefs to do a good job. People are not satisfied with the new system of five committee members; they begin to cry; they want their chief back as allocator of lands. We can do nothing about it because the law has been passed in Parliament, therefore it should work.' (from a tape-recorded interview)

In response to the question, 'Can you see any differences in land allocation since the advisory boards have been introduced?', an influential pro-Government Principal Chief said the following:

'Well, the chiefs are not satisfied with this. Most of them are fighting it, with the result that they don't follow the procedure laid down. Some of them don't understand it. So there is really no difference at all. About two weeks ago I discovered that one of the senior chiefs in my ward had been allocating lands without following these steps at all. When I asked him I found out that it was not because he didn't understand the law, but because he did not like it! Yet when you study the law, you will find the board is only there to advise the chief--the chief still holds all the power. Now most chiefs don't understand this.' (From a tape-recorded interview)

Wallman writes of the conservatism of the chieftainship in Lesotho, pointing out that it 'forms one of the most powerful and defensive factions in the country' (1974:236). She accentuates the important role the chief-

tainship assumes in the acceptance of innovation:

The administration and control of Basuto villages is the right and responsibility of the Chieftainship. Without at least the tacit approval of the headman or chief of a community it would not be tactically even to begin to speak of change. ... While chiefs are the source of rewards and punishments in the villages, no new idea can be 'safe' if the chief rejects it. (1974:235-6)

The introduction of land boards has thus been received with mixed feelings. Some chiefs feel threatened by it, and have consequently grudging and obstructed the workings of the boards. Central Government's passing a piece of legislation, as discussed in the previous chapter, does not automatically ensure its implementation or acceptance at the local level; indeed its very association with 'Government' may ensure resistance to its measures. This legislation was introduced at a time when Lesotho was experiencing what one informant described as 'the wailing wind' of politics.⁽⁸⁾ In the years before and after independence, the major political parties were driving to gain and consolidate power. Elections to land boards were not always viewed as a way to elect the best men to advise the chiefs. Often they became contests in which the relative strengths of the national political parties could be measured at the grass-roots level.

One of the 'unintended consequences' of the legislation was that it provided the machinery with which land allocation might become the focus of specifically directed political combat. This politicization created situations that were often inimical to the smooth processing of land, in which, for example, a chief or headman might be forced to come to terms not only with sharing power with an elected body, but also a body who were his opponents in the party-political arena.

Land advisory board elections in 'Mampho's

In most democratic countries where the electorate is sufficiently enlightened, campaigning for elections is a matter of a few weeks, or at the most a few months. This is because the elec-

tion machinery is sufficiently sophisticated for it to be put into top-gear within a week or so. In Lesotho, on the other hand, campaigning for elections is a full-time job, beginning almost a week after a new government has been sworn in, and continuing at top speed until the Assembly is dissolved and the date of the next General Election is announced. (Khaketla 1971:171)

The first land advisory board elections were held in Chief Seeiso's ward in June 1965, approximately two months after the pre-independence general election of 29.4.1965. It was in this election that the BNP gained victory at the polls with a precarious two seat majority over the combined forces of the Opposition. The constituency into which the village of study then fell was won by the BNP.

With the general election having been such a closely fought contest, the first land board elections to be held in the village of study were bound to carry a high charge of party-political rivalry, and draw the interest of the major parties. Khaketla's statement directs our attention to the intensity and duration of campaigning which was characteristic of Lesotho then.

In describing the elections I shall confine my account to that of the Principal Chief's advisory board because the election of that land board was seen to be the foremost electoral platform, parties concentrating their efforts to ensure their domination of this important body.

In 1965 the office of Principal Chief was still occupied by the regent Chieftainess 'Mampho who was then a supporter of the MFP and, because of her allegiance, the MFP was well organized and commanded strong support at village level. According to one of its leaders,⁽⁹⁾ on the night before the election the MFP and BNP met together with Chieftainess 'Mampho because they feared defeat by the BCP the following day. It was thought that the two parties ought to combine their strength and share representation on the board. Certain MFP members were unwilling to join forces, however, and the meeting ended without unanimity. The following

morning, before voting started, it was seen that there was a strong turnout of BCP supporters in the village and it became clear that if the MFP and BNP did not combine, they would be beaten. The MFP decided to change their list of nominations and accept three places on the seven man committee, the other four going to the BNP.⁽¹⁰⁾ This coalition blocked the challenge of the BCP and their nominated candidates won representation. This result roughly reflected the position of the parties at national level.

There was no attempt to nominate and vote for candidates on an individual basis. Instead, lists of candidates were prepared by party leaders prior to the pitso, and it was the party list that was voted for rather than the candidate. To illustrate: on 18.6.1965 there had been a pitso to elect, among others, the land advisory board for the village itself. This result was contested subsequently and a re-election was held. The figures for this re-election show clearly the pattern of block voting. Each party placed its support behind its nominated candidates. The number of votes for each of the MFP candidates ranged between 166 and 171, those for the BNP between 123 and 124, and those for the BCP between 84 and 87.

At the local level then, the land elections were looked on as having a barometer-like function: success at the election lipitso could apprise party leaders of the standing of their party and its relative strength, and at the same time serve the valuable purpose of demonstrating visibly that power, as votes were taken at these lipitso by a physical count and not by ballot slip. The intensity of these local-level election lipitso could not but heighten villagers' awareness of the question of land as an issue, and sharpen their realization that rights of allocation and deprivation were now no longer the province of the chieftainship alone, but had entered the political arena as a bone of contention to be

worried to the side of one party or another. Rancour and factionalism, always present in the distribution of a limited resource, were now given an institutionalized footing at village level. Land boards constitute a bureaucratic tendon that has its fulcrum in the outside system, rather than in the cell structure of the tribal body. It is a graft on to the traditional that indicates both a power shift and an ingress that have their origins in the pull of centralization.

When I enquired about the men who had been voted on to the regent Principal Chief's land board, a leading reason given for their nomination was the knowledge and experience some had in interpreting the enclosing framework of the outside system. It was common to find on important land boards men who had previously been employed as policemen, court interpreters, ex-workers in the administration of chiefs, and teachers.

If we let our scrutiny shift from the first elections in the village of study, we find that political balances and power relations changed radically in Lesotho subsequent to 1965. The years between the holding of the first land board elections and the next, in 1969, were vital in the political history both of Lesotho and of the village of study. After the pre-independence election Chief Leabua Jonathan's party, handicapped by its slim mandate, pressed on to independence, although as Weisfelder notes,

Many students of the post-election scene were agreed that some sort of coalition regime was both necessary and desirable if national unity, weakened and perhaps shattered by the protracted struggle for power and inconclusive electoral result, were to be restored. (1969:3)

Far from national accord being promoted, divisions between contending interests deepened after independence was gained on 4.10.1966. It was during this period that the BCP and MFP started an expedient course of rapprochement:

Because their individual efforts failed to stymie the Prime Minister, the BCP and royalist forces, hitherto hostile and incompatible, joined in a marriage of convenience, mobilizing their combined organizational capacities and popular support against the Government. ... (Weisfelder 1969:4)

Shortly after independence, on 27.12.1966, an incident occurred that was profoundly to influence the political history of Lesotho. This was the date set for the King to deliver his end-of-year message at Thaba Bosiu. According to Khaketla,⁽¹¹⁾ the Government became 'flustered, jittery and apprehensive' (1971:144) and negotiated with the King, evidently offering him repeal of a controversial section of the Constitution if he cancelled the meeting. His Majesty accepted the gesture but felt that it was too late to cancel the meeting scheduled for Thaba Bosiu. He decided to base his speech on the repeal of the controversial section, indicating thereby his acknowledgement of Government goodwill. As Khaketla tells it, at the eleventh hour the Government changed its mind, and in ignorance of this the King went forward to Thaba Bosiu 'in order to address the people and inform them that a modus vivendi had been worked out between the Prime Minister and himself' (1971:146). The Government now moved to stop the gathering and the Police Mobile Unit was ordered to intervene. I have heard accounts of the incident from the Police Mobile Unit point of view, which tell a very different story. Suffice it to say that the police ordered the people to disperse; when this order was not obeyed, shots were fired. Khaketla states that ten people were killed and several others were seriously wounded (1971:147).⁽¹²⁾ The King was placed under house arrest, Prime Minister Jonathan claiming that the King was involved in a plot to overthrow the Government. Commenting on this unhappy situation, which led to deep schisms that still leave their marks on the country, Weisfelder writes thus:

Mokhehle was among the prominent Opposition figures convicted of inciting public violence because of their part in disturbances that followed government cancellation of a controversial public assembly to be addressed by the King. Moshoeshoe, himself, had been placed under virtual house arrest, forced under penalty of abdication to abjure any activity not expressly approved by "His Government," and reprimanded in court for his "extraordinary" behaviour. ... Despite these setbacks,

Moshoeshoe has never resigned himself to a figurehead role and his simmering feud with Jonathan's Government has repeatedly threatened to shatter the truce between these protagonists. ... Neither has Mokhehle allowed the suspended sentence hanging over his head to deter him or his party from outspoken opposition and intense abuse of Jonathan's foreign policy stance. (1969:5)

Jonathan's Government was now threatened by an Opposition who, albeit wedded in 'a marriage of convenience', could point to Opposition blood having been spilled on the hallowed ground of Thaba Bosiu, the mountain which has historically stood for the oneness of the Basotho nation, forged by Moshoeshoe I in the crucible of the Lifaqane years. The Opposition now ranged with greater commitment against the Government, and King Moshoeshoe II, inheritor of the mantle of the first Moshoeshoe, was restrained by Government edict. Those were the essential alignments which were to dominate the acrimonious years before the general election of 1970.

How were these tumultuous events mirrored in 'Mampho's village? During this period the fortunes of the MFP declined. The regent Principal Chieftainess relinquished her support to form her own party, the Marematlou United Party. She later amalgamated her following with the splinter Lesotho Democratic Party under Charles Mofeli, to form the United Democratic Party, which was to contest three seats in the 1970 general election. The Chieftainess herself was one of the party candidates, a fact that occasioned much comment in the village, it being alleged by some that she used her tribal power base to support her national ambitions. The 'Chieftainess's Party', as it was often called in the village, had 'a policy of "critical support" towards Jonathan' (Macartney 1973:477). Opposition members, as will be seen, made capital out of a feeling of outrage at her having endorsed the Government's move to restrict the function of the King to that of a constitutional monarch. Khaketla states that the chiefs who voted this way 'went against the

wishes of the vast majority of the people' (1971:78), and that was how the Chieftainess's action was interpreted and used by local-level politicians in her area. Thus an influential local-level opinion maker had swung from an Opposition and pro-royalist stance to a pro-Government one. This was particularly irking to the MFP, who claimed that in her defection she took many of their erstwhile followers with her.

This swing towards the Government was counterbalanced by Chief Paul's accession, for he had strong royalist leanings and he was a young Chief whose educational career had closely paralleled that of the King. It is important that he was seen as a Chief who supported the King and who was thus in opposition to the ruling party.

With MFP followership attenuated, that party had drawn closer to the BCP in 'Mampho's. In conversation with MFP members, I was told that the incident at Thaba Bosiu had profoundly influenced their thinking, as there had been men from the village on the mountain that day. It was then, one said, 'that we came to realize that there were not three parties in Lesotho. There was only the BNP and the Opposition.' As the 1970 general election drew closer, one was to hear more frequently statements such as, 'At Thaba Bosiu they did not distinguish between BCP and MFP'. The fact of a King under restrictions, too, did much to meld the two parties, for although the BCP had been mercurial in its attitude to the monarchy and the chieftainship, there was now common cause to be made against a Government which had fused together the Opposition as its target.

It was against this political backdrop that the second round of land board elections was to be fought in the village of study. The Land (Procedure) Act stipulates that the term of office of a land board be three years and that the new board be elected 'as soon as practicable after the expiry' of that period (section 5). The second round of elections in the village was not held, however, until March 1969, a bare ten

months before the first post-independence general election.

The atmosphere of the year before the 1970 general election might be briefly reviewed so as to evaluate the importance of this series of land board elections. Politics dominated all discussion, from conversations in beer huts to outside courts. Political rallies brought the politicians to the people and the ceremony and drama of those lipitso rammed home the fact that this was an election of great significance. As claim and counterclaim was made, the extravagance of politicians' language gave no true indication as to attributed advantage. There are no real pollsters in Lesotho. Victories in land board elections would provide talking points for politicians intent on demonstrating that their party's fortunes had fared well in the run-up to 1970, and would be indicators to, and perhaps even presage, the results of the 1970 election.

The pitso to elect the new land advisory for the Principal Chief was held in the village on 29.3.1969. The importance of the election was made manifest in that Ntsu Mokhehle, leader of the BCP, was present in the village that day. His attendance was to give rise to an incident with far-reaching consequences for the ward. Not only his presence, but also the keen rivalry of villagers, betting as much as R10 on the outcome, reinforced the atmosphere of expectation.

Prior to this pitso the BCP and MFP had come to an agreement about contesting the election. Entente had not come easily, certain MFP members wanting to put forward their own list of candidates. However, the appeal of one of their leaders won out. He considered it inadvisable to split the Opposition vote, a course that could only benefit the Government faction. Some of the MFP were reluctant to side with the BCP because it was thought that they did not fully support the King, but against this was urged the argument that party differences had been buried at Thaba Bosiu, where the Government had gone up against BCP and MFP alike. In addition,

the MFP had been weakened by the change in allegiance of the Chieftainess. Notwithstanding the alliance, some MFP members did not vote at the election pitso, preferring not to be associated with the BCP. The 'Chieftainess's party' and the BNP combined to resist the Opposition challenge.

The election was held at the Local Court on the outskirts of the village. Before the voting, two counters each were nominated by the Opposition and the Government parties. A fifth counter, Mofoka, represented Chieftainess 'Mampho. The Principal Chief's representative, Chief Leboea, addressed the throng, and said that, as the Principal Chief was absent from the village, he spoke on his behalf. He asked all chiefs, headmen and liphala to assist in conducting an orderly election and stressed that they were essential in preventing voters from neighbouring wards sneaking in and attempting to pack the election to the advantage of a particular party. They were to stand at the gate to prevent outsiders from entering. The count was made physically, without electoral rolls. After these warnings nominations were called for and the Opposition first presented their seven candidates, of whom, according to the information I obtained, five men were BCP supporters, one was of the MFP and one was neutral. Then the list of pro-Government nominees was read out, of whom it was reported that four were members of the BNP while three belonged to the 'Chieftainess's party'.

Government supporters voted first, getting a count of 1 349 votes,⁽¹³⁾ to be followed by the Opposition. Evidently many of their supporters had been scattered among the village huts, so as not to reveal their strength until they came up to vote. When they did, they were led by men dressed in red blankets. At this point an altercation broke out between Ntsu Mokhehle and Mofoka, the counter. Informants stated that the cause of the disturbance was the presence of a man whom Mofoka alleged to be from Leribe, a neighbouring district, and thus not eligible to vote.

The two were separated and the voting proceeded. The combined forces of the Opposition obtained 2 305 votes.

'The man from Leribe' remained an issue after the election, some now claiming that there had been three, and that the election should consequently be declared null and void. There was a meeting of the pro-Government coalition and it was decided that a case be made against Mokhehle. The following Monday a charge was laid against him. In discussion with the Magistrate who heard the case, in which Mokhehle was cleared, he mentioned that the case had been characterized by the blatancy of some of the lies told in its course. There had been police present at the election, and Opposition informants were of the opinion that they would have taken steps had there indeed been an actionable incident, and this they had not done. They held that the fracas had been instigated, together with the allegation about the men from Leribe, because the pro-Government coalition had been alarmed at the visual impact of the Opposition supporters as they came forward to vote.

Be that as it may, the controversy over the election, and the bickering it gave rise to, resulted in the Principal Chief's land advisory board not being officially registered. Indeed, he was without the services of a board throughout the fieldwork period. This was one of the points raised by Chief Mohao Seeiso on his official visit to the Principal Chief on 23.10.1970 to discuss, among other things, complaints about alleged maladministration of land in the ward. The Chief replied that he had not been able to hold lipitso because of the emergency that followed the general election of 1970, and that consequently he had not been able to arrange for the election of a new committee. Land administration, already patchy in a ward run by a weak Chief, suffered further by being made the token in a tug-of-war game.

Although the election did not yield a conclusive result in that

respect, it proved to be an accurate barometer of party strength. In the 1970 general election, the constituency into which the village fell was won by the BCP candidate, Shakhane Mokhehle, the brother of Ntsu.

It was mentioned earlier that the introduction of land boards has presented a new range of strategy to the local level. Land board elections were exploited as handy issues on which political parties could target their aims. Thus in the years prior to 1970 the management of land allocation was not necessarily regularized by this innovation, but was in many instances actually complicated by it. The disputed election described above is a case in point. The jealous politicking which surrounded the election of 29.3.1969 served to hinder the equitable allocation and distribution of land in a chieftainship already subject to administrative ills. Thus the politicization of land allocation, and the provision of institutionalized machinery whereby it could be drawn directly into the party-political arena, have overlain an already contentious area with yet another layer of controversy. Not only has the village and its traditional procedures become more attached to the national sphere through the institution of land boards, but they have imported an awareness of national rivalries in a neatly packaged and demonstrable form.

National policy has a way of particularizing itself with a local content and flavour as it leaves the typewriters and forms of the capital. How have local power ranks adapted to the arrival of land boards?

Land boards and local strategy

In the Constitution it has been made explicit that in order for the stigma to be removed of allegations of the selling of fields by chiefs, the responsibility for allocating fields should vest instead in special committees set up for the purpose as provided by Section 90 of the Constitution. Yet these committees have been elected only in the areas of some chiefs and not in others', since some chiefs have these committees and others do not. Some chiefs have had these committees elected but refuse to work with them. (National Assembly, Official Report of the Debates, 3 May 1966, cols 738-9; A. Mabula)

An examination of the system of land allocation and deprivation is one way of mapping out the contours of the local power structure in Lesotho. In the early 1950's, for example, Chieftainess 'Mampho had to move decisively against a threat to her authority, which was dressed in the language of the rights to allocation.

As the story was told to me, when Chieftainess 'Mampho first became regent, she was not completely confident or experienced in the exercise of power. Certain subordinate authorities thought to take advantage. The village of 'Mampho's is situated on a high, rocky plateau with little arable land in its immediate vicinity. Surrounding it are 'satellite' villages which have fields at their disposal. This gives rise to an arrangement whereby the inhabitants of the Principal Chief's village are allocated lands in the areas of these other villages. Periodically the headmen of these villages come before the Chief with the lands that are available for allocation in their areas, and a compromise is arrived at. A headman might have, say, six lands vacant, of which the Principal Chief will ask that two be allotted to the inhabitants of his village, while the remaining four will go to the land-needy among the headman's own subjects. In an accommodation such as this, there is ample room for headmen to become resentful. We have seen that headmen cherish their degree of control over local resources. This arrangement in effect removed land apportionment from the personal management of these headmen and brought it directly under the gaze of the Principal Chief.

At the time to which I refer, an inhabitant of one of these villages moved to another district, leaving three vacant lands. The Headman did not report to the Chieftainess, but allocated them to three of his own subjects, two of whom were related to him. The Chieftainess heard of this and sent for the Headman who defied her, maintaining that, as a gazetted authority, he had the right to allocate lands without her comment in

his own area. At that time there were two 'Treasury Courts' in the village, the forerunners of today's Local Courts. The Chieftainess instituted proceedings against the Headman and lost her case. She appealed to a central appeal court at Matsieng, the substance of her reasoning being that in gazetting a subordinate, a principal chief does not relinquish control over land administered by that authority. The appeal raised the point that superior authorities in the political hierarchy retain the right to ratify or question allocations at a lower level. The appeal was upheld and the Chieftainess later had this Headman, along with several others who had been influenced by his intransigence, deleted from the Gazette listing.

This example illustrates how clearly land, status and power are intermeshed at the local level. Writing on the problems which the introduction of land reform might pose, Spence comments,

Clearly the most intractable aspect of the problem concerned the role of the Chieftainship. ...they are not unnaturally strongly attached to the one function--land allocation --which has survived ... inroads into their role in Basuto society. (1968:61)

The operation of land boards must be interpreted as inimical to the interests of the chieftainship. As we have seen, local accommodations are commonplace at village level. The land board can hamper the peculiar and private local dispositions concerned with land which undoubtedly take place under tribal authorities. Yet it is not only at this level that boards pressure tribal authority; they institutionalize an alternative power structure to that of the tribal. That the chief is supposed to consult with his land board demonstrates his lessened autonomy, for the chief may not like those who are elected to his board, or they may not be of the same political persuasion, or they may have been elected over the heads of old and trusted advisers. The permutations for friction are considerable, against the basic fact that a sphere of influence has been

broken into.

Local reaction to the introduction of land boards takes varied forms. It is appropriate to start an evaluation of them with the appearance of a small and apparently extremely nervous man before the Chief's court on 4.6.1969. He had come as the representative of the land advisory board of Lichaba's sub-ward. He was the bearer of a note of complaint drafted by the board, saying that since they had been elected on 22.3.1969 to advise the Chief of Lichaba's, Chieftainess 'Mampho, they had never been called by the Chieftainess. As the man spoke, he twisted the note in his hands. He said that the committee was aware that the Chieftainess had in the interim dealt with certain land cases which by law she should have called them to attend to advise her. The court asked him for an instance of such a case and he mentioned one which had concerned his brother's wife. He added that the four other members of the committee who had accompanied him as a deputation would mention instances from their own villages.

The court dealt shortly with the man's grievance. If he was not satisfied, he was told, he should see the Chieftainess personally. They should have seen her first before coming to the Principal Chief. But we have seen above the Chieftainess's attitude towards land boards: she saw them as an intrusion into the sphere of chiefly legitimacy. Chieftainess 'Mampho is an impressive woman who has wielded power for many years. The plight of her land board shows how men elected to advisory positions may find themselves officially in positions of review, yet unofficially ignored. For the Chief's court was notably unhelpful in providing a forum for redress. Indeed it was my impression while observing this incident that all concerned would have been happier if the petitioners had 'just gone away', for they were now being placed in the extremely unhappy position of having to evaluate the actions of a Chieftainess who had been

regent during her son's minority and who, even then, maintained a firm grip on power in the area.

The Chieftainess's neglect of her land board may have been occasioned by other factors besides a resistance to innovation. Her land board was an Opposition one, voted in by the combined support of the MFP and BCP. The Chieftainess was to stand as a UDP candidate in the 1970 general election. It must have rankled to have her opponents in the political arena voted in to work with her in such an important area of jurisdiction.

The vignette above points to a common and obvious form of resistance. This kind of refusal was repeated at lower levels of the administrative hierarchy and in Chapter Two I dealt with the case in which Headman Lenkoro Lekhala was alleged to have acted without consulting his board. In an interview with a member of that board, the political implications of the impasse were made clear by a statement towards the end of the tape-recorded conversation:

'We are recording the deeds of our Headman, and we are waiting to see what happens on 27.1.1970 [the date of the first post-independence general election], because many things will be changing in Lesotho.'

The statement suggests expressly that, not only are land boards at loggerheads over the question of land and the apportionment of domains of influence, but that this conflict has provided a convenient base for the pursuit of party rivalries. As Chieftainess 'Mampho would appear to have had a two-fold resentment against land boards, so it seems that land allocation in Lekhala's was complicated with the same juxtaposition of competing interests.

The expression of land board dissension assumed greater local content when it was used as a metaphor to confirm or deny power relations. Men with whom a headman had long been used to working could now be excluded

from a stake in this vital decision-making, and headmen could possibly be deprived of well known and trusted functionaries. Several of the cases in my field notes reveal this type of tension, with the old guard resisting the new. In another, a dispute over the election of a land board in which a sub-ward Chieftainess charged an authority under her, there were strong suggestions that uneasy relations between the subordinate and superior found expression in the ostensible cause of a disagreement over the election of a board.

Lastly, a blunt reaction to the introduction of boards would be for a chief to submit a list of names he thought would be desirable members of a board. On 25.7.1969 a deputation appeared at the Chief's court to allege that just this had been done by the Chieftainess of their sub-ward. They claimed that they had approached the Chieftainess about when the election for the board was to be held, and were told that it had already taken place and the names submitted to the Principal Chief's office. They said that on the day the election was supposed to have occurred, there had been a public meeting held by a Government Minister in the area. They had been present at that meeting, and they knew that no election could have happened on that day without their being aware of it. Furthermore, the public meeting had drawn people from all parts of the ward who would not have been entitled to vote at a sub-ward election if one had indeed taken place. The court read from the Chieftainship Act and the Land (Procedure) Act, thus warning the Chieftainess that she was technically committing an offence, but the force of this sanction was somewhat tempered by what followed. They then instructed the deputation to return to their Chieftainess with their complaint: 'She is bound by the law I have read to fulfil your demands'.

Conclusion

Perhaps the effects of the politicization of land and its incor-

poration in political conflict as a resource can best be illustrated by reporting some reactions to a Government Commission of enquiry to gauge the people's opinion on land. This Commission, visiting the village in June 1969, was chaired by a BNP Senator. That morning, Litaba and I were waiting for a case to begin in the Local Court when we were drawn into conversation by a group of Opposition supporters, who planned to attend the meeting. I was quizzed on my attitude towards the Commission. In other countries, I was asked, did Government continually intrude, continually try to change things? The attitude of the Opposition men, some of them influential locally, was hostile in the extreme to the question of Government penetration. We must ask why.

The timing of this pitso was important. It was convened when electioneering was in full swing for the 1970 general election. At this stage, anything the Government did was apt to be construed by the Opposition as 'bad'. The introduction of a water scheme, for example, could be hampered because it had the 'taint' of Government.⁽¹⁴⁾ The Commission was viewed by the Opposition as an electoral ploy, designed to convince the electorate that they had their interests at heart. In a country where the electorate was so riven there was a tendency to latch on to issues where they were to be found. The Commission provided such a convenient issue. The Opposition could not afford to allow Government to play out the role of concerned enquirer, trying to ascertain the temper of the electorate and wishing to ameliorate injustices in the allocation of land. This was the misfortune of Lesotho in 1969, that although in this instance Government motivation might have been sincere, or at least pragmatically concerned, their opponents, the needs of the peasantry notwithstanding, could not afford to cooperate.

The first part of the proceedings was straightforward: the large crowd were asked to present grievances and my field notes indicate that

nineteen people did so. These were wide ranging and often surprisingly blunt, some authorities being accused outright of having accepted bribes. The crowd was then asked, having heard the numerous complaints of the petitioners, for their opinion: did they want lands to be allocated by the chieftainship or did they want land to be removed from the jurisdiction of the chieftainship?

On this question, the political dimensions of the pitso became patent. Although the division was not absolute, opinion for and against generally broke along party lines, influential BNP speakers asking for the removal of land administration from the hands of the chieftainship, or even, in one case, for the abolition of chieftainship itself:

'The time is ripe that the people ought to lead themselves without chiefs. The Commission has heard the complaints of the people about the chieftainship. I am surprised that two speakers have said that the allocatory powers should remain with the chieftainship. Let's do away with the chieftainship, and guide ourselves!'

Opposition speakers generally supported the status quo, with chiefs working in consultation with land advisory boards. They stressed that land was vested in the King, and that these rights were central to the traditional way of life of the Basotho. There were sufficient checks, it was maintained, to discipline any chief who abused his powers.

This view requires comment. The BCP's attitude towards the chieftainship has always been ambiguous. Weisfelder, for example, claims that

the Party has time and again indicated that chiefs and churches will survive only if they accede to the wishes of the people and fulfill their modern roles in accordance with general interests of the society. (1969:24)

Why then would BCP supporters now group together with the MFP in opposing reform aimed presumably at curtailing still further the chiefs' control over land?

The answer must be found in the tenor of the times. The Opposi-

tion were in expedient alliance against the governing Party, and most Government action was suspect. Whatever the BCP's 'real' opinion on the chieftainship, the Government's initiative in probing attitudes towards land was met with a united front at the Commission's hearing. Thus a Commission which might have had the valuable function of teasing out local opinion on land and its future administration, reflected rather the degree to which the politicization of the country tended to exploit what was expedient or at hand for party ends.

At a more general level, one can conclude that resistance to this innovation is symptomatic of the chieftainship's instability. They resist because they must, for much of their power has been whittled away since Moshoeshoe stood on Thaba Bosiu. But one must be aware that their obstructions are merely transitional stopgaps. Ultimately chiefs and headmen must come to heel, for legislation passed by Maseru will have the effect of more and more narrowly circumscribing the latitude that is open to them. Their devices are 'make-time', in the face of narrowing options. The inception of land boards, as well as carrying the obvious consequences spelled out above, demonstrates in its innovatory capacity a change in the rural balance. It is representative of processes of adjustment and change which must take place in a society in transition. In the following two sections this leitmotif will recur with only slightly altered emphasis.

LIREMO: ENCAPSULATION

Introduction

An ancillary effect of the introduction of land boards was the throttle placed on the independence of the chieftainship in this once relatively autonomous zone. Tightening up on land allocation was only one way in which centralized authority was netting in local accommodations and closing the interstices which allowed tribal authorities a measure, albeit

lessened, of their old prerogatives. Many of the threads which knit up what remains of the tribal fabric are tied into resources which can best be termed 'traditional'. As we have seen, land has superimposed upon it a set of meanings beyond the simply usufructuary. There are other resources which have this 'local weight' and are still important indigenous ones, lending themselves to independent management. An examination of one such resource, liremo and, in particular, thatching grass, will show that in this area too, centralized control attempts to impose uniformity.

Duncan defines liremo as

a verbal noun from the verb ho rema (to cut down). As a class it includes many of the plants that are of economic value in Basutoland and that are not cultivated. Included in the class are the following trees and bushes, which are not private property:

<u>joang</u>	=	grass in general,
<u>mohlomo</u> , <u>qokoa</u>	=	thatching grass ...,
<u>lehlaka</u>	=	reeds ...,
<u>lenqana</u>	=	wormwood ...,
<u>loli</u>	=	a mat-making rush ...,
<u>moli</u>	=	rope-plants ... (1960:99-100)

The Basotho have established conservation measures regulating the exploitation of certain natural resources, especially those that may be subject to local or periodic scarcity. The commodities listed above used to play an essential part in Basotho life, and were in such demand that limits had to be placed on their over-utilization.

These, the scarce commodities, are made available to the public through the operation of the Public Enclosures system (lebōella, pl. mabōella).

The resources that nowadays fall within the category of scarce commodities are the thatching reeds and grasses, trees and bushes, and winter grazing for stock.

Little is known of the history of the Public Enclosures. Such records as exist show the system to be current in Basutoland at the beginning of the Cape Colony administration in 1871. We find the Assistant Resident Magistrate of Thaba Bosiu District (now mostly Maseru District), at the Annual Public Meeting held at Maseru during October 1874, saying,

inter alia,

"... Building and thatching materials are also getting insufficient and should be strictly preserved and the people ought not to complain against their chiefs for keeping their cattle out of the grounds where winter grass and reeds grow, for that is done for the benefit of everybody." [Reports British Basutoland, 1875; Cape of Good Hope: Blue Book, Native Affairs, 1875, G. 21]

Briefly, the Public Enclosures system is a means whereby land is made available for the production of the scarce commodities which, were it not for this system, would be largely unobtainable. (Sheddick 1954:116-17)

Under the maboella system, areas of pasture are set aside in which grazing is prohibited or restricted. A special area may also be set aside for the promotion of thatching grass. In some cases the word leboella has a wider application, and may be applied to 'tree areas, reedbeds, and crop residues in lands that have been reaped' (Duncan 1960: 75).

Liremo, traditionally, was administered by the chiefs who usually appointed caretakers to help them with its regulation.

The protected grasses and reeds were, and still are, widely held to be the property of the chief administering the enclosures. They are his property in his official capacity and are not his personal private property. Formerly, all grasses and reeds when cut were supposed to be stored at the chief's residence. At the same time, it was held that those who had assisted in the harvesting could expect to receive half of what they had cut, if they wanted it. The balance remaining had to serve the official needs of the chief as rewards for his staff and officials and for his own building programme. If a balance still remained, it could be given to any applicants who were his own people irrespective of whether they had helped in the harvesting. (Sheddick 1954:119)

In earlier times it seems that control of liremo symbolized the mutual involvement of both chiefs and people. Even in relatively recent times the occasion of cutting reeds, for example, was an event in the village of study. As an informant relates:

'In former days, when there were many reeds here in the district, people from afar, like Leribe, Thaba Bosiu and Majara's, if they knew the day of the harvest, they would all come to Sekonong, to cut and buy reeds. When you looked down from the plateau here at the reeds, you would find people surrounding them waiting for the word to cut, which would come from

the plateau, from the chieftainship. The people would send lookouts to listen for the shot fired from a gun, signalling that it was time to cut.'

In 'Mampho's today, the reeds have largely died out, ploughed under, I am informed. In a way, the dearth of a ceremonial day of reed-cutting tells the story of the administration of liremo. In previous times it seems that valued reeds and grasses were cut by the people on the chief's instructions. Those who wanted grass or reeds could take half of what they cut, to thatch their homes. The rest accrued to the chieftainship. Grass and reeds were then exploited reciprocally by people and chiefs to supply their needs. The chief's share was greater because his needs were greater: he had to thatch court and guest houses, and to provide thatching for those indigent people who could not assist in the harvest.

Writing more than twenty years ago, Sheddick comments on a growing trend which indicated the shift that was altering the reciprocal relationship between chiefs and people in exploiting natural resources. By this stage some people were no longer prompted to harvest grasses and reeds to supply their own building needs, but rather to sell for money. Chiefs were also starting to view their share as a source of income, rather than a means of discharging their obligations to the people. The trade in thatching materials was prompted by the pressure of an increasing population on these resources and by their regional scarcity. Basotho had become involved in migrant labour for wages on a large scale, and thus had the cash to buy their building materials rather than wait to accumulate the necessary number of bundles to thatch a house. Of this process of change, Sheddick says,

European employers usually insist on full time engagements so that it is recognised that those in permanent employment cannot be called upon or expected to work for their chiefs. In the case of these men, then, one important element in the chief-commoner relationship is withheld. In consequence of this fact, ... the chieftainship often withholds the reciprocal element in

the relationship, the gift of resources. (1954:120)

Sheddick accentuates mainly economic causes for the transforming of these scarce resources into saleable commodities. Just as important was the series of reforms commenced in the 1930's which divorced the interests of chiefs and commoners, altering a relationship of reciprocity into one of administrator-subject. A decline in indigenous democratic give-and-take found expression in the fraying of old relationships.

Thatching grass, reeds, the administration of liremo, and in particular the manner of their being funnelled to a redistributive centre, no longer represented a social and symbolic link between chiefs and people. When liremo came to be exploited for its cash value, it represented a debasement of these ideal bonds.

It appears that the question of administration of maboella has long been an area of tension between chiefs and subjects. In the previous chapter we saw how the administration of maboella concentrated grievances at village level. Duncan (1960:75-7) presents an interesting debate on rights to maboella. He mentions that chiefs and caretakers 'have always claimed special privileges over maboella' (1960:76) and that customarily these claims have to an extent been granted. However, he clearly indicates that these special privileges have also constituted an area of tension, leading in some instances to violence. So much so that in 1948 the Paramount Chief made an administrative decision that limited the privileges and prevented the chiefs from extending them to headmen and friends. However, the rest of Duncan's discussion makes clear that there is by no means uniformity in the administration of maboella, and suggests that there is a continuing tendency for the chieftainship to consider the domain of leboella management an area for private and particular arrangements. In the two headmanships described in the previous chapter this was indeed the case.

I refer to Duncan to draw attention to the fact that the administration of 'wild' resources has long offered cause for dispute. In the next section we explore the administration of thatching grass in 'Mampho's village to show how centralized authority continues to seek regularity in the management of liremo, and how there is continued resistance to chiefs claiming traditional and customary rights to contributions from subordinates and subjects.

Thatching grass and its administration
under the Principal Chief

A consideration of thatching grass conveniently concentrates the problems of managing liremo, particularly as it was in short supply during the fieldwork period, suffering under the force of a severe drought. The question of thatching grass is conjoined with that of maboella management. In a text on the administration of maboella, in which he has been personally involved for years, my field assistant wrote as follows:

'There are two different kinds of leboella. The first is leboella for liremo, i.e. thatching grass, reeds and trees. This kind of leboella is very important. Any Mosotho, when he sees animals grazing such a leboella is always worried, and should ask where the man got permission for grazing it. There should be no mercy on such animals. In former days if a person was found grazing the leboella, and especially the liremo leboella, his animals would be captured. If they were cattle or goats, when the animals had been enclosed in the chief's kraal, the chief's advisers and the villagers would say, "Chief, this person thinks a lot of himself, we cannot understand why he grazed the liremo. He must be taught a lesson. We are hungry. Please, we ran a lot in capturing these animals!" One of them would have a spear in his hand. The chief would simply say, "Get in and pick one for my children to eat". If among the cattle or goats there was an ox, or a goat hamel, one of them would be taken and slaughtered for the people. That would be the payment for the damage to the leboella. The members of the lekhotla would share the meat. They might share with the villagers who were often at lekhotla and who often worked for the chief. No women would have any except the one who cooked fast to bring them bohobe (bread) first. Then the rest of the stock would be released.

'Secondly there is leboella where no liremo grows. This leboella is kept simply to provide grazing. Anything is allowed to graze this, once it is open for grazing in about April or May. At ploughing times, anything can graze there, because they are there legally. But when the time comes for the animals to be driven behind the mountains, nothing but horses can graze there.'

And in another text, he accentuates the importance of thatching grass:

'Thatching grass is Basotho corrugated iron. It is grown on leboella or reserved pasture. The chiefs, sub-chiefs and headmen will instruct some of their people to keep leboella. These babehi are responsible for keeping the leboella where thatching grass--mohlomo and gokoa are two kinds--grows. For roofing, thatching grass goes over the reeds placed on rafters. Qokoa forms the beginning, for the eaves or lintsi. Towards the top, mohlomo is used because it is easily bound at the peak of the roof. Qokoa breaks easily when bent.'

These texts, which stress local involvement and cooperation in the management of a resource, give a picture from the past which no longer fits reality. The chief today is not often the strong and generous controlling figure presented above. Wallman underscores how effective jurisdiction over resources is being taken from his hands. An example she cites is that of the Local Government Proclamation (1960) which

says that District Councils^[15] are responsible for soil conservation maintenance. The Laws of Lerotholi, on the other hand, say that land and matters concerned with land are the trusted and time-honoured charge of the Paramount Chief and his Chiefs 'on behalf of the Nation'. When the District Council passed a bye-law concerning the opening and closing of grazing ground (leboella), saying that it would henceforth be regulated by 'a nominee of the Council', the Ward Chief genuinely felt that it encroached on the powers of Chieftainship. (1969:35)

Cordoning the chief's control over resources has been strengthened by more recent legislation. The Land Husbandry Act (No. 22 of 1969) conferred powers on the Minister responsible for agriculture to make regulations concerning the exploitation of land and resources, inter alia, to provide for control of grazing and the introduction of veld pasture management (section 4 (2) (h)). Section 4 (3) lays down that he will consult with the principal or ward chief of an area to be affected by such regulations. Yet the thrust of legislation is clear, to curtail indigenous powers and replace their overseeing with the more 'rational' apparatus of a modern State. To this end the Act provides for an Inspector, an eye of State, for the purpose of implementing this Act and the regulations. Moreover, inter alia, the Act repeals Paramount Chief's Rule No. 11 (Laws

of Lerotholi II, 11; revised ed., 1959) which is explanatory on the role chiefs and headmen play in the setting aside of special areas for leboella and its regulation.

The Liremo Control Order (no. 23 of 1970) takes this regularization a step further. The tightening of the encapsulation process can be seen in section 2, sub-sections (3) and (4) of the Order, given in full below:

(3) Liremo is vested in the Basotho Nation and shall be administered by or under the direction of the Chief within whose area of authority it is found.

(4) (a) The Ministry may, by notice in the Gazette, make regulations for the whole or any part of Lesotho providing in what manner a Chief shall administer liremo in his area of authority.

Sub-section (4) (b) renders a chief subject to action by the Disciplinary Committee:

A Chief who fails to comply with any such regulation, shall be deemed to have committed a disciplinary offence and may be dealt with in the manner provided in Part VI of the Chieftainship Act 1968 ...

To what end does Government concern itself with these local matters? My field assistant's text which claims that thatching grass is 'Basotho corrugated iron' is somewhat exaggerated. Cash wages have released migrants from an absolute dependence on local resources, and the tin roofs that at times seem so tawdry are common in the lowlands of Lesotho. Nevertheless, for many, thatching grass is still a necessity, for Lesotho has a harsh climate and roofing must be renewed to withstand the rigours of winter.

Thatching grass is then a valued resource. The lowlands, as they slope up towards the mountains, carry a heavy population load. Leboella management is necessary under such conditions to provide the means of shelter for the people. The 'scarce value' of thatching grass was increased during the fieldwork period by drought.

The Principal Chief was entitled to a proportion of thatching grass cut by subordinate villages. Let us look at the mechanics of this process

to understand the importance of such contributions.

The Principal Chief has functionaries who visit the villages to oversee the cutting and bundling of thatching grass and to settle disputes about its apportionment. Those people from a particular village who wish to obtain grass turn out to act as cutters. The grass so collected is divided among the cutters, the headman of the village and his officials, the Principal Chief's officials, and the Principal Chief himself. The Chief's pile is set aside from the rest to be sold at once to those wanting thatching material or to be transported to the moreneng. The Chief's share is calculated not in number of bundles, but by the size of the pile. In one village, where I obtained records of the 1966 harvest, the Principal Chief's share was a pile 7,3 metres long and 1,8 metres high. Its width was the length of the cut grass.

At the time of study, a bundle of grass measuring the circumference of 'a thin woman's waist' was selling for twenty cents; a 'stout woman's measurement' fetched twenty-five cents. It can be seen that in a favourable year the Chief and his officers stood to gain a great deal from the levy on thatching grass. In 1966 the most important of the Chief's functionaries obtained sixty bundles at the village mentioned above, while others obtained forty. Thus the income from these supervisory positions is considerable by Lesotho standards. An important corollary of the Chief's rights to thatching grass is the opportunities it provides him for rewarding followership and loyalty. In these arrangements something of the ways of former interdependencies seems to persist, but on the other hand, it must be remembered that the Chief today largely converts his share of the grass into cash. The old custom of providing lodging and food for the weary traveller has died away. The Chief's house itself is roofed with tin. There are those who resent the Chief's income from traditional obligations, for he is paid a salary by the Government and is

not a source of succour and sustenance to his people.

As thatching grass is a valued local resource whose management and harvest brings in 'indigenous' income, it is easy to understand why Government seeks to regularize its caretaking and revenue. Principal Chiefs are paid relatively large salaries. Chief Paul could maintain a car, dress well, and follow a life-style markedly different from that of most of his subjects. Perhaps Government reasons that traditional perquisites are 'gilt on the gingerbread' of office, and could be better used to swell other funds. It is not only Government that has eyed these traditional resources, and felt that chiefly privilege should be curtailed. The Principal Chief's right to traditional contributions is resisted locally as well.

On 27.10.1970, for example, the Principal Chief summoned before his court seventeen headmen who had not reported their thatching grass. The reasons they gave for not having rendered thatching grass varied, many of them stressing that the drought had made it difficult to supply the Chief with his quota. However, in certain statements, it was made clear that they resented the cut that was levied by the Chief and his officials, and indeed in several instances it was plain that the headmen had reaped the grass themselves, hoping to do the Principal Chief and his officials out of their share. Some headmen, with their small gratuities, are impatient of rendering thatching grass to the Principal Chief whose income is large by comparison. They also take exception to functionaries profiting from administering village grass. Tensions exist over matters such as these between people from outlying villages who regard the grass as their own, and who think of the functionaries of the Chief, who are close to him and near the centres of decision-making, as parasites on their villages.

The summoning of these seventeen headmen shows a Chief's adminis-

tration that is sloppy, lacks teeth and has to battle to maintain efficiency. It is also an index of the uncertainty that besets the chieftainship. Formerly the rendering of thatching grass was in part a symbolic act, the prestation reinforcing the two-way obligations that underwrote the traditional hierarchy. Today the flow of these contributions is often obstructed and made the subject of petty squabbles. Headmen who withhold tributes of thatching grass reveal a chieftainship whose traditional roots and foundations are loose. The sanctions used to attempt to bring the errant headmen into line were revealing. In addition to threatening them with penalties such as removal from office, the Principal Chief's representative reminded them that the DAS had spoken about the administration of leboella at lipitso, and that Government was now more importantly involved in it. Effective sanction must be aided by reference to sources beyond local authority.⁽¹⁶⁾

Government interest in the management and conservation of resources was to recur repeatedly as a theme in the latter part of my fieldwork, in the unhappy months after the abortive general election. Government held a number of lipitso in 'Mampho's in the second half of 1970 which dealt, among other things, with agriculture and soil conservation measures. Because of the recent election, and the grave political uncertainty of the time, these lipitso were attended by armed police. An example of these lipitso was one held on 16.9.1970, called by the DAS and concerned with soil erosion. He was accompanied by representatives from the Department of Agriculture and of Community Development. The first three speakers covered routine conservation practices such as stock reduction, contour maintenance and the building of dams. All three stressed that maboella should be maintained effectively to combat soil erosion. The last speaker was the DAS, who announced the date on which maboella should be closed to stock. He instructed those headmen and chiefs present to report to the

Principal Chief as soon as they had complied with this order; their reports would in turn be passed on to him.

The degree of Government control is significant here. Firstly, it was the DAS who announced the date on which maboella were to be closed. Secondly, the Principal Chief was to be directly responsible to him for the implementation of this order. Further, the DAS warned that if he discovered that chiefs and headmen had not complied with this order, he would deal severely with them.

It appears that the DAS's instructions were not fully carried out because on 6.11.1970, nearly two months after the maboella should have been closed, a routine meeting of chiefs, sub-chiefs and headmen dealt almost exclusively with this subject. The Liremo Control Order was read out by the Chief's clerk and explained in detail. The clerk strongly emphasized that leboella management had undergone changes. Government as well as tribal agencies were now involved in its administration and it was a serious matter not to manage the leboella correctly. Above all, a point was made that was to occasion a great deal of comment in the village: an authority who sold his share of thatching grass for cash had to pay his receipts to Government; he could not keep the cash for his own use.

This last originated in a legal notice proposed as Regulations under the Liremo Control Order of 1970. The Chief's office had received a xeroxed copy of the Regulations and had date-stamped it 4.11.1970, two days before the pitso mentioned above. It was brought to me from the Chief's administration and I was asked to read it and comment on its implications; the Regulations were in English. To check my understanding of the document, I sought an interview with the DAS at the District administrative centre. He was at pains to assure me that the Regulations were not in force yet, but were being circulated to invite discussion and comment.

The Chief's representative had been incorrect then in reading out

the provisions as fact. Nevertheless the Regulations had significant import for the local community. For example, section 8 expressly forbids chiefly privileges as regards leboella:

A Chief or caretaker shall not claim or exercise rights or privileges over or with respect to leboella not permitted to the public in general.

The proposed legislation is thus an extension of the limiting and encapsulating process that we have traced from as early as 1948. It is section 12 of the proposed Regulations that is most relevant here, headed 'CHIEF ENTITLED TO RETAIN PART OF CUT MOHLOMO ETC.':

- (a) Where a Chief has given permission for the cutting of mohlomo, qokoa or lehlaka ... he shall be entitled to retain not more than half the quantity so cut.
- (b) Where the Chief has so retained a part of the cut mohlomo, qokoa or lehlaka, he may administer it in his discretion or may sell it.
- (c) If a Chief sells any mohlomo, qokoa or lehlaka in terms of sub-regulation (b) he shall issue a proper receipt to the person making payment of the required amount and shall, within 10 days thereafter, pay such moneys into the Development Fund of the area or village in question.

The sting is in the tail: it is proposed that the chief can no longer benefit directly from 'wild' resources. As in the allocation of land, the State attempts to extend methodical coordination right to the small community. Government expansion in the Regulations is not only confined to thatching grass, but rather the Regulations deal with a broad spectrum of liremo resources, the implications being to bring local management within the scope of Government bureaucracy and control.

The proposed Regulations occasioned speculation in the village. At the close of the meeting of 6.11.1970, my field assistant asked the Agricultural Demonstrator who was present what was going to happen to the money from the chief's share of thatching grass. The Demonstrator replied that the chiefs were paid from Revenue. My assistant then told the Demonstrator that such an innovation was tantamount to a direct attack on

the chieftainship: 'So why do you still call them chiefs then if they no longer get any benefits from their own country?'

Some informants held that such Regulations would place the chief in an invidious position. While still expecting the chief to bear the brunt of administering natural resources in his area, they took away from him the right to benefit directly from his administration of them. This line of thinking suggested that the Regulations were ill conceived because chiefs and headmen only administered natural resources with any efficiency because there was direct reward to be gained from their sale. It was pointed out that with no direct financial reward, chiefs would neglect their duties. Agricultural officers would not be able to fill the vacuum because they would have neither the time, the local knowledge nor the men to do it efficiently. It was also suggested that their entry into these local domains might be blocked by recalcitrant chiefs. My attention was drawn to the fact that the penalties provided for in the Regulations (section 21) were harsh (a fine not exceeding R100 or imprisonment up to six months, or both) and that a chief's administration might be reluctant to forward evidence of misdemeanours as a consequence.

There were political objections to the Regulations as well. When I described in the previous section the arrival of the Land Commission, I mentioned that it drew a charge of resistance simply because it was of the Government. In a similar fashion, some Opposition supporters saw the Regulations as yet another Government move to push change down their throats. At that time the legitimacy of the Lesotho Government was widely questioned, and it was asked by what 'right' the Government could propose such Regulations. These were the views of some of the Opposition. There was also some strong support for the Regulations. I remember giving a lift to a man, on my way back from interviewing the DAS, who was vehement in his endorsement of such moves to rationalize the emoluments received by chiefs.

As they were in receipt of Government payment, he asked, why should they tax the people further?

Conclusion

Government's attempt to control the administration of liremo is a necessary one. Lesotho is a poverty-stricken country which must perforce essay to pull herself up by her own bootstraps. The ecology of the lowlands cries out for a rational management plan. The pressure of people, animals and the plough have overburdened the lowland area and the results can be seen in denuded hillsides, deep erosion and limited areas for grazing. Chiefs are not always the best agents through whom to exert control and put right ecological maladjustments. They are not always concerned with a broad overview of the problem and, in some cases, have not the interest, the power, nor the knowledge to implement necessary steps. The problem necessitates a firm hand and the power to impose restrictions, enforce these through inspectors and back inspectors up through penalties.

However, the actual implementation of such steps is difficult. Lesotho's funds are limited and the replacement of the chief as local-level administrator by Government officials would require an investment which at the moment I do not think Lesotho is capable of making. Chiefs may be tempted to see cooperation in change as opposed to their own best interests and may seek to obstruct it. As I have pointed out previously, local reactions to innovations must also be costed in and they are not always favourable.

This configuration is a repetition of what is occurring in many other countries in Africa. Government reaches out its organizational framework in a dual thrust towards development and nationhood. Whether it be the introduction of a party cell structure in Tanzania, or innovatory legislation in Lesotho, the drive is the same: to modernize and forge to the State. The initial resistance I have recorded is an adjustment to,

and the growing pains of, a line of development that is already firmly entrenched.

Although legislation may be difficult to implement, be resisted, or perhaps perforce have to be reformulated, the trend is certain. As its by-product another consequence is just as certain. Local autonomy, and the strength of the traditional hierarchy which constitutes one of its walls, will lessen as the State encroaches in effective jurisdiction. The chieftainship, already subject to Government control, must more consummately assume the role of civil servant, or find its function replaced by alternative structures.

LIPITSO: COMMUNICATION

Wallman gives the historical antecedents of the pitso thus:

it was customary for Moshesh and his successors to consult Chiefs and people before taking decisions affecting them. The institution of the pitso (from ho bitsa: to call) reflects this habit. Whenever matters of public interest were to be discussed, Chiefs and people would be called to assemble and hear the details. Any man was then entitled to voice his opinion and advise on the proper course of action. Pitsos were conducted in this way at each administrative level, from national down to village unit, and became the basis of Basutoland's 'democratic' tribal politics. (1969:18)

Ashton offers a more detailed picture of the procedure:

The chief may decide all minor matters on his own responsibility, with or against the advice of his councillors, but all matters of importance should first be discussed with the people at a public meeting (pitso), to which all adult males are summoned. These meetings are held in his village and are presided over by him or his representative. The subjects for discussion, which will have already been discussed with his councillors, are introduced and elaborated by his relatives and other councillors, and then thrown open for general debate. The proceedings are finally wound up by the chief or his senior councillor (the part played by the chief being determined by his own activity and interest); his decision, if any, is announced and the meeting is closed with the words "Le lumile" (It has thundered). (1952:215-16)

The pitso was then a device allowing for a form of democratic consultation

between chief and subjects whereby the people could make their voice heard in tribal decision-making.

Social change, affecting the position of the chief and his relationship with his people, has altered this model. Writing in 1953, Hailey commented on the decline of the pitso, which he attributed mainly to the changed role of chiefs:

It was no longer the custom for them to submit important matters to the opinion of the tribe in a local pitso. It could not now be said of them, as in former days, that "their authority was built up on the foundation of popular support and maintained by a two-way stream of consultation and advice." [Ashton 1947:241] It is probable that the pitso never had in Basutoland the importance possessed by the kgotla in Bechuanaland as a means of maintaining contact between the Chief and the people, but all observers agree that the basis of the authority of the Basuto Chiefs began to be seriously undermined when the regular practice of meeting the people in a local pitso fell into disuse. (1953:135)

Nonetheless, it is, today, still one of the main communication links between chiefs and people and Government and people. Although great reliance is placed on it as a communication medium, Wallman has underlined its limitations and inadequacies:

Today, in so far as the traditional political structure remains the same, the pitso as such is unaltered. But whatever role it may once have played, it cannot now be said to ensure either consultation or communication--although the assumption that it does so is often made. (1969:18)

We must weigh Wallman's words carefully, for although the role of the pitso may have changed, it is still an important and valuable articulatory channel. In the village of study the pitso worked fairly well as a means of apprising villagers of matters of local concern. Notice of these was usually given by the Headman acting as a kind of town-crier and if sufficient numbers turned up, the pitso would proceed. The following is an example of what I would term a non-controversial pitso:

Mrs. Jemina Matsie, wife of an AME minister, interviewed Chieftainess 'Mampho about the advisability of starting a clinic in 'Mampho's. The Chieftainess agreed to the proposal and decided that it should be put before the villagers. The Headman was duly instructed to summon the people. Too few gathered and the pitso was postponed for a week.

On the elected day, the pitso was opened by the Headman in the presence of the Chieftainess, and Mrs Matsie was invited to speak. She pointed out that a village the size of 'Mampho's should provide some sort of medical service for its inhabitants, for they had neither doctor, nurse, nor clinic. She was at pains to state that she did not want to start the clinic without having consulted the people and the Chieftainess for their opinion.

The pitso was unanimous in agreeing that a clinic would provide a much needed service. After that, discussion revolved around finding a hut to store medicines (this was proposed by the Chieftainess) and electing a secretary to collect fees and register children for regular attendance. The villagers themselves took the lead in nominating and voting for a secretary.

At this non-controversial level the pitso seems to work well. A pitso is organized to discuss an innovatory idea and a decision is reached through the medium of village consensus. This type of discussion seems to represent what previous writers have termed the democratic element in Basotho village life, and I have records of another pitso in which the formation of a burial association was mooted and discussed in a cooperative and similarly constructive way. Both these lipitso were attended by relatively small crowds, were not initiated by Government directive, and were not obviously amenable to political manipulation. Their non-contentious nature and the smallness of attendance would not appear to have lent themselves to heated debate. Yet these two examples should not lead us to conclude that the pitso was functioning well as a two-way channel of consultation in Seeiso's area.

It can be said that many vital spheres of communication in the ward were impeded by problems of interference or 'noise', to use current jargon. Sometimes this interference or non-communication was occasioned by the simplest of causes, the 'receiver' not being present to hear the message sent. Towards the end of 1970, in an effort to renew interest in, and the efficiency of, the administration, the Principal Chief decided to institute a system of monthly administrative lipitso of chiefs and headmen. Previously chiefs and headmen had met separately at monthly intervals, but

those lipitso had not been functioning smoothly and had for some time not gathered at all. The reconstituted lipitso took place at a time when the Chief's administration was attempting to correct administrative derelictions in the face of considerable criticism.

These lipitso were necessary to keep chiefs and headmen aware of recent legislation and Government directives for, as was emphasized at one meeting, literacy is by no means standard among them and lipitso are the main conduit through which they can apprise themselves of information and changes affecting their roles. Despite these compelling reasons, headmen absented themselves from meetings, even though the Chief's representative repeatedly deplored the slackness that was common in the administration, and notwithstanding the important content of the messages conveyed. The Chief cannot compel attendance at lipitso and for a wide variety of reasons attendance at them has dwindled. This is not confined to administrative lipitso. Ordinary village folk are also often loath to attend. Some state that they are too busy getting their daily bread to waste their time spending hours at a pitso--'weeds do not stop growing while the Chief speaks'. I have been at the Local Court while an important pitso was gathering--it does not stop its business to accommodate this demand. Further, some informants were unwilling to attend lipitso because, they said, meetings were where 'politics happened', and they had no wish to be drawn into quarrels between politicians. One old woman stated that the modern pitso was simply a 'thing of politics' and lacking in goodwill. Not even the sanction of public opinion seemed to be levelled at non-attenders; one went if one felt like it.

Non-attendance at lipitso is serious if we consider that the chief's administration is the primary link to convey directives downward.

To return to the administrative lipitso of chiefs and headmen: considerable confusion came to light in certain of the discussions at ad-

ministrative lipitso. It is difficult to know whether chiefs and headmen were merely trying to cover up administrative oversights, but some of them asked such elementary questions as how to obtain books to record births and deaths in their villages. An experienced chief actually had to instruct one pitso on how he recorded population changes in his area. He objected to the suggestion that the recording of births and deaths was a confusing and new thing, and stated that even in the days of Paramount Chief Griffith, births and deaths had been recorded. He said they were being obstructive in raising the point that they did not have books for recording--surely they could simply go to a trading store and buy an exercise book for one-and-sixpence. He said they should use 'one pen for births and another pen for deaths; use a third page for newcomers and people moving away from villages'.

These facts would be trite if it were not that details such as these, and the incompetent way in which they were handled in the ward, moved the Principal Chief's clerk to say at one pitso:

'Chiefs and headmen, you do not report monthly, you people. This, the Principal Chief's office knows nothing about the newcomers to your villages, nor about people who have died in your villages, nor about babies born in your villages. You have placed this office of the Principal Chief in difficulties because of this. ... As you do not do these things, you are working against the Principal Chief, because the Government expects the Principal Chief to report about all these things every month.'

If headmen and chiefs do not attend administrative lipitso, lines of communication become tangled and smooth administration impossible. The administration of the ward under Chief Seeiso had a bad name, and instances such as the non-reporting of births and deaths are examples of the sort of dereliction which contributed to this reputation. Snarl-ups might have been avoided by the efficient and clear-cut issuing of instructions.

We have to deal here with a problem that is the cumulative outcome of the dwindling fortunes of the chieftainship. In the process of becoming a 'Government chief', the chief has lost his position of centrality, com-

manding effective decision-making. Constrained to convey the will of Government to his people, his lessened power does not give him the means to compel their attendance at lipitso. Association with Government makes his rule subject to bureaucratic criteria of efficiency to which he and his underlings must adhere. The pitso is not a viable medium to convey this new input, often not suitable for oral transmission, with its references to sections and Acts and the language of officialdom. His very closeness to Government has undermined the legitimacy of the chief, and thus the pitso is now less of a forum for tribal give-and-take and is often more importantly a forum in which Government's voice is heard.

Not only was there difficulty with the transmission of directives down, but the lack of co-ordinated discussion and drive among authorities hampered concerted action being taken on matters important to all in the ward. There was a hesitation in the presentation of demands to the encapsulating system, and a lack of force for the synthesis of petition. When, for example, the Local Court was removed from 'Mampho's village, its transference was allowed to proceed unprotested initially. The matter surfaced in one of the administrative lipitso, and an influential chief mentioned that in a neighbouring ward a like removal had been successfully reversed. He rebuked those present who, because the monthly meetings had been allowed to lapse, had allowed the removal to pass unremarked because of their tardiness. If the communication process had been working well, their alarm could have been communicated via the Principal Chief to agencies of Government. Information flow was impeded upwards by the malaise and lack of commitment which manifested itself among the administrators of the ward.

In the conveying of messages both into and out of the community, the Principal Chief was a weak link in the information chain. He was shy, seldom spoke in public, and was sometimes not present at lipitso, func-

tionaries representing him. His absences and the fact that he hardly ever made any statements or led debate could not but contribute to a disbelief in the efficacy of lipitso. An influence was thus missing which might possibly have recharged lipitso. The Chief was visibly alienated from commitment either to the Government or the people.

Extreme political differences would not facilitate the operation of the pitso as a forum for democratic consultation. Informants have recounted to me that even as long as sixty years ago, the pitso could be exploited to mount controversial questions and could be used as a springboard for attacks against a chief who had displeased his subjects or a certain faction among them. The intense political feeling prevailing at the time of fieldwork made its presence felt at lipitso, and the pitso could change from being a vehicle for the dissemination and discussion of generally relevant information, to a platform for the expression of political grievance. In this instance the pitso did not function to bring the people together in a reasoned discussion, but in itself was illustrative of deep divisions.

On 27.4.1970 Chieftainess 'Mampho called the people of the village together to discuss the misuse of a grove of pine trees which belonged to the chieftainship. When the people had gathered, she informed them that people had been cutting wood from the grove without permission. She added that it had been her practice to allow people wood from the grove when they had a special need, for example, for cooking and maintaining fires for a funeral vigil. She warned the people not to take advantage, and that in future, they should take wood from the slopes behind the village, not the pine grove, after having notified the Headman.

Thus far the pitso had been unexceptionable, and the Chieftainess's speech was followed by such commonsense questions as when the trees on the slopes could be exploited.

However, the pitso took a very different turn when an Opposition supporter stood up, thanked the Chieftainess for her information and then asked whether she knew anything about a blanket which he had found hanging on his fence one morning. This reference to a blanket was an oblique way of drawing attention to the activities of a group of vigilantes in the village, Government supporters who were enforcing the curfew. The Chieftainess was asked whether she knew that people were being assaulted and intimidated by this group. Members of a faction who will appear prominently in the next chapter were taking a lead in this questioning. They wanted the Chieftainess to say whether the vigilantes were acting with her cognizance. She replied that she had not appointed them, but that the Government had declared

a state of emergency and imposed a curfew. She was asked: if the Government had appointed vigilantes, surely the chieftainship would have been apprised of the fact? Further: 'As you were never told, and these people go about in the village, hitting people, kicking them, forcing them to blow out their lights, do you think that is the right thing to do without your having told them to do so?'

The Chieftainess disclaimed responsibility, saying that she, like her subjects, was constrained to keep to her house at night. She had not known, she said, that vigilantes were terrorizing the village. She thought that their activities were wrong, but she told the people that they were living under emergency conditions and that they must obey the Government.

To the accusation that she was failing to protect her subjects, she admitted that her hands were tied because of the emergency powers the Government had assumed.

Her questioners persisted, wanting to know, for example, what would happen to a man who disobeyed the curfew because his cattle were escaping from the kraal to graze other people's lands, or who wanted to report a death at night. The Chieftainess could only reiterate that the people had to obey emergency regulations. One comment on this was that even in South Africa, people were not so harshly treated. The questioners, because the Chieftainess was 'on the Government side', directed their questions in such a way as to hold her responsible for the restrictions. Was she afraid of the people, she was asked, that she would endorse such repressive measures being taken against them? How could she support such actions as people being stopped on their way to a vigil at night?

The bitterness about the activities of the vigilantes surfaced when one man threatened reciprocal violence against them: 'Chieftainess, may we tell you one thing--and we believe those "watchmen" of yours are present here: we are tired of their acts, and we are not afraid of them. If they do it again, they will get what they are after. We won't only assault them, but we will cause that whoever dies must die.'

Chieftainess: Can't you simply arrest them and take them before the law?
 Answer: No, they know nothing about the law themselves. The Devil will drive another Devil out of the village.

The Chieftainess tried to mollify the feelings of those present. She said she was glad that a pitso about firewood had ended like this because she had learned things of which she had been in ignorance. She warned the vigilantes, because they had heard the threats uttered against them. She advised the people, of all parties, if their cattle escaped at night, not to leave their houses, but to shout to an important person nearby, the Headman or another, for help. In the case of a death, they should get a letter from the Headman to show why they were moving about at night. To close her speech, she made an impassioned plea for the people not to let politics divide them, but to come together as the people of one chieftainship.

This last, a plea for unity, was occasioned by the groupings that villagers had formed themselves into during the pitso, for the division between Government and Opposition was clearly to be seen in their clustering

along party lines. This pitso developed into an attack on the Chieftainess in terms of the ongoing struggle for power in the ward, but more importantly, it was used as a means to express Opposition disquiet at how their subjugated position was being exploited at village level and how old scores were being paid off under the guise of the enforcement of Government law. This pitso revealed not only a divided village and ward, but how national cleavages drove people apart. It did not constitute expression of village democracy, even though it provided a forum for the airing of grievance at a time when such utterances were problematic. Discussion could not lead to resolution in this instance as the causes for division lay beyond village and ward. The pitso might once have been able to resolve parochial differences. To-day when the differences have their mainspring in national concerns, its efficacy is limited in attempting to mediate consensus.

This was true even more of lipitso where Government attempted to reach out to the people. The emergency exacerbated the Government's difficulties in communicating with the peasantry, for as we have seen, ranged against them was a disillusioned Opposition whose outlook on Government intentions was often cynical. The pitso that follows, a Government attempt at rapprochement after the coup, demonstrates essential communication problems.

In 1970 a Government Commission visited 'Mampho's and held a large pitso to attempt to meet the people of the ward and sound out opinion on their attitude to the Government, and to put Government's point of view to the people. The catch-phrase used was 'Le bona joang, re bona joang?' (How do you see things, how do we see things?). After giving a fairly hard-line justification of events after the 1970 general election, comment was invited from those assembled.

The range of discussion illustrates what an unsatisfactory medium the pitso is for clear-cut communication. Certain people saw it as a suitable arena for raising the question of increased school fees; some headmen revived the old chestnut of their not being gazetted. Government supporters praised the actions of the Government:

'I have no questions. I agree with everything you have said. Only that there was a hailstorm coming to Lesotho, and you took out your medicine and stopped the hailstorm. Do just as much as you can--those who don't want

to listen to your orders, must do what they please.'

Opposition supporters attacked the Government:

'We are living under Chaka's laws'; 'If a Nationalist member calls you to whip some people in the village, the police you send will not call around to see the head of the village, as the British Government used to do, but your men will simply go to the person who called for them and will be shown where to go to the person he wants punished. How do you expect then that the people or the chiefs will not run away from you? You don't trust the chieftainship any longer.'

The Government was called upon to reform the Local Courts which, it was alleged, were biased against Opposition supporters and were not protecting the people by punishing offenders of certain political persuasions.

A definition of the weaknesses of the pitso emerges in a consideration of the following. This pitso had been arranged after consultation with the Chief about a month before. Government had informed him that they wished to consult with the chiefs and the people of the wards in Lesotho to test reaction to the events after the general election and to set about mending fences. They were turning to the chiefs, the two Government spokesmen said, because they were closer to the people and heard their views first, the people not being afraid to speak to their chiefs. Because of a misunderstanding, the people of Seeiso's expected the pitso to start at 10.00 a.m., when in fact that time had been set aside for a similar pitso in a neighbouring ward. When the pitso commenced at 2.00 p.m., the Principal Chief's representative opened proceedings with the embarrassing information that the majority of people had left, and that the Chief himself had departed at 11.00, thinking that the meeting would not take place as scheduled. The pitso was also to close with the representative saying that there were more chiefs and headmen absent than were present. There were police at this pitso (a comment on the unsettled atmosphere of the time), providing their own ironic punctuation to Government's 'consultation' with its people. At one stage, when a questioner used biting language in criticism, the police moved as though to intervene, and that line of commentary ceased. But one or two speakers used the 'Le bona joang, re bona joang?'

refrain to lend force to their dissatisfaction. The man who had annoyed the police said, 'Since you are asking, people get arrested under your Government ...' Another said, 'I myself consider that you have come too late. ... Go around Lesotho, telling the chiefs and the Basotho people what they see and what you see--they will tell you.' In conversation with friends among the Opposition about the pitso, the phrase was used bitterly as a comment on the type of meeting held. How could the Government seriously expect to communicate constructively with the people after the coup, the emergency and the repression that had taken place?

The pitso has become overloaded. It is expected to carry a range of matter from that concerning a clinic to Government's seeking to plumb public opinion. Although the holding of lipitso still attests to a willingness to debate, the subject matter, in some instances, has become too complex to be accommodated through this cumbersome medium. The range of audiences, Wallman has pointed out (1969:90), is wide: it is difficult to strike a consistent note understandable to all. In addition, the reasons which gave the pitso its force are no longer present: wards and villages are more atomized and the form of the pitso is no longer underwritten by a sense of close community participation and consensus. Chieftainship has declined, and especially in Seeiso's ward, the Principal Chief did not act to attract and endorse discussion by his part in and presence at lipitso. Wallman writes (1969:91) that the pitso can be manipulated too easily by those with partisan interests to pursue and, in turn, I would add that too easily can it be turned into a vehicle for displaying discord, rather than attempting to alleviate it. More seriously, so often today it cannot make binding decisions on the issues it raises. Called upon to comment on Government's rapprochement with the people, with the ward's Principal Chief absent, and many chiefs and headmen also not there, can participants really trust that what is being said will ever result in a decision being taken

that will meaningfully take their views into account?

During a recent field trip to Lesotho, I fell into discussion with the man responsible for the introduction of an irrigation project in the District of study which will affect three principal chiefdoms. I raised the question of how difficult it was, in initiating development projects, to 'capture the imagination' of those who were to be affected. How did one avoid it becoming just 'a thing of Government'? In reply he said that one answer was to make the principal chiefs concerned speak, not to their own people, but to those of the other wards. I interpret his words to mean that this would lessen the difficulty of a chief perhaps distorting information, would lessen suspicion that the chief might be promoting a scheme for his own ends, and would endorse the scheme with chiefly approval. On the other hand, it also proves the diminished role the chief now plays; here he is a streamlined civil servant, delivering Government's wishes, not even to his own people, but to those of a neighbouring ward. Here the pitso still functions, but in a context so foreign that it is even alienated from its symbolic centre, the link between a chief and his people.

CONCLUSION

The impact of the preceding three sections has been to show a diluted administrative self-sufficiency. Coupled with the inexperience of a young Chief, not dedicated to the administration, possibilities for impeded governing in Seeiso's ward become all the greater. Throughout the fieldwork period, Chief Paul's administration was held up as weak and beset by ills. This was in part the outcome of personal factors, in that he did not exert himself to bring the ward's affairs under his direction and seemed incapable of settling factional jealousies. The unhappy relations with his mother further clogged the administrative machine.

Administration bogged down even in elementary matters, as in the

registration of births and deaths. In this case too, the differences between the Chief and his mother were alleged to be one contributory cause. It was said that births and deaths would be reported to the office of the Chieftainess, which would not pass them on to be funnelled to the Government. One of the Chief's clerks reportedly said, talking to two headmen who were complaining that the administration had started to run down, 'You and you are the ones responsible for this sort of thing. Instead of reporting births and deaths to this office, you go to Lichaba's office to report. That office does not report to Local Government, and therefore we are breaking the law because no reports are sent in.'

Thus misunderstandings and competition about relative statuses disrupted internal communication channels, and the rivalry between the two 'offices' hampered clear-cut decisions. A striking example arose because of an accusation made at the graveside of a man from the village of Tlali's in Lichaba's sub-ward.

On 10.12.1969 Headman Labone Lerata appeared before Lichaba's office to report on an accusation of murder by witchcraft poisoning that the office had sent him to investigate. He was with Headman Lesuo of Tlali's, the village where the death had occurred, and relatives of the deceased.

After he had made his report, he said that Headman Lesuo could fill in any gaps because he had called a pitso at Tlali's to facilitate Labone's investigation two days after the funeral at which the accusation had been made. Headman Lesuo confirmed Labone's report and added that all the people concerned were present in Lichaba's office except two who were unable to come, being in mourning.

Ralisa, the Chieftainess's representative, questioned Labone:

Q. What is your opinion? Is there a case here?

A. Yes, there is.

Q. Do you suspect that Mpase was poisoned?

Both Labone and Lesuo said that, according to what they had heard from those involved, they suspected that Mpase had indeed been poisoned.

Q. I do not think we can deal with this matter; it should be sent to the police.

A. I understand that. But what this office sent me to investigate was what was said at the funeral, about how Mpase died. I am only sorry that your messenger was not there to bury Mpase, my Chief.

The Principal Chief's clerk, Rametse, happened to enter Lichaba's office at that point and when he found out what was being investigated, he lost his temper. He said that had the matter been reported to the Chief's office first, instead of going through Lichaba's office, the deceased would not have been buried before a doctor had examined the corpse, and such a serious affair would not have been left pending for so long. He was told that when Headman Lesuo'a first tried to report the matter to the chieftainship, the Principal Chief was not in his village. To this Rametse replied, 'The Chief is never absent. His representatives are always here.'

The complications of this case arose because the chieftainship was not represented at Mpase's funeral. It is customary for chiefs to send representatives to funerals to avoid the very sort of confusion that resulted from this one. When Headman Lesuo'a first arrived in 'Mampho's to report the death of Mpase, he had found the offices in the administration building closed. He then reported to the Headman of 'Mampho's, Mpho, who instructed his chairman, Rangoane, to attend the funeral. Rangoane failed to do so because of a death in his own family. As Headman of Tlali's, Lesuo'a had not attended Mpase's funeral himself, but his representative had reported to him the next day, and he had gone to Lichaba's office to report there the gravity of the accusation that had been made at the funeral. That office had then instructed Headman Labone Lerata to go into the matter with Lesuo'a.

That was a full two months before Labone brought his report to Lichaba's office, as related above. Lesuo'a tried to explain this delay by describing how he and Headman Labone had been too busy to find a time to suit them both to go to Lichaba's office to report. But Rametse and, in the later hearing in the Chief's court, the Chief's representative Leboea, found much to comment on in the delay. Rametse was particularly scathing. He chose to interpret the affair as typical of the mismanagement that was bringing the Chief's administration into disrepute and, he implied, Lichaba's office was undercutting the Chief's position by being careless in matters like this one.

Rametse added that this was the first he had heard of Mpase's death, yet he was responsible for reporting births and deaths to the Government. Lichaba's office was taking upon itself responsibilities that were beyond its competence and was, moreover, deliberately undermining the Chief by failing to report to his office.

When he reprimanded Labone and Lesuo'a for working through Lichaba's office, they tried to defend themselves by stating that they were accustomed to receiving letters and instructions from Lichaba's office stamped with the official stamp of 'The Chief of 'Mampho's' which, they had assumed, invested their instructions with the authority of the Principal Chief. Rametse explained that this stamp was causing trouble because people usually assumed that communications bearing it came from the Chief when in fact they came from Lichaba's office.

Rametse then ordered everybody into the Principal Chief's courtroom, where the hearing of the Tlali's investigation was resumed. After the evidence was heard, it was decided that the case ought to be passed on to the police.

The reporting of births and deaths was by no means the only admini-

strative area that showed shortcomings. There was also, for instance, much talk about the maladministration of land, and I heard it said that the Principal Chief himself had been embarrassed in the Local Court when giving evidence in certain cases where the facts revealed were not at all flattering to the chiefly administration of land.

The visit of Chief Mohao Seeiso on 23.10.1970 was a further setback to the Chief's reputation as an administrator. Chief Mohao explained to the Chief and his assembled advisers that he had come to 'Mampho's on the instructions of the Government Department for which he was working, to investigate a number of pressing questions. The first thing with which he taxed Chief Paul was the election of his land advisory board: why had this still not been carried out? Next he turned his attention to three headmanships about whose administration there had been complaint. One headman had gone to South Africa and his Department had not been notified. Further, they had received a letter from the inhabitants of the village in question, complaining about the man the departing headman had left to act in his stead while he was away. The second and third headmanships had come to his Department's notice because the headmen there had died and as yet there had been no communication on who was to succeed them. Chief Paul promised to resolve these three cases as soon as he could and instructed his clerk to write to the villagers telling them to appear before him on given dates to decide their affairs.

The next two grievances that Chief Mohao had been sent to handle had both been occasioned by complaints to his Department about land allocation. What was important about both these complaints was that, after not getting satisfaction from the Chief's administration, the complainants had gone over his head and prosecuted the matter at a higher level. Both had asked Government to intercede for them with the Chief. One was present at this hearing and, although apologetic to the Chief for having gone to Govern-

ment, was nevertheless insistent that, as a taxpayer and a man with children, he was entitled to land. He had been deprived of a land which he had ploughed for four years, although it had not been formally allocated to him. From the evidence, it seemed possible that there had been some irregularity on the part of the Chief's functionaries in the granting and then withdrawing of this land. The Chief took steps to rectify these cases, but it might be mentioned that his attempt at brisk efficiency suffered momentarily when the clerk had to report that they appeared to have run out of the application forms that the Chief had ordered to be given to the second complainant. The application was duly completed on a piece of foolscap, and not on the required printed form.

Administrative self-sufficiency has thus been taken out of the chief's hands. From preceding sections an analytic residue remains: that administrative procedures are subject to political influences and Government scrutiny. The chieftainship is not significantly in touch with its subjects, and communication between chief and subjects, Government and chiefs, and Government and people is affected by the watered down position of the chief. All these factors must remain in the reader's mind as we move to the next chapter, for at a different level, they remain constants and are renewed as themes in the discussion of the struggle for power between Chief Paul Seeiso and his mother.

Chapter Five

THE ADMINISTRATION:

THE CONTEST FOR CONTROL OF LICHABA'S

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STAGE ONE: THE ROOTS OF CONFLICT (1)

The regency

When Principal Chief George Seeiso was hanged for ritual murder, his eldest son Paul was still a child and Chief George's wife 'Mampho subsequently became regent for her son. She ruled Seeiso's ward until 1967 when her son became Principal Chief. The Chieftainess readily familiarized herself with the duties of her position and emerged as a capable ruler in her own right, building up a core of advisers of her own. People still talk admiringly of how she used to ride on horseback to inspect contested fields and boundaries. During her rule, Chieftainess 'Mampho succeeded in stamping her personality on the administration under her control, and in entrenching her position as a powerful and capable leader who wielded authority effectively.

Her son Paul received an education in England which culminated in a period of study at Oxford. He left before completing his degree requirements and returned to Lesotho where his rights as a Chief were. He was to find his mother unwilling to yield power easily.

The issue of the King's powers

He returned at the height of some of the most important debates to decide the future of his country, and his quest for the chieftainship was strengthened because of the stand his mother took on one of the central issues of the time: what powers were to be accorded the King in an independent Lesotho. The powers in question were notably those reserved until independence by Her Majesty's Government regarding external affairs, defence, internal security and the public service. Prime Minister Jonathan was opposed to having these reserved powers transferred to the

King and accordingly he visited London in November 1965 to request the Secretary of State to delegate him powers in preparation for independence. He was supported by a message signed by sixteen principal and ward chiefs and four other senators, among them Chieftainess 'Mampho (Khaketla 1971:72).⁽²⁾

Jonathan again turned to the chiefs for support of his position at the Independence Conference in London in June 1966. Chieftainess 'Mampho and sixteen other principal and ward chiefs were signatories to this message telexed to the Secretary of State on 11 June 1966:

We the undersigned Principal and Ward Chiefs wish respectfully to bring to your notice:

1. That we desire that Independence be granted to Lesotho on 4th October, 1966.
2. That we are convinced that all the conditions laid down in the London Agreement of 1964 for Independence have been duly fulfilled.
3. That we are convinced that the people of Basutoland desire Independence in terms of the White Paper which the Honourable the Prime Minister tabled in Parliament.
4. That we are satisfied that the Government has accepted the principle that the position of the Chieftainship should be properly entrenched including a provision that no Office of a Chief may be abolished save by law passed in accordance with the procedure for entrenchment.
5. That we are very disturbed by the fact that the Paramount Chief has seen fit to make political speeches to the Nation. Political speeches are for politicians who are answerable to the people at elections. We consider the Paramount Chief's action to be opposed to his own best interests and not in accordance with our Constitution.
6. Aided and abetted by certain politicians, a false issue is being put to the people. They are being asked whether they wish to be ruled by the Prime Minister or the Paramount Chief. The truth is that we wish to be ruled under the Constitution in which both the Paramount Chief and the Prime Minister have their proper places. The Paramount Chief is the Head of State and ought to be a Constitutional Ruler, the symbol of National unity. The Prime Minister is the Head of a Government accountable to the people, in whom lies ultimate sovereignty.
7. We believe that what we have said above corresponds with the views of the great majority of the Nation. (cited by Khaketla 1971:77-8)

After giving a list of the signatories, Khaketla comments,

These are the men and women who went against the wishes of the vast majority of the people in that, knowing full well what the people wanted, they supported the idea of turning our King into a constitutional Monarch. (1971:78-9)

He later calls their petition 'a death warrant to the Chieftainship' (1971:79).

Opposition informants recalling this time in the constitutional history of Lesotho said that the Chieftainess's siding with Jonathan against the King bitterly offended some of her subjects. It was alleged that in a statement supporting Jonathan in Senate, ⁽³⁾ she had buttressed her words with the phrase, 'Lintsu ⁽⁴⁾ lira ...' (The people of Seeiso's say ...), to indicate that she was expressing the will of the majority of the people of her ward. They maintained that she had no right to constitute herself spokesman for the ward, since she had not consulted the sechaba. Moreover she was not an elected representative like their members of Parliament, but held her position in Senate by virtue of her office as regent. It was felt that in this, a seminal constitutional issue, she had betrayed her trust as head of the ward. ⁽⁵⁾

Resentment against Chieftainess 'Mampho evidently led to a meeting in the nearby District administrative centre, the decision of which was that a letter be written to the Chieftainess telling her that the Lintsu would like her to clarify her position at a public meeting to be held at 'Mampho's. Invitations were also sent to distinguished political figures of all party persuasions. Chief Paul was advised not to attend, so as not to compromise himself with obvious political taint.

On the appointed day, 30.4.1966, the prominent politicians who attended were exclusively of the Opposition parties, and included Ntsu Mokhehle and Dr S.P. Makotoko (then leader of the MFP and President of the Senate) who both, according to informants, addressed the meeting.

Chieftainess 'Mampho did not attend. An informant summarized the meeting in the following way:

'This was the day on which we called upon our Mofumahali after we had read her speeches in the papers saying that she had been instructed by us that the powers should fall to the Prime Minister and not to the Paramount Chief. We knew well that we had never said such a thing. We had our own members of Parliament through whom we could operate. It was clear that she had ruled too long ... We therefore passed a resolution that we wanted to see the King install Chief Seeiso III who was over twenty-one years of age and who was back in Lesotho ... and had not yet been installed.' (6)

These events laid down a pattern that was to dominate later occurrences in the ward: Chief Paul's cause and interests became identified with the Opposition, while those of Chieftainess 'Mampho were identified with the ruling party. Chief Paul was seen as a firm admirer and supporter of the King whereas Chieftainess 'Mampho had made evident her views on turning the King into a constitutional monarch.

The installation of Chief Paul

Chief Paul pressed for his installation in a letter dated 17.5.1966 in which he canvassed for the support of the traditional decision-making authorities of the ward, the translated text of which follows.

TO ALL THE CHIEFS OF SEEISO'S,

Honourable Chief,

I am writing to you to acquaint you with my desire to be given the responsibility of reigning. Here are my reasons:-

1. I have reached an age which is legally suitable for me to be installed as a chief without opposition.
2. There is already a lot of clamouring amongst the people regarding my installation, and I do not know of anybody who denies me this.
3. Delaying an installation always ends up in uproars and quarrels, which things I wish to avoid.
4. At the moment, a great work has been entered into affecting changes in the administration under which I shall be rendering my services for years on end, and it is necessary that

I should also have a say in respect of these changes.

For these reasons, Chief, I am making this request on my own behalf, and not through the administering authorities, that you should grant me the favour of being present personally at the Chief's place at 'Mampho's on 28th May 1966 to discuss with all the other Chiefs my request, and to approve or reject my plea to be installed at once.

I shall notify the Chieftainess of Seeiso's of this request I have made to you, and I shall ask her to assist me in every respect as a parent, so that the gathering of that day will achieve its purpose.

As for you, Chiefs, I thank you for all the help you might offer me so that I may be installed immediately.

I, your child,

[signed] Paul G. Seeiso.

This letter was in effect an appeal to the Sons of Seeiso, a chiefly and administrative body which met to discuss matters pertaining to the ward and its chiefly affairs.⁽⁷⁾ The letter was not submitted to the chiefs of the ward through the 'proper channels' of the Chieftainess's administration, as Chief Paul himself pointed out in his letter. This manner of bringing his suit to the attention of the decision-makers of the ward must be interpreted as an assertion against his mother's authority. By going directly to the Sons of Seeiso, Chief Paul bypassed his mother, and put the issue of his installation to the test of debate. His action has broader connotations within the framework of Lesotho national politics. It could be--and was--seen as an attempt to replace a Chief who had spoken out in support of the Government with one who was known to be a sympathizer with the King's cause.

Political overtones were echoed in the gathering held at 'Mampho's on 28.5.1966 in response to Chief Paul's letter. The discussion crystallized into a clear-cut dispute.

One section of opinion, represented by Chief Lehloa Seeiso (come from Johannesburg specially for this), Ntsabane (an experienced admini-

strator), and Mofoka (at that time chief clerk in the Chieftainess's administration, maintained that the meeting itself was out of order because it had not been convened by the Chieftainess, and that she was the one to decide when her son should be installed. They held that a matter pertaining to the chieftainship was being used to make political capital for the Opposition; that the chieftainship should be divorced from politics.

This group was opposed by notably Chiefs Maleke and Mojake Seeiso, who asseverated that Chief Paul was within his rights in pressing his claim through his 'uncles'. The Chieftainess was remiss in denying him his rights, for he was the rightful traditional ruler and was of an age to assume power. (8)

The Chieftainess herself insisted that hers was the right to decide her son's future and that politicians were muddying the waters of what was essentially a matter between herself and her son.

The meeting ended with no decision having been reached, but the ball had been set rolling. When Paul wrote a letter to the Sons of Seeiso threatening to look for work on the Witwatersrand if his cause were not furthered, matters were expedited. Chief Paul was eventually installed, not without opposition, as Principal Chief, and his installation was gazetted in 1967.

STAGE TWO: THE CONFLICT OVER LICHABA'S

The issue of Lichaba's

As the Gazette stood before Chief Paul's installation, Chieftainess 'Mampho was gazetted both as the acting Principal Chief of Seeiso's and as the acting Chief of 'Mampho's. When this was amended after Chief Paul's accession, he was gazetted only as Principal Chief and not as Chief of 'Mampho's as well. Accordingly, his mother's name was deleted only as acting Principal Chief; she remained gazetted as acting Chief of 'Mampho's, subordinate to the Principal Chief.

This meant that while Chief Paul assumed control over the whole ward of Seeiso's, as administered by various authorities under him, he did not take over any particular area or sub-ward directly under his own administration. For generations the Principal Chiefs of Seeiso's have

regarded 'Mampho's and the administrative area surrounding it (known as Lichaba's) as their own particular domain, whether or not they delegated its de facto administration to representatives. With his mother's name not specifically deleted as acting Chief of 'Mampho's, Chief Paul was leaving in her hands much of the day-to-day power she had wielded while she was regent. Chieftainess 'Mampho thus retained a most effective, power base from which to influence affairs. As acting Chief of 'Mampho's, she retained control over the running of 'Mampho's village and Lichaba's sub-ward, and over their resources, while her son became more of a figure-head than an actual ruler. She was able, for example, after her son's formal assumption of office, to run her own administration and court from which there was appeal to the Principal Chief's court, and through which the litigation and administration of Lichaba's was supposed to be funnelled. Some were not aware that she had actually retained this gazetted position and believed--or purported to believe--that she was clinging to power that was not legally hers. The question of the Chieftainess's continued power first became a public issue at a pitso held early in 1968.

Chief Leboea, the Principal Chief's adviser and representative, called a pitso of the chiefs and headmen of Lichaba's to have read to them a letter in which the Principal Chief stated his decision to install his mother as the Chief of 'Mampho's. This information was presented as the announcement of an established fact and not in such a way as to invite comment or discussion from the assembly.

The letter called forth a strong reaction from several chiefs and headmen who objected to the fact that neither chiefs nor sechaba had been consulted about their Principal Chief's intention. They said that when the chieftainship needed them, for example to raise money for Chief Paul's bohali and wedding and for his education in England, the chieftainship appealed for help to the people. They had a right, they felt, to participate in decision-making of this nature.

Although some expressed their acceptance of the decision announced, there was further objection to the fact that the pitso had been called in the absence of the Principal Chief. It was felt that there should have been opportunity to put questions to him.

Chief Paul's announcement appeared to come as a surprise, but all

he was doing was to publicize his mother's position as acting Chief of 'Mampho's. At his installation, her name had not been deleted from this position. People had evidently assumed, because it was customary for the Principal Chief to administer Lichaba's, that this had transpired when Chief Paul was installed. (9)

If the Chieftainess had proved in the past to be a competent regent, why then was there such a degree of opposition to her continued exercise of authority in the ward? There is no one-stranded explanation for the degree of antagonism that her control over Lichaba's aroused.

Objections in what may be called traditional or tribal terms centred around the following points. It was stated that in the ward of Seeiso's it was unprecedented to have effective power split between two major rulers; such a situation could only lead to a weakened and conflict-ridden administration. There was ample precedent to attest to the problems that had arisen in Lesotho when mother and son contested for power. It was felt that the Chief should have his own area directly under his rule. A Lichaba's office staffed with 'outsiders'--it was said by some that the functionaries of the Chieftainess were not concerned with local problems--was not congruent with the interests of the community.

A considerable part of the resentment arose because it was thought that the sechaba should have been consulted in the decision-making that attended the arrangement between the Chief and his mother. This current of opinion represented a continued commitment to idealized norms reflecting past democratic decision-making practices as synthesized in the maxim morena ke morena ka batho (a chief is a chief by the people).

Although the Chieftainess complained that politicians influenced her son, in Lesotho at that time it was difficult to exclude a political dimension from an issue of such importance. Not only had the Chieftain-

ess's statements aligned her with the ruling BNP, but she was later to announce her own candidature in the local constituency on the ticket of the UDP which in local parlance was often referred to as 'the Chieftainess's own party'. Thus her influence in Lichaba's was clearly not without its party-political implications. Some Opposition members claimed that in a Lichaba's administration staffed with supporters of the Chieftainess, decisions were bound to be influenced by political interest. Coupled with this was the fact that in the village of 'Mampho's itself, certain influential Opposition leaders were commoners (who identified with the interests of the sechaba). Their political resistance to the Chieftainess was given a finer edge by the feeling that they had been excluded from decision-making that was the prerogative of the people. The sights of politicians were already on the 1970 general election. Control over Lichaba's was drawn into the testing-ground of parties.

The start of factional activity

It was at this time, in reaction to the pitso about the Chieftainess's rule of Lichaba's, that a faction began to coalesce in the village, designed to frustrate the dividing of the administration and to brace the power of the Principal Chief. The reader must follow subsequent events bearing in mind the continued presence and influence of the faction whose activities are detailed in a following section. Initially the faction sought to make Chief Paul aware of the implications of the anomalous situation which had arisen in the ward, and to urge him to a course of action that would dislodge his mother and bring the area under his control. Their repeated petitions were disregarded by Chief Paul for nearly one year. During that time and indeed until well into 1970 Chieftainess 'Mampho directed the affairs of Lichaba's.

Events leading to the Chieftainess's deposition

On 28.7.1969 the Sons of Seeiso met at the Chief's court to discuss the issue of Lichaba's administration.

The Chieftainess, who spoke first, complained that it had come to her notice that a group of men whom she dubbed 'brandy-drinkers' had written to Local Government to protest against her position in Seeiso's administration. Their point was that Lichaba's was the bokhinapere (literally, the 'small place where one puts one's horse to graze') of the Principal Chief of Seeiso's and, as such, should be gazetted in his name. While this letter did not bear the official sanction of the Principal Chief or his administration, the fact that the matter had been presented as contentious to Local Government made it necessary to clarify her status.

When Chief Mohao Seeiso asked the Chieftainess why she wanted to be gazetted over 'Mampho's, she replied by asking how she was expected to live if her area were taken from her. Chief Mohao pressed her about her exact position and she stated that she was gazetted to rule over 'Mampho's or Lichaba's; she wanted to rule there because that was where she lived. Chief Mohao pointed out that that was unprecedented in the history of Seeiso's and stressed that control over the area was not the Chieftainess's to bestow or withhold: the decision should have been left to the 'owner' of the area, the Principal Chief, once he had become Chief of 'Mampho's.

Chief followed chief throughout the meeting in trying to convince the Chieftainess that her son ought to be gazetted as Chief of 'Mampho's, that she had acted in a manner that did not conform to traditional expectations of 'proper government' in the ward, and that she had been at fault in not consulting the Sons of Seeiso or the people.

The Chieftainess remained adamant and accused those who spoke against her of trying to force her into the position of entering litigation with her son. She suggested that four chiefs be elected to consult a lawyer about the legality of her position. There were shocked and indignant reactions to calling an outsider in to what was seen as an affair of the Seeiso's.

The Chieftainess was not without supporters, but the consensus of the pitso was that the executive of Seeiso's ward should be rationalized under one head.

Although the tenor of the meeting was clear, no firm decision was announced by late afternoon when it was postponed to 1.8.1969. On that date, Chief Leboea read a letter to the gathering from the Chieftainess requesting that the meeting be put off because she was not well. She asked them not to continue in her absence.

Ralisa, the Chieftainess's right-hand man, urged that her request be granted, but the gathering refused, saying that the majority decision was quite clear. The village Headman, Mpho, tried to plead for the Chieftainess, but he was disregarded. The gathering's decision was recorded by Chiefs Leboea and Maleke and read out to representatives of the Sons of Seeiso subsequently.

The decision was that traditionally a principal chief in Lesotho has his own area to govern directly, known as his bokhinapere; there was no precedent to validate the Chieftainess's claim to Lichaba's; if the Principal Chief wished to install someone else to act for him in an area it was up to him to choose someone himself; Chieftainess 'Mampho had acted wrongly and ought to relinquish her claim at once.

The Chieftainess did not accept the Sons of Seeiso decision; despite her slender support, she continued to govern. Indeed, she acted decisively to counter the rising tide of opinion against her in the ward, for on 17.10.1969 she called a pitso of the chiefs, headmen and sechaba of Lichaba's to tell them that she was their head.

The Chieftainess told the gathering in forceful terms that she was the gazetted Chief of 'Mampho's, under the Principal Chief, and that she was entitled to obedience. She suspected, she explained, that the people of Lichaba's were being misled into believing that they no longer need honour her. Consequently there were some who were taking their complaints and administrative business directly to the Principal Chief's office instead of hers. Her office existed, she reiterated, to deal with the affairs of Lichaba's. No matter what rumour might circulate, she was the rightful Chief of Lichaba's and always would be. She warned them that she would take steps against people who circumvented her office or disobeyed her orders.

The reaction to these words can best be shown by the questions posed by one Headman.

Seko asked whether the Chieftainess was justified in giving such orders and making such statements in the absence of the Principal Chief. Why was he not present? If he was represented at the meeting, then who was his representative?

In reply the Chieftainess repeated that she was the Chief of Lichaba's. Were the Chiefs of other sub-wards also expected to notify the Principal Chief every time they called a meeting about an administrative matter?

The heart of the matter, Seko insisted, was that the Chieftainess had usurped a position that was traditionally that of the Principal Chief of Seeiso's. Surely when Chief Paul was installed, he was taking his father's place. When his father was ruler there had not been two competing chiefs in the ward. If the Chieftainess was going to try to assert her authority, he asked again, where was the Principal Chief when such things were being said in his absence?

That the Chieftainess felt it necessary to call this pitso is indicative of the extent to which public opinion had turned against her.

The debate about her continuing in office revolved not only around the questions of legitimacy and precedent. Increasingly, to the Chieftainess's administration was attributed the responsibility for many of the ills that beset the ward at that time. Her hypercritical opponents subjected her administration to a minute scrutiny and saw in every administrative mistake symptoms of the cause of the general administrative laxity for which Chief Paul was starting to be blamed. Her office and staff were unpopular in some quarters, smeared as they were with suspicions of political bias and lack of concern for the local community. A rivalry between the administrations of the Principal Chief and the Chieftainess was hampering an administrative machine already faltering under an inexperienced Chief. Communication suffered, with a consequent blurring of any clear idea of boundaries of responsibility, and sectional jealousies complicated decision-making. The administration of Seeiso's was in disrepute, and it was felt that a centralized administration would help the Chief bring affairs under control. Where a stronger personality might have been able to stamp the print of his authority over a divided administration, Chief Paul became a victim of the conflicting forces that prevailed.

Coinciding with the increased tempo of carping against the Chieftainess's administration was the fever of politicking preceding the general election. A schism in the chieftainship was easily exploitable by politicians, and the momentum of the campaign against the Chieftainess was undoubtedly given impetus by the partisan interests that kept worrying at it.

One of these was the faction which took up cudgels on Chief Paul's behalf and which, throughout these events, was a continued presence, applying pressure on the Principal Chief to bring administrative matters firmly under his hand. Initially the Chief had not paid attention to their repeated petitions and, in response to his continued stalling,

they met on 5.12.1969 and drafted a letter to the Chief setting forth what they saw as the shortcomings in the administration. The letter was an ultimatum because it threatened to go over the Chief's head if he failed to recognize the urgency of the matters they were bringing to his attention. The letter was submitted to the Chief through his office and it led to a meeting with him on 23.12.1969, when he informed the faction that he was already in correspondence with Local Government about the question of his mother's position. It was decided that the faction would forward their resolutions to Local Government through the Chief's office, and so inform the Government of grass-roots opinion in the ward.

After correspondence with the Ministry concerned, the Principal Chief was instructed to hold a pitso of those villages controlled by the Chieftainness so that the whole matter could be discussed. The Principal Chief issued a circular to the heads of Lichaba's on 9.1.1970 instructing them to attend a pitso on 16.1.1970 to 'put right matters affecting the Chieftainship of 'Mampho's'.

An estimated three hundred chiefs, headmen and people gathered outside the administration block the morning of the appointed day. Before the Principal Chief left his house to address the gathering, he met with some of his advisers and kinsmen. While they were in discussion, a letter was brought to Chief Paul from his mother informing him that she would be unable to attend his pitso because she had not had sufficient notice. She asked to be granted an interview with her son before he addressed the pitso.

The Principal Chief and his entourage went to his courtroom in the administration building and sent messengers to fetch Chieftainness 'Mampho, who arrived soon after with her own advisers. Chief Paul's wife, Chieftainness 'Mamosala, was also sent for.

By this time the people gathered outside were starting to grow impatient. Why had they been summoned to a pitso if they were going to be excluded from the discussion? The pitso was, after all, a direct result of their representation to Government and the Principal Chief. They felt that those who had been instrumental in drawing up the letter to Local Government should be present at the discussion now going on behind closed doors. One of the prime movers in this suggestion was Shakhane Mokhehle, brother of Ntsu and the BCP candidate for the constituency, backed by local Opposition men.

There followed an interlude of bargaining with members of the Chief's administration, notably Chief Leboea. It was agreed that the sechaba would be represented by two delegates, Chief Lejapoli and a second man who was rejected by the gathering indoors and replaced by Litaba, leader of the faction.

Litaba entered to find Chieftainess 'Mampho addressing Chief Motiki, accusing him of having been a poor adviser to her son because he had not warned him that he could not call a pitso of Lichaba's without his mother's consent. 'This is my child;' she said, 'he was not borne by you!'

Chief Motiki reminded her that although she had borne Chief Paul, he was not her child; 'He is the child of the people, as you told him and your people the day you installed him'. Motiki was rebuked by some present for being so 'harsh' with the Chieftainess, to which he replied that she could not expect respect from people if it was not forthcoming from her.

At that point Chief Seabata pointed out that they were there to discuss the Chieftainess's request that the pitso be postponed so that she herself, acting on her son's orders, could summon her people to the pitso. He asked the Principal Chief to grant his mother's request.

Chief Paul asked irately whether he himself did not have the right to call a pitso of Lichaba's and Seabata hastened to reassure him. Then why, asked Chief Paul, should he wait for his mother to summon Lichaba's for him? Was he no more than a 'doll' at Seeiso's?

Chief Jani pointed out that valuable time was being wasted in pointless discussion while the people were growing impatient and angry outside. Litaba supported him and asked the Principal Chief to go outside and tell his people why he had called them.

The point to which Chieftainess 'Mampho kept drawing the discussion back was that, as Chief of 'Mampho's, hers was the right to summon lipitso in Lichaba's; that she had not received notification of this pitso in time to prepare for it; and that the pitso ought accordingly to be postponed so that it might go through 'the proper channels' of her administration. She was not without supporters, one of them being Chief Leboea.

However, the crowd outside was still waiting to participate in the pitso they had been called to attend. In view of their expectancy and their restive mood, the Principal Chief asked what he was supposed to tell them if he were to postpone a meeting they had all taken the trouble to attend. The Chieftainess and her supporters quickly assured him that, as their 'father', he could tell the people what he pleased and still retain their respect.

Again the Principal Chief demurred, saying that he could not allow matters to be delayed any longer as the Gazette was shortly to be printed and Local Government wanted the Lichaba's matter to be settled before then. But under his mother's tears and her supporters' reminders that one should honour one's parents and that her request was a small favour to grant, Chief Paul wavered. He addressed each speaker in turn, asking whether he would be prepared to go out to face the by now clamorous crowd, and tell them why the pitso had been postponed. Clearly, no one was anxious to do that.

So the discussion swung back and forth, with the Chief's supporters questioning the whole premiss of the debate. In the past, the Chief's word had always been law; what right had anyone to question his decision now? The Chieftainess's claim over Lichaba's and the right to summon lipitso there was in itself subject to dispute. The Sons of Seeiso had already decided the question of the Chieftainess's legitimacy in Lichaba's, why then the long discussion about whose right it was to summon the pitso?

The Chieftainess had at first asked for a postponement of one week only. By this time, she was pressing for a postponement until 30 January or even 5 February (by which time the Gazette might have appeared and the general election would be over). She had diverted discussion from whether or not there should be a postponement at all, to a heated argument about the date to which the pitso should be postponed. Finally at the prompting of Litaba the Principal Chief settled that the pitso be postponed to 21.1.1970.

It was now raining heavily and the people outside were angry; they had been waiting for over three hours. Chief Leboea went to the office door to give the people Chief Paul's message but when he started speaking some of the men, who had crowded on to the verandah, grabbed at him, and he had to be pulled back inside by a fellow member of the Chief's administration. The crowd was demanding to see their Principal Chief. Chieftainess 'Mampho went out next, when she heard the crowd accusing Leboea of siding with her against the Chief, but she retreated when threats were uttered against her. The crowd was shouting for their representatives to bring the Chief out to address them.

Litaba stepped out from the courtroom and told them to clear the verandah so that the Principal Chief might come out to speak to them without disturbance. They refused to move until they saw the Chief. When he heard this he went out and Chief Lejapoli called for silence. Then Chief Paul informed them that certain reasons prevented him from holding the scheduled pitso; they were to gather again on 21.1.1970.

The delay the Chieftainess succeeded in winning by having this pitso postponed shows up clearly the complications inherent in her maintaining so decisive a hold in the administration, for the difficulty of demarcating spheres of influence provided her with a wedge to contest and split decision-making lines. She was able to use her position to thwart the Principal Chief's holding a pitso which had the sanction of Local Government and the approval of the people.

Strictly, in terms of custom and courtesy, the Principal Chief should not act within the jurisdiction of any of his subordinate chiefs without consulting him first and going through him. But in this case

it was a very fine point that the Chieftainess raised. Chief Paul was acting on the orders of Local Government, and the question as to whether the Chieftainess should have been asked to convene a pitso to discuss her own dismissal was clearly a vexed one.

If one traces the pattern of involvement one discovers that the major forces involved in decision-making in Seeiso's are easily abstracted from the flux of events. The pitso itself had been called on the instructions of Local Government, which is indicative of a theme that has been developed throughout this thesis, that of the influence of the outer or encapsulating structure impinging upon the independence of the local community. The presence of a party-political candidate actively directing the demands of the crowd underlines the extent to which the national political arena obtruded upon the affairs of the encapsulated community. The representation of the faction and their supporters was indicative of the concern of the people that tribal democratic processes be adhered to, and the part they played reveals the strength of a continued commitment to tribal democratic practices. The continuity of traditional decision-making practices is revealed not only by the involvement of the people, but also by the role played by the Sons of Seeiso, whose part in the drama played out between the Chief and his mother was at all times a central one.

The degree of insistence of the people to a stake in the decision-making of the ward was manifest in the behaviour of the crowd who, when frustrated by exclusion from the discussion, made known their temper in outbursts of near-violence. It must be emphasized that the degree of commitment to the issue was undoubtedly influenced by the electric tension prevailing immediately before the general election. The Opposition was determined to oust Chieftainess 'Mampho and, as has been stressed above, her exclusion from office had significance of far greater import than a parochial chiefly dispute.

It was clear to many that the Chieftainess was fighting a rear-guard action and it was recognized that, although the tide of events seemed to have turned against her, actually to unseat her would prove difficult.

The faction was disturbed by the turn events had taken and with the Chieftainess's delaying tactics. The issue of Lichaba's was still far from resolved. Consequently, to counter the Chieftainess's effort to stymie matters, they met on 17.1.1970 at the home of Lejapoli to decide what course they should adopt if the Chieftainess again tried to gain time by frustrating the pitso to be held on 21.1.1970. They decided that if the Chieftainess was again successful in putting off matters they would tell the Principal Chief that he had failed in his duty to the people, and that they were going to take the matter before Local Government or if necessary even to the Prime Minister or the King. They also resolved to see that there would be an escort for the Chief's wife, Chieftainess 'Mamosala, to and from the Principal Chief's residence on 21.1.1970.

On 19.1.1970 Chieftainess 'Mampho wrote to her son to request a further postponement on the grounds that an unhealthy 'spirit of politics' had prevailed among the people at the meeting of 16.1.1970 and she felt that this spirit should be given time to die down. Chief Paul refused to consider her request and stated that he expected her to be present at the scheduled pitso.

On 21.1.1970 the Principal Chief told the assembly that he would ask his clerk, Rametse, to read out an announcement about Lichaba's; he had decided to write down what he wanted to say because, he stated, he wanted the announcement to be 'official' rather than merely verbal.

Rametse read the announcement, to the effect that when he was installed as Principal Chief, Chief Paul had reserved the area known as 'Mampho's or Lichaba's for his mother, and had given the Chieftainess control over it. He had been shown the folly of his action by the Sons of Seeiso who had reminded him that all principal chiefs retain direct administration

of an area within their wards. He intended making certain changes; the administration of Lichaba's would now fall directly under the Principal Chief's own jurisdiction and no longer under that of Chieftainess 'Mampho.

After the clerk had read the announcement, the Chief informed the gathering that this change would be recorded in a forthcoming Gazette.

Chieftainess 'Mampho then stood up and expressed her pleasure at seeing how the people had received their Chief's words; on 16.1.1970 there had been a bad 'spirit of politics' among them, but now that was gone. She went on to explain how she had retained control of Lichaba's under her son's instruction, and reassured the people that she was only acting on behalf of her son and not usurping his position, just as the Chiefs of the other sub-wards were acting in the interests and on behalf of the Principal Chief. Paul was born Principal Chief; no one could dispute or change that.

But, the Chieftainess noted, the people must not forget that chieftainship goes according to birth (i.e. it is the affair of the chieftainship and not of the people). Unless it appeared otherwise in a Gazette, the Chieftainess remained Chief of 'Mampho's, whatever her son said. If he was serious about having her name deleted from the Gazette, he should also consider having the names of all the other chiefs who acted on his behalf deleted from the Gazette for she, like them, was acting for him.

She concluded by exhorting the people to go forward to the general election in a spirit of peace, and said that they would meet 'on this spot' again after the election, for the question of Lichaba's was not yet decided.

The Chieftainess was asked how she could still be the acting Chief of 'Mampho's when Chief Paul had made it quite clear that she was to be deposed. Until it was deleted, she replied, her name was still in the Gazette.

Chief Lejapoli spoke for the people, thanking the Principal Chief for his statement and saying that the people, who had suffered under a divided administration for too long, would be grateful to be 'under one cool and pleasant shade'.

The issue of Lichaba's was overshadowed within a week by the general election of 27.1.1970 and the events that followed in its wake, for Prime Minister Jonathan declared the election invalid, suspended the Constitution and proclaimed a state of emergency.

Although conventional political activity was placed under a blanket ban, the Chieftainess's continued control of Lichaba's was not allowed to fade from attention. The core of the faction remained active and, even in straitened political circumstances, they found opportunity to renew

their questioning of the role of Chieftainess 'Mampho. For example, on 27.4.1970 they attended a pitso called by the Chieftainess about firewood so as to confront her by calling in doubt her authority. As it happened, they did not need to follow that line because the pitso was dominated by a political discussion about a group of vigilantes that had come into existence in the village to enforce the curfew and discourage Opposition activity. As the Chieftainess was known as a Government supporter, the turn taken by the pitso constituted in itself an indirect appraisal of her role as Chief of 'Mampho's.

The following month saw the deletion, by Government Notice, of the name of Chieftainess 'Mampho from the Gazette listing. On 24.8.1970 the Principal Chief locked up Lichaba's office in his administration building and told the clerks who had worked there to go home. The next day Chieftainess 'Mampho held her last pitso as acting Chief of 'Mampho's at which she informed the people that they were not tilling the reedbeds allocated them as they should. She reported this pitso to the Principal Chief who thanked her and said that such matters already scheduled before the closing of her office might proceed as planned, provided he received a full report.

On 5.9.1970 Chieftainess 'Mampho disappeared from 'Mampho's. Five days later it was reported that she had been seen in an outlying area. Her son asked her to return to 'Mampho's but she pleaded to be allowed to rest for a while for she would find it humiliating to be in 'Mampho's just then.

STAGE THREE: RE-ENGAGEMENT IN THE CONTEST

Chief Paul's 'illness' (10)

Although Chieftainess 'Mampho had been blamed for maladministra-

tion, Chief Paul, from the start of his rule, had not given decisive direction to ward affairs. A hiatus was left in the governing of the ward by the eclipse of his mother. Now that responsibility could no longer conveniently be laid at the door of Lichaba's office, Chief Paul had become fully liable. As an Opposition Principal Chief, Chief Paul was doubly unfortunate in not enjoying the patronage of the Government. If all this is coupled with the fact that his education had not been designed to train him for the day-to-day running of the machinery of tribal government, it was likely that the young Chief, retransplanted into the hurly-burly of Lesotho politics, should fall foul of the authorities.

On the morning of 28.10.1970 Chieftainess 'Mampho arrived in the village accompanied by Mofoka, Ntsabane and a third man, asking for an interview with the Principal Chief about the administration. Chief Lejapoli, working in the administration, took them before the Principal Chief who invited him to be present during the interview.

It transpired that the ostensible reason for their visit was a concern to advise the young Chief about some administrative deficiencies whose remedy was in the best interests of the ward.

The first was the monthly administrative meetings of chiefs and headmen which had not been held for some time. The second was the continued schism between the Chief and his mother. After these had been discussed, they came to the real nub of the visit: it had been noticed that Chief Paul was not well; it was known that he often left 'Mampho's to consult doctors; would the Principal Chief allow his mother to approach Local Government to suggest that he be granted sick leave?

When I discussed this meeting with Litaba, who had been given a detailed report on it by Lejapoli, he explained that the members of the deputation were acting reasonably in seeing the Principal Chief about things they considered him to be doing badly. They were all qualified to advise the Chief by virtue of their experience as administrators. But Litaba added this rider: 'Nowadays, in this time of politics, we don't take things like that; these people are all strong Government supporters ...' He also pointed out that had the deputation been acting in a traditional advisory capacity, they should have gathered representa-

tives from each of the sub-wards to show that they had the interests of the whole ward at heart. Besides, their meeting had been a private one: had they wanted to show their sincerity in helping the Principal Chief it should have been open to the people. Litaba was convinced that in some way this meeting was part of a power play designed to reinstate the Chieftainness in the running of the ward.

Litaba's fears were not unrealistic. On 18.11.1970 Chief Lejapoli told him that the Principal Chief had received a letter from Local Government informing him that he was not working well for his people and that, as he was sick, he should cease to act in office and should call a meeting of the Sons of Seeiso to appoint someone to act on his behalf.

Litaba went to see the Principal Chief who told him that he had been called to Maseru to see Local Government that morning; there he had found his mother and the other members of the deputation who had visited him. He was told that there had been many complaints from his people about the way he dealt with their affairs, and that he should take extended sick leave and have someone appointed to act for him. His doctors' reports were read to him and he was told that he needed a long time to recover from the sickness from which he suffered. He was also told that, because his wife, 'Mamosala, was not a Lesotho citizen and did not have a Lesotho passport, ⁽¹¹⁾ she was not eligible to act in his stead. The date fixed for the Sons of Seeiso meeting was 27.11.1970. Litaba impressed upon the Chief the urgency for taking competent advice to obtain a Lesotho passport for his wife so as to establish her status as a citizen of the country.

The role of Chieftainness 'Mamosala

At the outset of the fieldwork period in 1969 Chieftainness 'Mamosala seemed to be a relative outsider at the moreneng. She was

often referred to disparagingly as a bride who had come from South Africa with sejoale-joale (modern, modish) ways. When Chief Paul's lack of interest in the administration was brought up, it was often implied that gadding about would have held less attraction had it not been for the urban background of his wife. As power relations became contested in 'Mampho's, Chieftainess 'Mamosala appeared to be an unconsidered figure in the wings.

It was the faction under Litaba's leadership who first, to my knowledge, recognized her potential importance as a counterweight to the influence of his mother. On 31.12.1969 the faction showed her a copy of a letter they had written to Local Government and they discussed her husband's situation. She informed them that her position in the village was an unhappy one, for she had no real advisers and her husband did not confide in her about his administrative duties. She feared that if her mother-in-law gained more power she herself would be nothing, for as it was, people did not pay their respects to her when visiting the moreneng, but went straight to Chieftainess 'Mampho. She was told not to forget that she had been 'married by the people' to whom, it was intimated, she could always turn for support.

During the events that led to the unseating of Chieftainess 'Mampho, Chieftainess 'Mamosala was maintained as a presence by the faction. Before and after the lipitso of Lichaba's of 16.1.1970 and 21.1.1970, they arranged for her to be escorted from her house to the administration building and back again by a group of men and women as a mark of respect for her position. This ostentatious support was to signal overtly their endorsement of curtailing the Chieftainess's ambitions.

Prior to the Sons of Seeiso meeting of 27.11.1970, members of the faction realised only too clearly that unless they found a way to have Chieftainess 'Mamosala placed as acting Principal Chief, Chieftainess

'Mampho would become regent for her son again. This would once more set up a situation similar to the one the ward had found itself in prior to the long process that had led to the closing of Lichaba's office. They thus made preparations to ensure that nothing would stand in the way of Chieftainess 'Mamosala's being elected to act for her husband. They thought Chieftainess 'Mampho's supporters would oppose Chieftainess 'Mamosala's nomination on the grounds that she was not a Lesotho citizen and it was to block such a move that the faction leader urged the Chief to get his wife a Lesotho passport forthwith and to keep the fact secret. The Chieftainess obtained her passport the day before the scheduled gathering of the Sons of Seeiso, but few people knew of it. The faction leader also approached Chiefs Maleke and Mojake, who had both been vociferous in opposing Chieftainess 'Mampho's position in Lichaba's, to sound out their views on who was to act for the Chief. As they saw it, the possible candidates were: Chieftainess 'Mamosala, Chieftainess 'Mampho, Chief Lehloa (as Chief Paul's uncle), or Koteta (Chief Paul's younger brother).⁽¹²⁾ When they found that they were in agreement about Chieftainess 'Mamosala's being the most suitable candidate, they discussed how best to counter other nominations.

At the pitso of 27.11.1970, Chief Lehloa explained the circumstances of the meeting and stated that the duty of the Sons of Seeiso was to elect someone who would act on behalf of the Chief while he was sick.

Chief Maleke stated that the present custom was for a chief or headman to leave his wife to act in his place whenever he was absent from his area or sick; it was right therefore that Chieftainess 'Mamosala be elected to act for the Principal Chief. His nomination had the support of the majority.

Chief Kuoane Seeiso then moved that, since Chieftainess 'Mamosala was young, a newcomer to Lesotho and inexperienced in the administration of a chieftdom, Chieftainess 'Mampho be elected by the gathering instead. When no one seconded his motion he withdrew it, but added that if Chieftainess 'Mamosala took on the duties of acting Principal Chief, she would not have the time to nurse her husband during his illness.

When Chieftainess 'Mamosala was invited to comment on her nomination,

she said that her husband would speak on her behalf. Chief Paul expressed his agreement with the pitso's decision, but added that Seeiso's people had betrayed him by letting his enemies triumph over him. He had been ill advised.

The meeting then fell into discussion on the blame that could be apportioned to those who had been deputed at Chief Paul's installation to help the young Chief find his feet. Debate naturally turned to the pressing question of who was to advise Chieftainess 'Mamosala.

Ntsabane was nominated, seconded and accepted by the gathering. He was an experienced administrator and had long been associated with the chieftainship, but he had been with Chieftainess 'Mampho and Mofoka on 28.10.1970 when they visited the Chief to raise the questions of his illness and maladministration in his ward. He was known to be one of the Chieftainess's supporters, and a BNP member.

Chief Paul objected to his nomination, asking whether the gathering wanted to bind him fast with this adviser. He then asked Chief Mohao (who worked for the Government) about the legality of his choosing the adviser himself. After some discussion it was agreed that three names be submitted by the pitso to the Principal Chief who would pick one himself. They were Ntsabane, Chief Mojake and Chief Maleke.

Chieftainess 'Mampho then asked whether Chieftainess 'Mamosala fulfilled the legal requirements to act for her husband in a Lesotho ward. Chief Mohao informed her that he had received a letter addressed to the Principal Chief that very morning in his office which clarified satisfactorily Chieftainess 'Mamosala's status as an inhabitant of Lesotho.

After this it was decided that Chieftainess 'Mamosala would be 'brought before the people' and installed on 9.12.1970.

On 9.12.1970 the pitso to install Chieftainess 'Mamosala in her acting capacity was postponed by the police; the reason they gave was that at that time of the year many undesirable types gathered in Lesotho from the Republic and that no public meetings were to be held until the new year. The pitso was finally held on 23.1.1971.⁽¹³⁾

ANALYSIS

Political anthropology no longer exclusively studies--in structural-functionalist terms--political institutions of cyclical, repetitive societies. Its unit of space is no longer the isolated "society"; it tends to be the political "field." Its unit of time is no longer "structural time"; it is historical time. The combined unit is a spatial-temporal continuum.

A political field does not operate like clockwork, with all the pieces meshed together with finely tooled precision.

It is, rather, a field of tension, full of intelligent and determined antagonists, sole and corporate, who are motivated by ambition, altruism, self-interest, and by desire for the public good, and who in successive situations are bound to one another through self-interest, or idealism--and separated or opposed through the same motives. (Swartz, Turner and Tuden 1966a:8)

Swartz defines local-level politics as occurring

in communities where relations are "multiplex" rather than "simplex" (Gluckman 1955b, p. 19) and where politics is incomplete in the sense that actors and groups outside the range of the local, multiplex relationships are vitally and directly involved in the political processes of the local group. (1968a:1)

The events of the political contest described clearly conform to the salient features of Swartz's definition. Although the focus of events ostensibly hinged around confrontation between the Chief and his mother, one of the most important factors in this contest was the way in which it drew in actors, groups and institutions, revealed the complexity of their alignments, and showed up the various levels of interest involved in the decision-making.

To recognize the multiplicity and reciprocal influences of relationships affecting political action at the local level is one thing; what is less evident is how to select a suitable framework for their analysis so as not to distort the relative weight given to each factor. Max Gluckman (1940), in endeavouring to trace the intricacies of a rapidly changing Zululand, hit upon the device of using the 'social situation' of the ceremonial opening of a bridge to introduce the actors, groups, currents and forces contributing to the complexity of the country at that time. By drawing together the skeins of the social fabric around one event, he could show how the dynamics of the 'situation' resulted from the interplay among its structural underpinnings. In much the same way, I have framed the multiple processes that constitute the politics of making a decision in 'Mampho's in the lens of the contest for Lichaba's. Gluckman's

analysis is mentioned to indicate a style in the handling of data rather than a precise analogy. It is his concentrating on a concatenation of interests that concerns me here.

The intensity of the Lichaba's issue drew in the concern of the Sons of Seeiso, the sechaba, the outside structures of Government and the political parties contesting in this constituency. It would be possible to construct a structural framework to encompass a description of these events, looking for clearly delineable boundaries, common values and homogeneous functions, meshing in a well-ordered model. What such an approach precludes--and it is a critical inhibition--is the kind of notions that arise when looking at the events 'on the ground', and the most insistent of these are not of mutually exclusive boundaries and clearly defined functions, but of flux and accommodation, of interpenetration and of change and manipulation of values. Nor can a structural approach adequately account for such 'non-groups' as factions, temporary alliances and shifting coalitions. By concentrating on structure, we can

set out in admirable detail what the social structure is, how it is maintained, how various institutions are interrelated to form a system of relationships. We are then shown how the value system supports this structure. All loose ends are neatly tied up: behaviour that does not conform to the normative picture presented is ignored or explained away as 'deviant' or 'exceptional'. Yet that does not solve the problem, for this exceptional behaviour takes place within the same social system that is being studied; it must be explained by factors which operate there. In short, we are presented with a model of how the anthropologist thinks (and all too often how the latter's informants would like him to think) the system should work. The trouble is that ideal systems are presented. Jack and Jill are dismissed as exceptions at best or deviants at worst. Yet Jack and Jill are real, and the system but a model. What we end up with is a set of generalized role relations: nameless husbands and wives, rulers and subjects, and so forth. Examples, if provided, are carefully selected to illustrate this. Real people making choices between conflicting norms and manipulating these for their own benefit are almost totally absent. Jack and Jill have disappeared. ... (Boissevain 1974:12)

Like Bailey, who feels 'uneasy when faced with any analysis which does not allow man a central role as an entrepreneur' (1969; 2nd and

paperback ed. 1970:18), I should like to place foursquare in my model of the Lichaba's contest the concept of 'creative politics'. Actors on the stage exercise choice within structural frameworks, but are not altogether determined by them. It is this process of action that may support structural alignments, modify structural alignments, set out to deracinate structural alignments, or initiate chains of events that may lead eventually to new structures emerging.

Neither independent individuals nor the particular configurations which they form can be considered separately from each other. The interrelation between the two is dynamic, and forms a process with an inherent momentum or development of its own. ... (Boissevain 1974:9)

Barth's hypothesis, that the choices made by transacting individuals, given certain 'parameters of value' (1966:5), have the cumulative capacity to generate new forms, has bearing once again. I consider that the logic of events in the Lichaba's struggle provides instances of the actual working out of choice between divergent options and more importantly, insight into the process by which change is generated.

The political field

The territorial range and social scope of a political field are conditioned by the nature and intensity of the interests of the affected parties. This means that a field's social circumference is extremely fluid, expanding and contracting over time in response to changes of interests, or to policies in regard to interests. (Swartz, Turner and Tuden 1966a:27)

The field material comprising the Lichaba's contest is not readily tractable to a structure-function mould. One cannot confine one's examination to the village of 'Mampho's and isolate it as the geographic locality of the contest. The Lichaba's struggle is not to be pinned down in terms of place nor can it be delineated at a certain point of time. I think of it more as a stream of events which may conveniently be characterized by the term 'field'. By this I mean events converging around a certain goal because of the participants' common interest in

that goal. The notion of political fields as outlined by Swartz, Turner and Tuden (1966a) and by Swartz (1968a) meets many of the demands set up by the Lichaba's data. I define a field as a spatial-temporal continuum, whose boundaries are not fixed, but move in accordance with the engagement and disengagement of actors, certain areas of social behaviour being highlighted as the point of interest changes. The area the field embraces may expand or contract over time in accordance not only with the participants, but with the resources, supports, values and norms which are introduced.

The contest for Lichaba's constitutes a spatial-temporal continuum. Although most of its confrontations took place within the village of 'Mampho's, the absorption of those involved in it spanned a much wider area. At times the issue was prosecuted by a few concerned villagers; at others it led to large gatherings of interested parties assembling for discussion from the whole ward or even further afield. The spatial dimensions of the field ranged from the village to the national capital. In time, the events covered some of the most crucial years in the history of Lesotho, starting before independence, to the first post-independence general election and subsequent coup. The issues of Lichaba's were given direction by, and refracted, important occurrences at the national level and, in turn, took on meaning within the national political struggle.

"Field" is a concept which allows for both continuity and change in the relations among the participants in politics and it does not have the rather rigid quality carried by such more common terms as "political system" or "political structure." (Swartz 1968a:6)

Since our field is defined in terms of participation rather than membership, its boundaries are malleable to allow for the appearance of actors on the stage according to the dictates of interest. At times the Sons of Seeiso gave public ratification to events, then faded from view for their place to be assumed by the more clandestine activities of the faction. Not only are boundaries dependent upon the movement of actors

and the consequent changes of perspective and activity, but they are also subject to the type of resources and supports those actors can recruit to the field. Thus the Chieftainess's threat to call in a lawyer brought to bear a resource hitherto unexploited in this field and one which challenged the values underlying the role of the Sons of Seeiso.

Having abstracted the field, we are faced with the difficulty of explaining what surrounds the spatial-temporal continuum that has been isolated. It is self-evident that such a field must be embedded in a social matrix and we must look to the relationship between the field and its environs. Swartz suggests that the idea of an 'arena' is helpful here 'to mark off a social and cultural space around those who are directly involved with the field participants but are not themselves directly involved in the processes that define the field' (1968a:9). The 'contents' of Swartz's arena 'depend upon relations with participants in the field', and consist of actors and their 'repertory of values, meanings, and resources'. In addition 'values, meanings, and resources possessed by the field participants but not employed by them in the processes which constitute the field are also part of the arena' (1968a:9).

While I endorse broadly the concept of 'arena', I should prefer to use the less specialized term 'environment' to refer to the conceptual 'space' adjacent to and encompassing the political field, partly because elsewhere I make use of the term 'arena' in its more literal garb of 'a sphere of conflict', and partly because the word 'arena' has too definite overtones of specified locality. I accord less tangibility to my concept of environment than Swartz does to 'arena' in that I view it more as a potential that may be activated by field participants. Thus, the question of land allocation exists in the environmental dimension as a latent unformulated resource until it is pulled in as a field issue to gain particular keenness from the use that is made of it.

I return for a moment to the lawyer the Chieftainess threatened to call in to illustrate a further point common to Swartz's 'arena' and my 'environment'. The Chieftainess uses the lawyer as a resource she might activate. The possibility of his entering the contest becomes a social fact within the field, with its own ramifications, quite apart from the anticipated consequences of a lawyer's actual armoury being brought to bear. The fine distinction here is a demonstration of how relative is the boundary between a political field and its environment; relative, that is, to such variables as the interests and values of the actors, the stage of prosecution of the contest, and the significance attached to communicative signals between the contestants.

As a political field expands and contracts in rhythm with the fluctuating engagement of its personnel or with changes in the repertoires of resources, values and support of its continuing actors, so the environment of the field would also expand and contract. A good deal of the mutation of the environment would occur in the area of its 'inner' boundary, as it were, where the 'inputs' and 'outputs' of the field create shifts in their common boundary. But some change would also be inflicted on the environment's 'outer' boundaries, i.e. those boundaries it does not share with the field. Had the lawyer entered the contest as an actor, his total resources, contacts and values might have swelled both field and environment. Thus field and environment interpenetrate each other.

Goals

Having relegated "structure" to the realm of concepts whose referents have only as much significance as they gain through empirical demonstration and deprived it of definitional status, we must turn to the concept which comes closest to assuming the place "structure" has in many other definitions of politics. The central concept used here is "goal." It is through the discovery of public goals that the investigator who adopts this view of "politics" identifies political activity. ... Moreover, all political processes (which are, naturally, expressed in interpersonal relations) whether they be marshalling of support,

the undermining of a rival, the allocation of power, or some other process, take place in connection with public goals.
(Swartz 1968a:2)

It is fruitful to discuss at this point what gives the field coherence, what holds together the stream of events. If the field consists in the interaction of purposive individuals, then insight into the cohesiveness of the field is related to the objects which elicit purposive action.

The events of the contest for Lichaba's take on a logical pattern if we identify as running through them the public goal of determining the scope of the office of Principal Chief of Seeiso's ward. However deviously this public end was related to private motivations, however variable was the participants' consciousness of this goal, however discrepant were actors' formulations of their goal or the goal of their adversaries, and however many intermediary and periodic goals claimed attention, the common and ultimate aim that prompted engagement and re-engagement revolved around a say in the allocation of power in Seeiso's. It was this nuclear concern, first in the form of the disputed accession of Chief Paul and later as the issue of Lichaba's office, that pulled in all the participants.

Let us identify the main participants in terms of their position vis-à-vis the central goal before trying to tease out the more peripheral, complex and possibly covert ends that motivated action in the field. The central protagonists competing for control of the scarce resource of power in Seeiso's were Chief Paul and his mother. The Chieftainess's position seems clear: both in attempting to delay her son's installation and in trying to retain a foothold in the administration, she remains essentially the director of prosecuting her own cause. I interpret her actions as those of a woman used to the exercise of power and authority striving to maintain her tenure. Even her commitments in the party-political sphere were contingent on the very real drive she seems to have had to ensure

herself a position--and the income deriving therefrom--of power, status, and authority.

Chief Paul's position is less clear. His end, in returning from England to take up his principal chieftainship seems straightforward. Less so is his position regarding his mother's control of Lichaba's. Unlike his mother, he was not the prosecutor of his own cause and it seemed to me that he acted under pressure in closing her office. During my stay in the village the whole subject of the exact relations between the Chief and his mother in the matter of sharing power in 'Mampho's remained questionable. None of my informants was clear on whether Paul had willingly ceded power to his mother or whether he had been duped.

Chief Paul lacked the ability to take hold of his affairs in the way his mother did to champion his own cause and he appears at times to have become a stooge or stalking-horse behind which others could prosecute their own interests. I do not have detailed data on all the supporters of the Chief who might actively have assumed the role of protagonist on his behalf, certainly there were politicians and individual members of the Sons of Seeiso who did so. I do however have information on how the faction actively aligned themselves against the Chieftainess on the Chief's side. Particularly in the closing of Lichaba's office the faction played a central part in formulating the goal and in badgering the Chief to compel him to take steps towards implementing it. In terms of the central goal then, the faction's declared aim was to block the Chieftainess from the avenues of power in the ward in order to secure undivided authority for the Principal Chief. Their ostensible goal was a composite one, including such subsidiary avowed aims as reforms in the administration, the restoration of communication between the Chief and the sechaba, and the reassertion of the sechaba's stake in decision-making.

Their role as protagonists for the Chief cloaked what I shall call

their submerged goals. For example, two of the core members of the faction in the early stages of its activity privately expressed their wish to use it to score points for the BCP before the general election.

Another core member, who belonged to the BNP, became involved in the faction's activities after his return from working in Maseru. He had a personal grudge against the Chieftainess, had long been friendly with and a supporter of Chief Paul and, because of an asserted concern for the ward, backed the Chief against his mother, notwithstanding his own political allegiance. However, it should be noted that his support of the Chief secured him a position in the administration.

We now come to the role of the Sons of Seeiso, whose relationship to the central goal can be subsumed broadly as that of referee. Their declared aim is a composite one, related to their view of their responsibilities as decision-makers, advisers, peacemakers and arbiters. Their subsidiary overt goals have to do with their role as 'keepers of the chieftainship' as well, and involve such aims as upholding tradition and interpreting custom. The body preserved a front of impartially deciding on chieftainship affairs without indulging in the sort of political lobbying that one expects of something like a faction. It is as well to remember, however, that as a body they include individuals employed by Central Government, as well as some openly partisan followers of both the Chief and his mother. This split in itself was also broadly representative of support for the Opposition and the Government. Thus their goal of 'putting things right' in a divided chieftainship must be qualified by taking into account the disparate involvements of individual members.

Central to the Government's public goal must have been to effect a settlement of that which was assuming the proportions of a public scandal and to create order in an administration that was suffering because of it. To implement this goal, they recognized the competence of the Sons of

Seeiso to decide the issue. . However, the role of the Government in according final legality to decisions must not be underrated, as is stressed in Chieftainess 'Mampho's repeated assertions that she would remain in power until her name was struck from the Gazette. Government intervention in the question of Chief Paul's illness enlarges my point here. Given this strength and influence on chiefly affairs, it is easy to see why other, more covert, goals were imputed to the Government by those who supported Chief Paul. For example, it was suggested that while they had no option but to acknowledge his claims, in the long run they mistrusted him because of his political sympathies with the King. The imputed aim of the Government 'to bring the Chief down' was used by his supporters to explain such things as the later removal of the Local Court from his village and his eventual exclusion from the administration. These last are instances of the extreme suspicion with which Government action was greeted by local Opposition.

It was foreseeable that party politicians be drawn into both the accession and the Lichaba's office disputes. They presented their ostensible goal in terms of the age-old political formula of 'the rights of the people'. Opposition politicians first ranged themselves against the Chieftainess when they publicly challenged her right to speak for the people of Seeiso's, the Lintsu, on the issue of the King's powers. The contingent goal here was the Chief's bid to gain his chieftainship, for the Chief was known to support the King whose powers the BNP was seeking to circumscribe. In the issue of Lichaba's, the Opposition candidate of this constituency was prominent against the Chieftainess, firstly as a party-political rival and secondly because on a crucial occasion he chose to represent himself as spokesman for the sechaba excluded from the decision-making which was going on behind closed doors. The involvement of politicians in the affairs of the ward shows how the central issue had

the effect of a catalyst, enabling sectional interests to prosecute their various goals under the guise of a concern for the integrity of the chieftainship.

Supports

Every political end has some support or we would not be aware of its existence, so that even when an end is being altered radically or disappearing from the field, we can examine its supports if we wish to. (Swartz 1968a:22)

Political engagement, when it involves contest, must at some stage deal with the mustering of support. If we return to the opening stages of our contest and examine the relative strengths of Chief Paul and his mother, we find the balance of advantage weighted in favour of the Chief. He had been educated at a public school in England and later attended Oxford; his educational career had very closely paralleled that of the King. He was thus a young man of whom his people, because his education had taken him so far outside their world, anticipated great things. His claim to the principal chieftainship was without ambiguity; he was the first son of the late Chief George, returned to take up what was rightly his. He was thus the young, legitimate heir in whom the ward's expectations were vested.

His mother, whose regency he sought to end, had that stability in office which goes with the long and successful exercise of power and authority. She was by all accounts a most capable Chieftainess. She had built up the stock or repertoire of expertise we see so competently displayed in this case study. There is no question of her rule having been impaired by being a woman in office; she had stamped her imprint firmly on the affairs of the ward and her record was a good one. She used the fact that she was in office as the chief support of her position. This led to her being able to maintain a succession of delaying and bargaining tactics where she quibbled about fine points of legality stemming

from the fact that she was the incumbent.

Chronologically her 'Lintsu lira' speech signalled the start of her loss of support. There was an element of miscalculation in her entering the arena of national politics in support of Prime Minister Jonathan, for the Opposition were able to accuse her of overstepping the bounds of her office in misrepresenting the opinions of the sechaba in the affairs of the country. The reaction to her speech worked at two levels. It enabled Opposition politicians to seize upon the issue and use it as a purely political rallying point. Overlapping with this was that some men in 'Mampho's realised that it could be used to try to show that the Chieftainess was misusing her position as Principal Chief and that it was high time Chief Paul took up office. (14) The two aims mentioned here were not mutually exclusive as Chief Paul at that time was already viewed as a supporter of the King. So although the Chieftainess tried to use the Lintsu as a support for the Government, and possibly felt that she was backing the stronger national political section, she might have misread the vigour with which the Opposition would use her speech as a lever against her.

It must be noted at this point how the Lintsu, the people of Seeiso's, had been drawn into the field as a potential support for which the Chieftainess and the politicians were vying already. The pitso of 30.4.1966, called with the declared object of making the Chieftainess answer to the Lintsu for using their name, showed the Opposition politicians claiming their right to speak for the Lintsu. Clearly both the Chieftainess and the politicians were speaking only for that section of the people who shared their political alignment, but it is interesting that, while the Chieftainess claimed the people's support for the Government on a purely political issue, the politicians claimed their issue to be of tribal import as well. They were thus attempting to extend their appeal

beyond party lines by using the more generally acceptable platform of Chief Paul's accession. The resolution passed at this pitso, attended predominantly by Opposition supporters, was a nice blend of tribal interest and political expediency.

Politics and politicians were thus drawn into the field as support for both contestants and were to remain an intermittent support throughout the contest, but it is necessary to point out the ambiguity that was attached to this type of backing. At the Sons of Seeiso meeting of 28.5.1966 which convened in response to Chief Paul's letter to the chiefs of his ward, the dubious efficacy of having one's cause taken up by politicians was brought out by Chief Lehloa. He was able to question the propriety of having chieftainship affairs associated with politics, and he could make the point that the involvement of such prominent politicians as Ntsu Mokhehle and Dr Mokotoko in a tribal and chiefly matter had blown up the issue of Paul's accession out of all proportion. He was thus able to suggest that the validity of Chief Paul's case had been compromised by committed party politicians out to serve their own ends and, moreover, that Paul's calling of the pitso had been instigated by those politicians. The wheel of political thrust and counterthrust had completed one revolution, as Chief Lehloa was known for his support of the Government.

Chief Lehloa's last ploy was a sharp one because Chief Paul's letter summoning the chiefs to this pitso avoided any articulation of demands that smacked in the slightest of his own or his mother's political commitment. He had taken care to aim his appeal to a quite different level of potential support, that of the custom sanctioned body of chiefly decision-makers, and thus engage the support of the traditional sphere. In a sense he was seeking to activate a support that was ready-made to suit his needs, for as a traditional body, they would find it difficult to deny the heir his hereditary rights without appearing un-

reasonable. In fact throughout the contest the Sons of Seeiso majority would decide in Chief Paul's favour and in favour of what they saw as his best interests, and this support would be decisive in the matter of his installation, in the issue of Lichaba's office, and finally in the question of his wife's acting on his behalf.

It is not enough for contestants to have secured access to the potential supports available, in this case, party politics and politicians, the people, and the Sons of Seeiso. In a political contest, support must be maintained and worked for; it must be mustered and remustered at every critical stage to remain effective. An examination of the part played by the sechaba is illuminating here. It may be said that the sechaba exist as a kind of latent force in the environment, to be activated by either side. It is they who give the weight of public ratification. But it was the faction who created a body of support which it termed the sechaba, that gave the weight of public numbers to the decision to close Lichaba's office. The faction, through its machinations, had the organizational capacity to throw in supporters for the Chief under the guise of popular representation.

The Chieftainess's cause suffered from the lack of a faction with the tenacity displayed by the one supporting the Chief. In the village her most visible support came from the staff of Lichaba's office. This core of followers, tied as they were to Lichaba's office, were early and cleverly compromised by the campaign that was waged to discredit all those associated with the office. The very fact of their being office-holders limited their mobility in mounting an effective campaign on the Chieftainess's behalf and provided a convenient target for attack. The active supporters of the Chieftainess were unable to muster a physical presence in the way the Chief's faction so effectively did.

The process of mustering support may be effected in various ways.

We have seen how in turn the Chieftainess, politicians, and the faction claimed to be mediating the consensus based support of the people. A common way of recruiting support lies in the meeting of demands. But the processes of formulating and presenting demands may offer considerable scope for management. An instance of this is that demands may be created simply in order to satisfy them, and this element is not entirely absent from the faction's exploiting the people as a support. Part of the faction's recruitment of support lay in formulating demands such as 'we people need an undivided administration', and then setting in motion a train of events designed to secure that end. This is similar to the Chieftainess's suggesting that, as her son was not well, someone ought to be appointed to act on his behalf to ensure the smooth running of the administration--a demand she was well qualified to meet. The art of successful politics would seem to lie in the timing of the presentation of a demand so that it is congruent with an actual, potentially exploitable situation. For example, it is perhaps worth speculating briefly as to whether the whole issue of Lichaba's office would have sustained force had the faction not been continually active in calling for its resolution.

This type of politicking is a form of persuasion, as is the process of convincing potential supporters that the course of action most beneficial to them is the one suggested by you. This is part of the business the faction embarked upon to engage the assistance of the Chief. Such persuasion lies at the centre of activating political support. At the Lichaba's pitso of 16.1.1970, when the people remained bunched together on the verandah excluded from the discussion indoors, at least part of the momentum of their incipient violence seems to have been due to the skilful way in which demands were directed for them by the Opposition politicians who were present. The efficacy of the people's support here stemmed from the latent threat they constituted.

Resources

The elements that compose the environment of a political system remain so many empty categories until an individual begins political action. When a particular course of action is inaugurated, environmental factors become variables in a calculation that the actor must make in an effort to determine how to obtain his goal with the least cost and with the greatest likelihood of success. (Nicholas 1968a:310)

One of the political contestant's earliest tests of ingenuity lies in his securing access to, and his effective deployment of, the resources that rest as potential in his environment. The way resources are used in the field has a direct bearing on the supports, values and goals of the participants. Thus the bringing in of resources is seminal in giving definition to the field in that it may recruit new actors, subtly alter goals, lead to the assertion of new values and shift the focus of interest.

Consider for example the increasing engagement of Chieftainess 'Mamosala as a resource, and particularly her introduction as an alternative candidate to Chieftainess 'Mampho. In many ways Chieftainess 'Mamosala was suitable from the Opposition point of view: as his wife, she would keep the locus of power more or less within the control of Chief Paul; his temporary surrender of office would thus not be construed as a defeat in the way it would have been, had he been replaced by his mother. Getting their own candidate into office would have palpable advantages as it would ensure that they maintained access to the primary centre of decision-making of the ward.

The entrance of Chieftainess 'Mamosala registered a shift of accent in the field. Now, for example, the emphasis moved away from how and what Chief Paul ought to rule to whether he ought to rule at all and, once his supporters accepted that his case was indefensible, they replaced him with a new contestant. This is not to say that the Chieftainess's opponents had abandoned their major goal. Their interim and sub-

sidary goals became reformulated, however, in that, instead of seeking to stabilize Chief Paul, they were now presenting his wife under the continued, overriding goal of blocking Chieftainess 'Mampho from acceding to a position of power.

In order to marshal a convincing case, Chieftainess 'Mampho's opponents had to effect a change in the values which gave validity to their earlier campaign on Chief Paul's behalf. Previously presented values were modified or replaced with new ones as the cause underwent a laundering or cosmeticizing process. For example, precedents were now raised of how suitable it was to have a wife act on behalf of an incapacitated husband, and of the dangers of having a mother, uncle or brother act in this 'caretaking' role. My desire here is to catch the rapid norm-shift from the insistence on Chief Paul himself ruling, to the building up of his wife as a suitable temporary replacement.

Similarly, there was renewed bargaining about rules as new exigencies had to be met. At the pitso of 27.11.1970 to discuss who was going to substitute for Chief Paul the gathering seems, by tacit consent, to have avoided any embarrassing dissection of Chief Paul's administrative shortcomings by channelling discussion into apportioning blame to his advisers. Once weight had been lent to the whole question of advisers by the discussion that sought to place onus for the affairs of the ward on bad advice rather than on weak administration by the Chief, it became a negotiable commodity. Firstly, the gathering had concurred in the necessity for appointing an adviser--a new element in the game--and secondly, with the issue of the adviser now so closely associated with the 'health' of the chieftainship, the appointment of Chieftainess 'Mamosala's adviser represented additional space for transaction.

In the same way as the Chieftainess's opponents reviewed the values they invoked in terms of their new resource, the rules they endorsed had

to be modified in terms of the new situation as well. In the previous round of the contest, for example, the issue of Lichaba's office, they had declared the recruitment of outside legal advice to be a breach of the overall intention of keeping the problem within established frameworks of traditional decision-making. It is therefore interesting that now, in a discussion with Chief Paul about his wife's status as a citizen of Lesotho, the faction leader actually advised the Chief to seek expert legal advice himself.

Counsel was needed because Chieftainess 'Mamosala's entrance could be expected to provoke a counter-reaction from the side supporting Chieftainess 'Mampho. And indeed there was one: 'Mamosala's fitness for office was questioned on the grounds of her status in Lesotho, her youth, her inexperience in administrative matters and the objection that if her husband was ill, her place was at his side to nurse him, not bearing the burdens of a large chieftainship.

Thus although the basic goals and alignments remained constant in the field, the recruitment of a major new resource had as consequence a re-definition of the boundaries of the field, subtle alterations of declared aims, shifts in emphasis in values and, in fact, readjustment of the balance of the field in terms of the new input.

The way in which opinion was orchestrated against Lichaba's office provides insight into the process whereby a resource may be systematically created or realised out of suitable 'raw material'. I see this as an advertising and subtle distorting which is closely akin to the business of information management.⁽¹⁵⁾ It is aimed at presenting a particular 'definition of the situation', a definition that is projected in accordance with that view of 'reality' that is advantageous at a particular time and in a particular set of circumstances.

At each major stage, engagement may be viewed as taking the form.

of the sending and receiving of messages between the contestants. Bailey makes the point that political competition will be accompanied by the passing of information and messages signalling the relative strength and intention of the competitors; that this signalling takes place in an orderly fashion because it is subject to rules; and that these messages may be termed 'confrontations' (1969; 2nd and paperback ed. 1970:28).

One obvious confrontational locus in the Lichaba's contest is the arena provided by the debate forum of the pitso. I wish to show briefly how the use made of one pitso illustrates the importance of close attention being accorded to the flow of information in a political competition.

The calling of the pitso of 30.4.1966 firstly signalled to Chieftainess 'Mampho that there was the intent in her ward to challenge her authority. This is obviously so when taken in conjunction with the fact that her son had recently returned from England and was pressing to become Principal Chief. Of importance is also how carefully preparations for the pitso were framed to give the appearance of conforming to certain rules, in that its presentation was expressly designed to avoid accusations of political interest and seemingly to express the 'legitimate right of the people' to question the Chieftainess. To this end, for instance, one of the organizers of the pitso addressed the gathering, calling upon them to stop singing political songs and shouting slogans drawing attention to their party-political ties. The resolution passed at the close of the pitso, that the Lintsu had decided, because of the Chieftainess's speech in Senate, that Chief Paul should be installed, tried to mask its obvious political ramifications. Thus the presentation of the situation was designed to give off the impression of expressing the will of the people, an overflowing of popular sentiment against the Chieftainess's action. The pitso may be likened to a stage-managed performance, the bulk of the set designed to camouflage the specific intent of the gathering.

That the pitso was held at all, constituted the exchange of a message challenging in its form. That it had been successfully organized and presented, revealed the operational strength and organizational capacity of the Chieftainess's opponents. The holding of a well attended pitso without recourse to the Chieftainess's administration was an indicator of her challengers' political competence.

Rappaport (1967) draws an analogy between the dancing festivals of the Tsembaga held during a kaiko and the ethological concept of display. The measure of future competence in war among the Tsembaga is taken by the number of future allies who come to dance: 'those who come to dance come to fight' Rappaport (1971:62). It is useful to consider the pitso within the frame of a display arena. The pitso demonstrated ostentatiously the holders' facility in setting themselves up against the Chieftainess. The occurrence of the pitso itself was a signal of engagement, and its content, and the coding of this content, were a warning of the drawing of lines of hostility.

Just as important as the more striking interchanges of messages across the arena was the selective and pervasive dribble of information which both sides used, either for its erosive capacity or to foster certain positive impressions. Its projection, once again, was beamed at defining a certain 'reality', seeking to set one side's stamp to the malleable face of public opinion. This technique lacks the public nature and platform of a pitso, and makes use of the less formal channels of opinion management.

Paine defines gossip as 'a genre of informal communication and ... a device intended to forward and protect individual interests' (1967:278). The flow of information which was so characteristic of this field certainly bore many resemblances to gossip, of which it at times made use, yet to term it such is to distort slightly its meaning, for it involved the selective assembling and spreading of information, and was thus propagandistic too.

Propaganda is closely allied to what I shall term political myth-making: the collection, focusing on and disseminating of certain stories, assertions and facets of character so that by repeated asseveration they come to bear the ring of truth or at least to have widespread currency.

Let us start by viewing this process from the perspective of Chief Paul's proponents, who waged a campaign to furbish his image in a favourable light. This is what I call myth-making, even though the 'myths' may well rest on a solid foundation of truth. Chief Paul was often represented as a beleaguered figure, it being maintained that his position was under consistent assault. His friendship with and support of the King were made much of in the Opposition camp, as were accounts of how this relationship subjected him to Government sanctions. The point was made that his career had closely paralleled that of the King. His supporters presented him as a symbol which the Government would gladly have won over. They attributed the pressure which, they alleged, was brought to bear upon him, to the importance of his position in the context of Lesotho politics. It was suggested that it was because his political leanings irked Government that its supporters would have welcomed his being 'brought down'. For example, when the Local Court was moved from the village, one interpretation was that its removal was directed at humiliating him.

Thus Chief Paul was often made the metaphor of resistance to Government pressure and interference. It was related that, while he was claiming his chieftainship, he had resisted attempts to buy him off with offers of sending him to an American university. In the same way, it was alleged, he had withheld his concurrence when a delegation of chiefs visited him early in the emergency to ensure that he toe more closely a Government line. During the early stages of the emergency, a story that was current in the village held that he had intervened to protect villagers against police brutality and victimization, declaring that the police were required to

channel their activities through his administration and could only enter and search in his area with his consent.

Part and parcel of the creating of Chief Paul's positive image was the way his proponents focused on the shortcomings of his advisers and administrative staff for whose incompetence the Chief had to take responsibility. By turns, they were seen as inefficient, unconcerned, corrupt, or positively suborned, and constant rumours were in circulation about the degree to which they could be trusted. What was taking place here was a deflection of blame from the person of Chief Paul to the lesser figures of his subordinates.

The myth of the beleaguered Chief was naturally contested in a counter-presentation designed to show the Chief not so much as an embattled ruler but as undermined from within by his own shortcomings. The aim of his opponents was to interfere with positive impression signals about him. And it required no great skill to draw attention to the young Chief's weaknesses. He was talked about as an irresponsible young man; he did not spend enough time in his village engaged in the business of his ward, but sought more 'sophisticated' pleasures; muddles in land allocation became 'cautionary tales' aimed at demonstrating the ills that could beset an administration under a neophyte ruler. The validity of these 'myths' was greatly strengthened after the resolution of the conflict over Lichaba's as the shortcomings which continued then had to be placed squarely on Chief Paul's shoulders. In conversation with me at that time, some of his most fervent supporters admitted privately that there was much to be critical of in the young Chief's conduct.

In dealing with the orchestrating of opinion against Lichaba's office, I drew attention to the way in which opinion was slanted in the ward against the authority of the Chieftainess. A woman with her resources of personality and the experience of having ruled through some of the most

turbulent years in the evolution of Lesotho's politics, could be relied upon to go to ingenious lengths not only to promote a positive image for herself but to discredit her adversaries as well, in the transmission of 'signed' (Paine 1970) messages.

The Chieftainess's presentation made much of the fact that many of her opponents belonged to the BCP, and were thus extremist. As we have seen, it was not difficult to suggest that support of the Chief was compromised by political interest. There was a sense in which the Chieftainess's position was represented as having connotations of stability and orderliness, where the strong innuendo was present that support for Chief Paul was congruent with political radicalism and opportunism.

In the Sons of Seeiso meeting held on 28.7.1969, Chieftainess 'Mampho made use of the gambit of raking up information aimed at discrediting individual members of the meeting who were supporting her son's position. She was fighting a rearguard action in this meeting and, from its outset, she sought to disparage its very holding. For example, she stated that the matter of Lichaba's office, and the discontent there was alleged to be against her position, had only come to Government notice because of a letter written by a group of 'brandy drinkers'. As the meeting progressed, she singled out individual members of the Sons of Seeiso who disagreed with her, as targets for personal attacks designed to reflect on their credibility as administrators and on their fitness to decide. Thus, one was incapable of controlling his wife; another was himself listed to rule in two places at once (surely he could not begrudge her an income from one gazetted area); a third was a demonstrated failure as an administrator.

What Chieftainess 'Mampho was doing here is not very different, I would contend, from the action of the Khan in breaking up an assembly meeting in Swat Pathan, described by Barth (1959a; reprinted 1968:117-18) and commented on by Bailey (1969; 2nd and paperback ed. 1970:86-7). The

effect of her drawing attention to the 'back-stage' personal attributes of her opponents was intended, in my opinion, to act as a cut-out mechanism, and a breaking of the rules of debate to direct discussion away from the question of whether she should continue in charge of Lichaba's.

The possibility that her personally aimed attacks might stall or disrupt the assembly was at least a hoped-for chance, for they must be seen as falling into the same category as her later attempts to have meetings postponed. That she was trying to disrupt the course of debate so as to divert attention away from discussion of her right to rule, and that she was trying to provoke her opponents into having to adopt a defensive stance, was recognized and commented on by several of those present.

Legitimacy

Submission to an order is almost always determined by a variety of motives; by a wide variety of interests and by a mixture of adherence to tradition and belief in legality, unless it is a case of entirely new regulations. In a very large proportion of cases, the actors subject to the order are of course not even aware how far it is a matter of custom, of convention, or of law. In such cases the sociologist must attempt to formulate the typical basis of validity. (Weber 1947; paperback ed. 1964:132)

It is an induction from experience that no system of authority voluntarily limits itself to the appeal to material or affectual or ideal motives as a basis for guaranteeing its continuance. In addition every such system attempts to establish and to cultivate the belief in its 'legitimacy.' (Weber 1947; paperback ed. 1964:325)

The legitimacy of a political order may be viewed as a type of support in that its ascription depends on bestowal by the group subject to that order. It is ideally based not on threat or coercive force, but stems from a congruence between the expectations and values of the subject group and the degree to which the anticipated criteria are met (Swartz, Turner and Tuden 1966a:10-11).

Friedrich directs attention to the consensual underwriting of legitimacy: 'In the degree to which the villagers think, believe, or

feel that a leader's rule is right, and that he is acting on the basis of their ideal political culture, we may speak of "legitimacy"' (1968a:244).

Between the paradigm which a political community accepts as constituting an attempt to define legitimacy and the actuality of the political order that is under scrutiny, there must exist to some degree a tension. The hard facts of political circumstance are seldom in accord with paradigms of what ought to or should be. It is fairly self-evident that a political order seldom construes exactly with the scrupulous demands of a blueprint or grundnorm of legitimacy and, further, that there may be radical disagreement about the sources and form of the paradigm itself, depending on the viewpoint from which it is being considered.

Thus Friedrich's statement that 'Legitimate rule is validated by a persuasive and convincing relation to the political tradition, and to the ideals and positive norms of the political culture' (1968a:244), has implicit in it the ideal conception of legitimacy. There must often be an uneasiness of fit between concept and reality. As he states: 'Of such legitimacy there is variation along at least two significant dimensions: (1) the logicity of the relation between power and norm, and (2) the acceptability or popularity of the norms themselves' (1968a:244).

The task of this section is twofold then. Firstly, I must attempt to trace out the sources from which converge the elements of the paradigm against which legitimacy was tested in our field. This is necessary as so much of the action in itself constituted a test retort out of which a definition of legitimacy was distilled by virtue of successful contest. Legitimacy cannot be taken in this field to be an absolute structural principle. The process by which a definition was arrived at consisted of a type of bargaining which in itself followed the shifts of events in the field.

Secondly, it is useful to probe the connexions between legitimacy and power. Consensual power can be seen then as resulting from a situation

where there is the belief

that at some time in the future the official, agency, government, etc., with which individuals comply will satisfy the compliers' positive expectations. This compliance may be with directives or regulations which are not congenial (for example, doing *corvée* labor), and when there is little or no prospect of a direct return from obeying the directives or regulations. However, if consensual power is present as an attribute of the source of the directives, compliance will result from the belief that in its overall operation the official, agency, or government will sooner or later bring about desired results or continue some desired state. Thus *corvée* labor may not be viewed by the workers as producing any desired result, but the official who orders it may be viewed as likely to do something desired. Because compliance based on consensual power is divorced from immediate dependence or gratification, consensual power allows much more flexibility than does compliance based on other types of support. (Swartz, Turner and Tuden 1966a:14-15).

Thus we may speak of degrees of legitimacy. If a political order is securely rooted in a base of legitimacy with a close congruence between the expectations and values of the subject group and the degree to which the anticipated criteria are met, the order has consensual power. Certain logical consequences flow from such a situation. The political order is able to function with extensive fluidity and flexibility and is not pressed to prop up its regime with undue enforcements and coercion. However, if we see legitimacy as existing along a continuum, we may say that where such congruence does not exist between values and expectations, and reality, where there is little conjunction of interests between ruler and ruled, the political order will be forced to use crude methods to sustain its regime. In this type of situation, there will be increasing recourse to the outright use of force and the ideal system of reciprocity between rulers and subjects will be concomitantly distorted (Swartz, Turner and Tuden 1966a:14-17).

The question of reciprocity and the expectations of the ruled are two areas which spotlight the tension between the premisses of a political order and the actuality of the situation on the ground. Hammond-Tooke has this to say:

Sociologists, especially Simmel, have stressed the fact that the relationship involved in the exercise of power and authority,

except in marginal cases, is a reciprocal one. Simmel, in discussing domination as a form of interaction, makes the point: 'Nobody, in general, wishes that his influence completely determine the other individual. He rather wants this influence, this determination of the other, to act back upon him.' [1950:121] If this is the point of view of the possessor of power and authority, this element of reciprocity is even more valid for the subordinate. The effective exercise of authority depends as much on its acceptance as on its theoretical legality and, in a very definite sense, this acceptance is the ultimate arbiter of its legitimation. It is probable that, even in extreme forms of coercion, there is at least an element of acceptance: also legitimacy resides, of course, in the eye of the beholder. (1975:7)

It is possible then to look at legitimacy from a transactional viewpoint: the power user expects compliance with his directives; the power object in turn requires the fulfilment of his expectations. Theoretically the interchange is beneficial to both. In the degree to which the ideal balance loses kilter, the exchange becomes cruder, and between the perfect fulfilment or non-fulfilment of these criteria there are many permutations of position.

Political challenge in the Lichaba's field was often couched in the language of legitimacy which, in my opinion, was revealed as relative, subject to redefinition in relation to political circumstance. The use to which the concept was put showed clearly its transactional implications for it was not only a conceptual paradigm but also it was utilized tactically.

I return now to my first task: to trace out the sources of what I called the paradigm of legitimacy as it was formulated in the Lichaba's contest. Max Weber held that 'The derivation of the legitimacy of an order from a belief in the sanctity of tradition is the most universal and most primitive case' (1947; paperback ed. 1964:131). By tradition, Weber means 'a belief in the legitimacy of what has always existed' (1947; paperback ed. 1964:130).

When Chief Paul pressed his claim to be gazetted as Principal Chief, his demands were phrased largely in terms of tradition. Thus he

could assert that he was the firstborn son of the first house. He was appealing to the legitimating principle that, in effect, 'it has always been so'.

Similarly, when the Lichaba's office issue again brought the Chief and his mother into competition, it was reiterated that it was not traditional for power to be shared in the ward and that it was unprecedented for the Principal Chief not to have his own area to rule. The grounds of tradition were used to boost a campaign against the Chieftainess, decided upon after her 'Lintsu lira' speech. Political challenge was wrapped up and presented as an issue that devolved around legitimacy, and political action was shaped by the design of legitimacy and, in turn, sought to pattern that design to its own needs. When discussion took place about who would be suitable to act for Chief Paul while he was on sick leave, it was mentioned that possibly his mother, one of his uncles, or even a brother, would be a legitimate stand-in. However, it was Chieftainess 'Mamosala who suitably filled the bill of the more powerful section and had the most legitimate qualifications.

If we consider the question of regents in Lesotho, we can see that what is 'traditionally correct' is neither absolute nor invariable. Informants pointed out the dangers of an uncle attempting to usurp his ward's position. It is not without precedent, as this case study has illustrated, that the appointment of mothers as regents can also be unsatisfactory (see also Ashton 1952:198-9). It is interesting to note that at the meeting to decide who was to act in Chief Paul's stead, it was stated that 'it is the custom of the present' for wives to act for their husbands.⁽¹⁶⁾ In deciding this question then there were a number of principles from which to choose, in varying degree validated by tradition and custom. Of interest is why one, rather than another, was selected and pushed as being the most reasonable choice.

The body which served as umpire or referee was the Sons of Seeiso, the traditional decision-makers of the chieftainship. As such, they are to be considered as, firstly, arbiters of legitimacy and, secondly, as its bestowers in the sense that they set the stamp of tribal approval on the contestant whose legitimacy they recognize. As an adjudicatory body, they encompass a number of legitimating principles. As a council, they express the values and norms associated with chieftainship. Legitimacy derives ultimately from values, and values, as Bailey says,

are symbolized. This maintains and strengthens them. Indeed, if they are not constantly tended and re-invigorated, they fade. Consequently rites and ceremonials dramatize fundamental political values and associate them with such non-political values as health or fertility or prosperity or with God. ... (1969; 2nd and paperback ed. 1970:21)

The Sons of Seeiso represent continuity in the present of the past political traditions of the ward. When they meet to decide an issue they are not meeting simply as an adjudicatory body, but their pronouncements take on additional force from their being, in one sense, representative of their forefathers. Thus when Chieftainess 'Mampho persisted in threatening to call in a lawyer, one of the Chiefs who opposed her was moved to say that unless this idea were dropped forthwith, the gathering would come to know his displeasure as 'Seeiso's Son'. When the same man exclaimed later, 'No Seeiso would agree to such a thing!' I interpret his words as those of a man invoking the full power of a political tradition and a belief in the ancestral order of things. The type of legitimacy conferred by the Sons of Seeiso is very different from that of, say, the approval of Government. Its force is grounded in its traditional roots as well as its ability to offer reasoned, informed pronouncement.

The symbolism attendant the Sons of Seeiso is referential to affectual attitudes concerning chieftainship or the state of being a chief--borena. Max Weber maintains that 'legitimacy may [also] be ascribed to an order ... by virtue of a rational belief in its absolute value, ... thus lending it the validity of an absolute and final commitment' (1947; paperback ed. 1964:130). Of this, he says, 'The type case of legitimacy by virtue of rational belief

in an absolute value is that of "Natural Law" (1947; paperback ed. 1964: 131). The ability of the Sons of Seeiso to decide questions such as the legitimacy of candidates rested on a belief very similar to that which Weber terms 'Natural Law'. This is the conviction in Lesotho that the political tradition rests on a foundation reaching back to the founding of the kingdom by Moshoeshe. This political inheritance, although obviously modified in recent times, still invests the chieftainship with a quality of being tied in with the natural order of things. The particular nuance I am after is perhaps given best in a Shakespearean sense. In Richard II we have the Gardener and the Servant discussing the state of things in the kingdom:

SERVANT: Why should we, in the compass of a pale,
 Keep law and form, and due proportion,
 Showing as in a model our firm estate?
 When our sea-walled garden, the whole Land,
 Is full of weeds, her fairest flowers chok'd up,
 Her fruit-trees all unprun'd, her hedges ruin'd,
 Her knots disorder'd, and her wholesome herbs
 Swarming with caterpillars. (III:iv)

While not wishing to exaggerate the idea of a 'natural' order in which the chieftainship provides an exact parallel with a Shakespearean Divine Right of Kings, there was nonetheless an impression, sustained by numerous conversations, that the Lichaba's situation, with a divided chieftainship at war with itself, was viewed by some in the ward as indicative of a political 'sickness' and disorder that ought to be cured. The Sons of Seeiso had the task of healing the breach, to bring the ward again, in the words of Chief Lejapoli, 'under one cool and pleasant shade'.

The legitimate claim of this body to having a decisive say in matters affecting the chieftainship derived from their traditional status as well as from their experience, as administrators, in the laws and customs of their people. But their effective legitimacy depended in great measure on their acceptance as adjudicators by other actors in the field. We saw Chief Paul calling upon them to hear his case soon after he returned from

abroad. Chieftainess 'Mampho used their meetings as an arena, questioned their legitimacy to adjudicate between her and her son, and held that they were not empowered to make decisions affecting relations between her and her child.

It is possible to examine the clashes between the Chieftainess and certain members of the Sons of Seeiso as a contest over spheres of decision-making. In essence, the Chieftainess maintained that the Sons of Seeiso were interfering in an area which did not concern them: the relationship between a mother and her son. In turn, those who supported Chief Paul asserted that they had an essential stake in any decision-making that affected the chieftainship. It was in part because of this stake, which they considered their right, that they condemned Chieftainess 'Mampho's actions, because it was their contention that they had not been consulted by the Chieftainess about her continuance in power. At an earlier stage I mentioned that the Sons of Seeiso would be inclined to support Chief Paul's cause, based as it was on clear-cut customary principles. Chieftainess 'Mampho's refutation of their right to decide between herself and her son may also have hardened their resolve to decide in Chief Paul's favour in order to maintain their position as the accepted adjudicators in chieftainship affairs.

The interchanges passing across the arena of the meetings served to signal the definition of legitimacy which was to prevail in the field. We are dealing simultaneously here with two definitions of legitimacy: Chieftainess 'Mampho questioned the legitimacy of the Sons of Seeiso and they, in turn, reaffirmed their own legitimacy against her, as it were, by supporting her son.

It was also in this confrontational forum that the values that were to back up claims and counterclaims were selected and were given the force of norms and rules in the contest.

Values both create and regulate political competition. The restraint upon manoeuvre which distinguishes a competition from a fight entails that the contestants have some values in common: they agree not only about prizes but also about legitimate tactics. These shared rules pass ethical judgement upon conduct which is not an end but a means. (Bailey 1969; 2nd and paperback ed. 1970:21)

As each side put forward points in the attempt to swell the legitimacy of the claim of its candidate, these points were embodied in stated values which were either accepted by the other party, in which case a score had been made, or capped by yet another value. As has been suggested throughout, neither side maintained a constant pattern of values raised, but rather phrased and rephrased their claims in terms of whatever principles they felt would be most likely to bring success at that moment.

With this in mind, let us take a closer look at the letter Chief Paul addressed to the Sons of Seeiso dated 17.5.1966 asking them to meet with him in order to discuss his accession (see p. 214). His reasons for claiming his right to rule are drawn ingeniously from a number of disparate principles, all designed to appeal to the traditional body. Firstly, he is of age according to the law. Conveniently left unsaid here are other criteria, notably his not being married, an objection that was to be raised later by the Chieftainess's following. The second point in the letter concerns the 'people's clamour' for his installation. Here we see the well worn coin of the sechaba being used as a value; i.e. 'the people want it therefore it should be'. This is what will be termed below the force of the majority as a source of legitimate claim to authority. The third point, that delay in an installation gives rise to 'uproar and quarrels' is a composite one, invoking precedent and to some extent having implicit the threat that Chief Paul would be prepared to fight for his rights. The value here is peace in the chiefdom which, so the point goes, Chief Paul has at heart. The fourth point draws in the outside structure and the encapsulation process in that it deals with change in the administration--

change in which Chief Paul, as heir to the administration of the future, ought to have a say. Finally, as he signals by signing himself 'Your child', he puts himself within the framework of paternal obligations and responsible action towards a suppliant, and activates the idiom whereby a fair, adjudicatory body raises to majority their 'rightful child'. The spectrum of values raised by this letter is designed to establish indisputable grounds for Chief Paul's accession. For it is evident that one object of formulating one's claim in terms of culturally constituted values is to forestall disagreement on the part of one's competitor. Chief Paul's letter is a display of a selective synthesis of values which appears to be incontrovertible.

But the Chieftainess's side formulated plausible demurrers. Firstly, the young claimant was not of age because he was not married. Secondly, the 'people's clamour' was compromised by political ambition and radicalism. Thirdly, the Chieftainess, too, held no brief for quarrelling with her son; it was certain members of the Sons of Seeiso who were trying to provoke discord. In poker-table language, the Chieftainess had 'seen' her son, raising norms to counter the seemingly incontrovertible statements in his letter. And so, to sustain the analogy momentarily, the chips are values. They are selectively used and traded in order to lay down one's own claim to legitimacy and to undercut the claims of one's adversaries, for their 'intersection with the political system at certain critical points provides the culturally constituted bases of legitimacy' (Swartz, Turner and Tuden 1966a:27).

The manner in which the contenders' claims are put forward is regulated by means of rules, acceptance of and submission to which might vary markedly in degree. It was a rule for example, that the Sons of Seeiso meet to decide chieftainship disputes. But this was a rule subject to the modifications of change in Lesotho. There was ample precedent

for chieftainship disputes going to court and, indeed, this might have been what the Chieftainess was hinting at, in wanting to seek legal counsel. As a rule, it was also conditional upon the degree of endorsement of those subscribing to it. Thus while the Chief went along with most of the Sons of Seeiso decisions wholeheartedly, his mother managed to signal her reservations about competing with her son in this forum by quibbling about procedure and by calling in doubt its competence to decide. Nonetheless, in some measure, she did accept the rule, and the importance of the forum, as is shown by her attending meetings to present her own argument.

When dealing with the sort of disputes that the Sons of Seeiso were called in to adjudicate, it is important to avoid giving the impression that

argument ... is concerned with the 'facts' of the case while there is tacit or express agreement among all parties concerned as to the applicable norm or norms. This ignores the point that in any society one is likely to find a large category of disputes where argument is mainly concerned with the question of which of a number of mutually conflicting norms should be applied to the undisputed 'facts' of the case.
(Van Velsen 1967:146-7)

'Undisputed "fact"' in our field was, to give one instance, that Chief Paul was born Principal Chief. To be determined were such questions as the right moment for his accession, his exact jurisdiction, the precise degree of power to be allotted his mother, and so on. Furthermore, these issues were to be enunciated in terms of customary values ('a chief should have a bokhinapere') and settled in accordance with accepted norms and rules ('there will be no lawyer called in from outside to decide a family matter'). Here then, in the arena of the Sons of Seeiso meetings, were hammered out the questions about which values and rules were to prevail and, in fighting for their right to decide, the Sons of Seeiso were in one sense seeking to affirm their role as policy makers in the chieftainship.

'The structure which is symbolised in ritual is the system of socially approved "proper" relations between individuals and groups' (Leach

1954:15). The Sons of Seeiso, by their debate and ceremonious ratifying of the political hierarchy of their ward, were selecting and approving the pattern of 'proper relations' they would like to see endorsed. Thus, it was in jealously guarding their prerogatives that the Sons of Seeiso refused to be diverted by personal attacks, delaying tactics, or arguments about what procedure ought to govern their meetings, but persevered to make, and to make public, their decisions.

It would be all too easy to over-emphasize the self-sufficiency of this tribal, traditional decision-making body. As one of the members himself recognized, while commenting on the attempt by the Chieftainess to put off their reaching a decision, they themselves were only making a decision for 'someone ahead', i.e. for Central Government. In a very real sense the Government was the final arbiter in the field, as Chieftainess 'Mampho's office was not closed, and her power remained unchecked, until after a Government Notice finally appeared in a Gazette. While the Sons of Seeiso could bestow legitimacy, it was the Government, to a considerable degree, that bestowed legality. (17)

At the meeting of the Sons of Seeiso to nominate someone to act in Chief Paul's stead, the role of Central Government in chiefly decision-making was given significant definition. In the discussion about who was to advise the Chief's temporary replacement, when the Chief objected to the man suggested by the meeting, he asked Chief Mohao Seeiso, as a representative of the Government, to spell out for them what the law was concerning advisers. Chief Mohao had the unquestioned ability to do this, not because he was an important Son of Seeiso, but because he worked for the Government. Chief Mohao replied that it was not the Government's wish to impose any adviser on them; the Minister concerned would accept whomever they nominated. However, it is interesting to note that the next speaker took up this point to say that the choice of both the Chief's deputy and

the adviser would have to go for approval before Government (or its representative, Chief Mohao), the 'owner of the chieftainship'.

If we look at the Gazette Notice announcing the assumption of office of Chief Paul in 1967 and compare it with that announcing his assumption of office as Chief of 'Mampho's in 1970, we find that recognition is granted in the earlier notice by His Majesty the King and, in the later one, by the Minister of the Interior. This is indicative of the way control over chieftainship affairs has been progressively separated from the dynastic sphere and brought under the Government. The two lipitso that were held to install Chief Paul and to bring his wife 'before the people' as acting Principal Chief underlined this. The first was postponed because of the tragic events at Thaba Bosiu in 1966. The second, in 1970, was also put off by the Government because it was close to Christmas and, they held, there were undesirable people from South Africa in Lesotho who might create trouble at a public gathering. Both incidents coincided with times of political turbulence in Lesotho and Government intervention to delay these lipitso served to emphasize its effective power.

Thus to discuss legality in our field is to deal with the encroachment of Central Government on the domain of the chieftainship. This encroachment takes away from a body like the Sons of Seeiso its final integrity of decision-making and defines legitimacy in office as always pertaining in some measure to Government consent.

Bierstedt's statement concerning the power of majorities has relevance to the weight of the people in bestowing legitimacy:

majorities constitute a residual locus of social power. ... This power appears in all associations, even the most autocratic. It is the power of a majority, even in the most formally and inflexibly organized associations, which either threatens or sustains the stability of the associational structure. ... (1950:737)

The maxim morena ke morena ka batho stands as an idealized statement of past tribal decision-making practices; it is a recognition of the recip-

rocity existing between ruler and ruled. This mutuality of interests has become distorted since the folk concept gained currency, yet there remains a commitment to the norm. But to assert that certain behaviour reflected the influence of a revered political past is problematic. There is no doubt that the gestalt of the sechaba was maintained and utilized. It was marshalled as a resource, invoked as a value, and appealed to for support. The difficulty lies in determining to what extent the people's involvement was a true reflection of democratic tradition, and to what extent it was the child of political expediency.

Although warped by the emergence of party politics, there was a sustained ideology that the people ought not to be excluded from tribal decision-making. Partly this was expressed in terms of an investment: 'We helped to pay for Chief Paul's marriage, so we ought to help decide'; 'When you need us for money you turn to us, so why exclude us now?' Partly it was to be picked up in the awareness of some chiefs that they were answerable to the people, an awareness expressed at the meeting in the courtroom on 16.1.1970, while the people waited outside, in the constant question, 'What will the people think about what we are doing here?' As the people pressed on to the verandah, their presence became a force to be reckoned with in the decisions being made. It was this role of the people that the Chieftainess tried to cast doubt on, alleging it to be politically motivated; and interfering in a sphere of family and chiefly decision-making to which it should not have been privy.

However, Chieftainess 'Mampho had underrated the value of popular sentiment in this extended contest. For Weber, 'A criterion of every true relation of imperative control, ... is a certain minimum of voluntary submission; thus an interest (based on ulterior motives or genuine acceptance) in obedience' (1947; paperback ed. 1964:324). The power object's 'interest ... in obedience' is directly related to the expectations he has of his

ruler. When Chieftainess 'Mampho made her 'Lintsu lira' speech, it was seized upon, as has been shown, as an issue on which a systematic campaign to undermine her continued presence in office could be built. It was claimed that she was not fulfilling the expectations of the ruled, and had broken faith with the values of her subjects. A corner-stone of the campaign was a concerted attack upon the Chieftainess' performance as head of Lichaba's; by damaging her credibility as a competent ruler, her opponents sought to undermine her legitimacy. This propaganda campaign sought systematically to create a belief in a lack of congruence between the people's expectations and her performance in office.

a political system, in the absence of extensive legitimacy, is an extremely crude instrument for attaining group goals, settlements, and allocations because it does not have a "generalized capacity to secure performance." Indeed, if all legitimacy is removed, a political system is not analogous to a primitive monetary system based on an intrinsically valuable commodity (such as gold, which, though crude, has some general usefulness in exchange) but to a barter system with all the limitations such a system implies. (Swartz, Turner and Tuden 1966a:16)

If the ruler does not satisfy demands, or is seen as not satisfying demands, the ruled may consider the contract not worth keeping. Then the ruler must cast about for inducements such as direct exchange in the short term, or, if he can, coercion.

It was from this sort of position of undermined authority that the Chieftainess was trying to bargain when she called the pitso of Lichaba's on 17.10.1969, when she made veiled threats about the steps she would take if people chose to bypass her office and go directly to the Principal Chief. The weakness of her bargaining power was exposed by the way in which her claim to authority over Lichaba's office was refuted at the pitso. The pointed question put to her about where the Principal Chief was stressed the fact that she had come to be considered, by a large section of the ward, as illegitimately in office. The reaction of this gathering to the Chieftainess's attempt at a type of coercion served not to strengthen her position,

but to weaken it. The pitso provided yet a further platform from which she might be outdared. We may speak then of a 'run on the Chieftainess's bank'. As the movement against her gathered momentum, so she in turn was forced to try to counter it. In so doing, she provided opportunities for further defiance.

Only two months after that pitso, Chieftainess 'Mampho routinely summoned two Headmen to her to give an account of the lands inspected in their areas so that she could oversee their allocation.

On 23.12.1969 Headmen Lenkoro and Teboho appeared before the Chieftainess with groups of their villagers. When the Chieftainess opened the proceedings, one of Lenkoro's subjects called Simeon stood up and said that they had come to the meeting on the understanding that they were to appear before the Principal Chief. They did not recognize the right of Chieftainess 'Mampho to administer their affairs any longer.

Simeon was followed immediately by Nkoebe, a man from Teboho's village, who voiced similar sentiments. He also questioned the Chieftainess's jurisdiction. He wanted to know whether the Principal Chief was aware of what she was doing, and he pointed out that no elected members of Lichaba's land advisory board were present to consult with the Chieftainess. Her personal advisers who were present had not been elected by the people to advise on land allocation.

After this the villagers who had followed their Headmen to the meeting got up and left and, although the two Headmen were apologetic to the Chieftainess, the meeting broke up without the question of lands having been discussed.

Although the Chieftainess threatened to take steps against these Headmen for conniving at the disrespect, she was in a vulnerable position. This disobedience had been set up by her opponents to demonstrate that they no longer accepted her legitimate right to adjudicate in their affairs and that, emboldened by the success of the run on her bank, her subjects were prepared to flout her authority. It had been heard in advance that the land meeting was to take place. Some of the Chief's supporters had approached members of these two and another village to prepare their demonstration. In turn, those villagers had approached their Headmen, and the tactics of their defiance had in this way been laid down in advance.

A train of circular causation was set off. Initial criticism of her administration led to defiance. In turn this weakened her position as an effective administrator, so exposing her yet further to criticism. Thus, for example, the meeting to oversee the allocation of land, as well as constituting an arena to defy the Chieftainess, led to a situation in which the administration of land under her regime could be seen to be compromised.

Participants in a political game continually assess one another's power position. If a leader's political prestige is high, people will clamber on his bandwagon, but if it is at low-ebb then they will leave him in the lurch and this, to some extent, takes place irrespective of past investments. A man may decide to cut his losses and opt out of a relationship when he feels that the political fortunes of his patron or exchange partner are dwindling. ...

Thus, what seems of crucial importance for any theory of political mobilization are the expectations of the participants in a political game about emerging developments in the power distribution. (Thoden van Velzen 1973a:246)

THE FACTION

Perhaps the most fundamental criticism I have of most of the existing studies of factions and other non-institutionalized political groupings is that they are treated as things rather than as processes. (Bujra 1973:141)

Introduction

As Thoden van Velzen points out (1973a), Nicholas's enumeration of five characteristics of the 'faction' (1965), hitherto placed centrally in any review of the literature on this elusive social grouping, has limitations. The assertions that factions are conflict groups, political groups and not corporate groups 'are not restricted to factions exclusively nor do they shed much light on the structure and functioning of these coalitions', and the remaining two characteristics, that faction members are recruited on diverse principles by a leader, the argument continues, 'are of secondary importance' in that they fail to 'bring the most important attribute into focus' (Thoden van Velzen 1973a:220). The attribute accorded this priority, the management of a fund, will receive due attention below.

Firth gives the generally accepted view of factions, that they are groups or sections of a society in relations of opposition to one another, interested in promoting their own objects rather than those of the society as a whole and often turbulent in their operations (1957:292),

and suggests that this needs supplementation. The broader picture of factions he proceeds to outline plays down the pejorative view implicit in the statement above--the very word has negative connotations in common usage--and provides a less value-laden definition. Firth says of the composition of factions that they are leader oriented, have a core of 'henchmen', and are recruited on 'structurally diverse' grounds. Factions operate mainly 'in the political field', bringing influence and pressure to bear 'upon the social order'. He observes that they operate for specific ends and become operative in response to specific eventualities or situations. Although not part of the official machinery of government they may, however, use or even 'engulf' government machinery in achieving their goals (1957:292). The role of a faction seems to be to act as a gadfly, stinging institutions or individuals into action and serving to crystallize public opinion or, as Firth puts it, 'moral attitudes about matters of social concern' (1957:293). He suggests that factions may provide outlets to 'let off steam' (1957:294) in situations where conventional political activity is denied. Flexible and mobile, factions seem easily adaptable to facing changing contingencies.

Firth's article anticipated many of the main preoccupations of subsequent writers on factions and factionalism and serves therefore as a broad background to my discussion. With Firth and Nicholas as backbone, by far the mass of literature on factions has served to heap fact upon ethnographic fact, selecting from the corpus of the work those definitional details that characterize the activities of whatever sort of non-institutionalized grouping is being described. Bujra makes the point that this leaves us with a bewildering variety of social forms, all going under the nomenclature of factions, with often conflicting attributes being ascribed to them:

One of the main problems in identifying factions on the ground by reference to definitions given of them by authors is that factions are dynamic phenomena. Factional processes are in a dialectical relationship with other social and political processes going on both within and outside the community being studied, and the informal political groupings which they create may thus be in any one of several stages of development. (Bujra 1973:133)

In order to systematize the concept, Bujra suggests that 'the whole field of political conflict groupings' (1973:134) can most profitably be viewed as 'on a continuum, with faction-like groupings at one polar extreme and political party type groupings at the other' (1973:133). The grouping in question would be placed along this continuum in terms of what she calls differential 'variables' in its composition, these being related to three main areas:

- (a) The structure and organization of the groupings which arise in a situation of conflict over the use of public power; (b) The character of the process of political conflict; (c) The interaction between the conflict groupings and the wider political and social context. (1973:133-4)

What Bujra has to offer then is the heuristic usefulness of a logical and flexible 'running definition' in terms of which it becomes possible to evaluate the activities of a conflict grouping on the ground. Her insistence on the mutability of factional forms invites one to consider problems such as the way the faction meshes with the total political field, and the way in which both its form and its mode of interaction change according to situational demands.

If one is to concentrate on the changing adaptation of a faction to its field it is fruitful to adopt a transactional approach. Thoden van Velzen redirects attention to the transactional implications of factional activity. Central to his concept of the faction, or 'interest coalition' as he calls it, is the fund of 'resources or honour' whose protection, consolidation or expansion is the *raison d'être* of the coalition (1973a:220). He consequently endorses the emphasis Boissevain gives to his definition of a faction:

an exclusive coalition of persons (followers) recruited personally according to structurally diverse principles by or on be-

half of a person in conflict with another person or persons within the same social unit over honour and/or control over resources. (1968:551; cited by Thoden van Velzen)

The strategies a faction adopts for its fund involve it in a dialectical relationship with the political field, insight into which will have bearing upon the questions raised above about its form and mode of interaction.

Of direct relevance to an analysis of the activities of that group of individuals I refer to as 'the faction' in my account of the contest for Lichaba's, is Thoden van Velzen's concept of the 'levelling coalition' which is neither leader nor fund oriented, but which takes life from its common antipathy to a 'target' whose fund it seeks to destroy. The singleness of purpose with which the faction directed operations against Chieftainess 'Mampho invites one to draw obvious parallels here but, as will be shown, this faction was very difficult to pin down according to any one definition.

Clearly, the kind of variable-based schema that Bujra presents is helpful in tracing out the changing forms and tactics the faction assumed during the protracted course of the Lichaba's contest. Accordingly Bujra's logical continuum of 'faction' to 'party' is presented below with, superimposed upon it, Thoden van Velzen's concepts of 'levelling' and 'interest' coalitions, arranged according to the variables suggested by Bujra. Since the concepts 'interest coalition' and 'faction' are of one order, these two categories have been fused in the conflation, and represent the central position along the new continuum. To the left is placed the levelling coalition and to the right, the 'party'. It will be seen that as one moves from left to right, the organization of the social grouping becomes more formal, institutionalized and relatively permanent. Similarly, recruitment ranges from spontaneous cooperation on the left to rule-governed election and the common attraction of long-term shared interests on the right.

LEVELLING COALITION

INTEREST COALITION / FACTION

PARTY / DEGREE OF INSTITUTIONALIZATION

structure

Simple

It is target oriented

Its core is unstable, changing:
all those who initiate action
against the target

Only membership basis is shared
aversion to target

No fixed membership criteria,
thus it is amorphous

It has a loosely structured
interaction pattern;
lacks skeleton of transactional
ties

Pictorially it is a web, with a
number of spearheads emerging at
different times

It is leader centred:
the fact that there is a fund to
be managed requires this

Core members act as entrepreneurs

It is a social construction in that
it has an architect

It is a bounded social entity:
members are known to the core, who
have transactional ties with them

Its backbone is an exchange circuit

Pictorially it is a star: there is
a more or less stable core (or spear-
head) in the centre, from which trans-
actional linkages radiate in several
directions. The points at the ends of
these lines (followers) are not neces-
sarily connected with one another

Complex

Party is a system of interrelated
roles with rule-governed relations
between them

Lineal relations between leader or intermediaries more significant than lateral relations between followers

Lateral relatedness of ordinary members is politically functional

leadership

It is not centred around an instrumental leader; leading parts are played by different persons

Arises spontaneously; leader is focus of all action; no rules of succession; leader is active in recruiting supporters

Leader is appointed or elected according to rules; he is spokesman for the members' interests

recruitment

Support is seemingly spontaneous (note that ground has been prepared by social catalyst, however)

Recruitment is via transactional linkages, a process of exchange; according to all the individual ties a leader (and core) may have

Members recruit themselves according to common interests

Factions cut across existing groupings, and thus divide the community vertically

Parties thus tend to follow the lines of existing and generally horizontal groupings

From the followers' point of view, support related to short-term individual interests

Members share long-term common interest and ideologies

time-span

It is single-purpose, transient; when target falls, it collapses too

Relative impermanence

Relative permanence

process of competition

Comes into existence as a reaction to threat posed by target	Initially formed for protection or support in conflict situations	
Acts to minimize that threat or to level fund of target	Its purpose is to protect, expand or consolidate a fund	
	Multi-purpose unit, it often acquires other functions	
	Actions may affect all social fields since the faction is relatively unspecialized	Actions specialized in recognized political field, governed by rules and
Visibility lower than that of faction, it becomes visible in actions against the target and in the target's awareness of it	Actions often covert, governed by pragmatism and expediency	Overt
Social catalysts temporarily succeed in activating it; one incident is sometimes sufficient to generate a number of manoeuvres independently, undertaken by different persons in the coalition		

relation to wider social and political systems

Informal and uninstitutionalized	Formal and institutionalized
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Far from presenting this schema as an exhaustive check-list against which the doings of our faction are to be ticked off, it is tendered metaphorically to suggest avenues along which factional participation may proceed. There are discontinuities in human action which preclude its being lumped categorically into such compartments as purely levelling, interested, or institutionalized. The schema is useful in that it provides a framework within which to examine the complexity of factional activity as it alters form and strategy.

Still One: the leader

How does the observer pick up the existence of a faction within the hurly-burly of intense political movement when so much of factional scheming takes place covertly? In this case I followed the participation of one man in certain types of political action, and in time the rest of the faction became visible around him.

The imagery of the cinema is put to use here to identify the moments of arrested action that have been selected out of a long train of events to give insight into the differing modes of activity and flexible form of factions. We start with the pitso of 30.4.1966 which was a decisive stage in a period of political activity designed to secure the chieftainship of the ward for Chief Paul.

We get our first look at Litaba, the leader of the faction, at this pitso held to make Chieftainess 'Mampho account for her using the name of her people to make political statements prior to independence. Litaba had been connected with the whole series of events that led up to the pitso. Specifically, he was part of the manoeuvre which took place to validate its being held and was operative in its actual presentation. It was he who spoke to the people, asking them to stop singing political songs, and stressed the non-partisan nature of the assembly.

Litaba's leadership at this pitso was compounded of the many

attributes which combine to give him force as a local-level leader. For many years he has been intimately connected with the affairs and workings of the Seeiso chieftainship. In the early stages of Chieftainess 'Mampho's rule he made himself valuable by teaching her the craft of entrenching herself in her position. He is a man who, during the course of his life, has come to feel a deep sense of commitment to the chieftainship and has a belief that it still has an integral part to play in the future of Lesotho. He is a friend and adviser to Chief Paul, as to his mother and his late father, and takes seriously the guardianship of what he sees as the Chief's interests.

Running parallel to his royalist allegiance is an equally affirmed preoccupation with modern political developments in Lesotho. He saw the MFP as the party best positioned to weld together a country undergoing all the difficulties of transition to modernity. After the incident at Thaba Bosiu he reconsidered his political alignment and, although still a local leader of the MFP, began to think along lines of united opposition to the Government.

Litaba is an old man who has travelled widely and has had varied political experience both within and outside the boundaries of Lesotho. This wide base has made him an adroit politician with an expertise beyond that normally associated with domestic village politics. Litaba is not intimidated by, nor isolated from, the world beyond the village horizons. He has contacts in the encapsulating environment and is used to making representations to it. Coupled with these obvious qualifications for effective local-level political leadership are the more personal talents of a gift for oratory, a delight in argument and a desire to make his impact felt over a sphere of influence.

The impetus leading to the convening of the pitso of 30.4.1966 came from the local level. Initially a group of men whose party alleg-

iance bridged the three main divisions in Lesotho at that time decided that the Chieftainess's statements should be questioned. This multi-party front disappeared as the implications of such action became obvious, and a clear correlation emerged between the interested men and the Opposition. It is relatively simple then to identify to some extent the collective fund they shared. The prime stock would be in the augmenting of Opposition capital at the local level in demonstrating their viability by delivering a public reprimand to the Chieftainess. To see their fund purely in terms of political interest, however, is to distort the composite nature of such political activity. Embedded in their reasons for concerted action was also a concern with the integrity of what I have termed the tribal system and, closely allied to this, a desire to work through the voice of the sechaba. Getting Chief Paul in provided a focal point around which these various elements could become fused.

By inviting prominent party-political leaders to attend this pitso, there was a conscious effort from the local level to involve national structures to publicize and lend weight to the decisions of men in the local political sphere. We have an instance here of the use to which coalitions or interest groups may put more formal organizational machinery in order to strengthen their position. The activities of this early faction would appear to place it, in terms of our schema, as an interest coalition making use of the already organized resources, lines of support and communication links of institutionalized party structures.

It is when we come to consider the crowd of people at the pitso, with speakers standing up to address the throng and with the faction or interest coalition submerged in the surge of numbers, that we find that there is a stage in factional activity where, having sparked off a train of events, the faction appears to become eclipsed in a type of 'bandwagon' effect. This is where Thoden van Velzen's idea of the levelling coalition

becomes useful, not as a definition necessarily, but as a metaphor for explication.

I have already analysed the effort that went into the presentation of this pitso: its political nature was played down in trying to create an impression that it represented the momentum of a 'people's movement'. Yet when our attention rests on its presentation a problem asserts itself: by shifting the depth and angle of our analysis, we can bring into focus either the faction core itself or the assembly of people into which the faction members merged. The faction was indubitably present at the pitso, controlling, directing and occasionally even emerging briefly to speak. But the pitso came to assume its own volition too, against which the faction became well-nigh indistinguishable at times. This movement appears significant when described in the following terms: it was multi-spearheaded in that various leaders emerged to spell out what they interpreted as the assembly's wishes and intentions; it was target oriented, for most of its animus was aimed at the Chieftainess whose fund, both political and local, it sought to level; as a group it lacked the transactional ties that hold together the network of an interest coalition; it came together in reaction to the Chieftainess's 'Lintsu lira' statement; as a coalition, it was visible only in its action against this one target, and was to de-coalesce subsequently. One may thus speak of the faction as sparking off activity analogous to the activities of what was defined above as a levelling coalition.

This exploration of a train of political activity culminating in the early pitso provides a baseline for an appraisal of the formation and nascent influence of the faction that came into being and operated in the Lichaba's field after Chief Paul had been installed. Important are the ideas that have been introduced: that a faction may start its career with a tightly defined interest centre, may make use of the more formal

structures of a complex society, and may initiate and develop action in which its own activities may become obscured by a snowballing or bandwagon effect, even while those activities exert vigorous direction.

Still Two: the core

Our second still is taken about two years later and coincides with the start of a new stage in the field. Chief Paul had successfully been installed. We re-enter the field at a pitso of Lichaba's administrators in 1968 at which it was announced that the Chief wished to formalize the control his mother had over Lichaba's. The formation of the faction which claims our attention now and is to be the central subject of analysis had its roots in the discussion held by a small group of men after the pitso. This faction came together in response to what they held to be a new challenge by the Chieftainess. We have a continuity in action in that the leader of this faction, Litaba, had been instrumental in the earlier coalition against her.

This faction came into being, not against another faction, but as Bujra indicates is 'very often' the case, 'in opposition to the actions of some pre-existing locus of authority and power in the community' (1973:138). It is important to observe that, in the formational stage, there was a vast disparity in effective strength between the faction and their target, the Chieftainess. Much of the early recruitment to and manoeuvring of the faction may be seen as a response aimed to design a more equivalent power base.

Surrounding Litaba in the leadership of the faction was what can be termed a 'core' of support, consisting at that stage, to my knowledge, of two other men, Banda and Khemi. Banda lived near Litaba and was a friend of his. He had been deported from South Africa for his political activities there and was an ordinary peasant farmer. He was a man of

presence and independence, having moved his homestead from a cluster where his kinsmen lived to isolate himself from interference in his affairs. He was actively interested in party politics and was a well known BCP supporter.

Khemi, the second core member, was secretary of the village and had also been banned from South Africa. He was one of the local leaders of the BCP and involved in much of the local politicking in the village. He, like Banda, was a close friend of Litaba's.

Litaba described how these three, drawn together by a common concern in opposition to the ruling party in Lesotho, had fallen into the habit of meeting regularly to discuss events of both national and tribal political interest. Litaba appears to have taken the lead in these discussions in grasping issues and giving direction to the formulation of demands.

These two men were the main and steady core of Litaba's support and he used to refer to their threesome jokingly as 'The Mob' or 'The Gang'. They were the two who, with him, were most consistently involved in the operations of the faction as I was aware of it. At times, however, the core expanded and contracted according to the issues at stake and consequently I was not always able to trace its membership continuously. I studied the faction through Litaba's eyes and ears and through his contacts; I am largely unaware of the links that other of the members might have had. Another factor that inhibited my tracing the membership of the faction was precisely those features that give a faction its characteristic qualities: its fluidity, covertness and non-institutional nature.

Because the pitso had been called for the Lichaba's heads, the commoners who were present were not able to voice their opinions.

Those who were distressed by the decision approached Chiefs Motiki and

Sekhohola and Headman Seko, and asked to be notified when they took their objections before Chief Paul. The authorities who objected had asked Chief Leboea to set up a meeting for them with the Chief, but as it happened they were never summoned to such a meeting. It is to be noted that the faction was opening a channel to the authorities of the ward.

By July 1968 it had become apparent that the split in the administration had aroused resentment in certain quarters. Litaba and Banda decided that they ought to sound out local opinion. They held a small and fairly exclusive meeting near the Chief's administration building of the core described above and a few other men, all of whom had shared a common resistance to the Chieftainess's 'Lintsu lira' statement two years before. Significant about this gathering was that it was not confined to Opposition men for it included Lebona, well known for his BNP support but also, and importantly, well known for his commitment to the chieftainship. The rest of the men attending this meeting, however, could perhaps best be described as local Opposition leaders, and the meeting made a point of excluding a local-level BNP leader known for his fervent support of that party and of the Chieftainess. One of the Chieftainess's advisers was allowed to listen to the discussion briefly and, it was presumed, reported on it to her.

The meeting resolved that the Chief ought to be made aware of their dissension and they decided to seek an audience with him to warn him that his people were not satisfied with his mother's position.

If we look at the recruitment of the core from the point of view of interlocking transactional interests we find that it was advantageous for Litaba, Banda and Khemi to come together in a community of interests. For example, Litaba and Khemi were both involved in what can be termed the administrative circuit of the village. Khemi, as secretary of the village, and Litaba, an adviser to the Chief often

co-opted into the administrative machinery, had a clear interest in centralizing the administration of the ward under Chief Paul. Both men, in their administrative capacities, had clashed with supporters of the Chieftainness. In addition, all three men were involved as local-level leaders of the BCP and MFP. By cooperating, their interests could be amplified by the mutuality of their support. Litaba in particular was useful to both Khemi and Banda in that he had access to the Chief and was more experienced in the legwork of political manoeuvre. Thus ties of friendship, mutual obligation and usefulness serviced an interest coalition in which the more pointed political aims of Banda and Khemi were tempered by the broader scope of involvement of Litaba.

For Litaba was more obviously concerned for the health of the chieftainship and its administration than Banda or Khemi appeared to be. He was a friend and supporter of the young Principal Chief and felt, perhaps exaggeratedly so, that the existence of Lichaba's office was one of the prime reasons for the confused administration in the ward. Litaba also had very firm ideas on how a chief's administration should be run. He saw clearly how the existence of two centres of power was compromising the administration of the ward and the reputation of the chieftainship. Thus, even in the core of the faction, we do not have unanimity of interest, but composite fusing around a target.

It is possible here, in the early stages of the faction's formation, to speculate about its probable fund involvement. Although faction membership was not confined to the Opposition, its fund was connected with augmenting Opposition kudos at the local level. This association was maintained as a clear thread throughout the course of the faction's activities in the field. The involvement of local-level men influential in party politics enabled them, both to build up their own influence, and to swell the fund of the faction by giving it

credibility and bringing in, by implication, the supporters of these men. In the resolution passed at the end of this meeting, that they should make the Chief aware of their intentions and dissatisfaction, we see how the faction started to put out 'feelers' in an attempt to recruit individuals and to make use of institutional machinery with which it could challenge more effectively the position of Chieftainess 'Mampho. Not to be omitted here is the idea too that commoners or the people, the sechaba, have a stake in decision-making, and should be able to influence the government of their ward. It was perhaps this leitmotif which made possible the recruitment of BNP members.

Still Three: negotiations with the Chief

Litaba realized only too well that to go up against the Chieftainess effectively, his faction could not remain out on a limb. He moved to gain the legitimacy that backing by the Chief would provide. The attempt to win the support of the Chief may be interpreted partly also as their trying to brace a contender with sufficient heft to balance the influence of the Chieftainess. In order to phrase their opposition to the Chieftainess in terms of the Chief's best interests, it was imperative that he recognize the validity of their movement and lend it his endorsement. As Bujra writes, 'Where the adversary is already strongly entrenched and has institutionalized his position, then his opponent must organize similarly, or be repressed' (1973:150).

The faction, spearheaded by Litaba, made repeated representations to the Principal Chief between August 1968 and October 1969. These took the form of both personal appeals and letters. But the Chief, by his repeated rebuttal of these approaches, indicated his lack of interest in their proposals.

Still Four: Lejapoli joins the core

In March 1969 Lejapoli returned to the village after having been in Government employ in Maseru and, having heard about the faction from Lebona, he sought out its leader.

Lejapoli had previously been the Headman of the village. He was descended from chiefly stock, was known as a man experienced in administration and one who, having worked in Maseru, had connexions with and knowledge of the outside structure. As Litaba told it, he knew Lejapoli well and liked him, and he realized that he and Lejapoli agreed about the necessity for bringing the administration of Seeiso's under one centre. The only problem was that, in the eyes of the rest of 'The Gang', Lejapoli was compromised on two counts: he was a prominent BNP supporter and was seen to have divorced himself from the interests of the community by taking up a Government position in the capital. As such, a clear distinction was made between him and their earlier BNP recruit, Lebona, who was thought of as 'one of us' in village terms.

Lejapoli's advice to Litaba was to persist in his efforts to recruit the Chief's assistance. If the Chief continued to ignore their overtures, he suggested, they ought to go to the Department of the Interior or even the Prime Minister where, he assured him, they would find sympathetic audience. Litaba balked at such misprision of the Chief as going over his head, but they were later to find this threat to be of powerful persuasion.

When, by October 1969, the Chief had still not responded to any of their approaches, they met again with Lejapoli. Others in the faction were very suspicious of him. Banda and Khemi felt that the inclusion of Lejapoli would prevent their being able to make political capital for the Opposition out of the activities of the faction. Litaba countered

their objections by pointing out that political considerations ought to be secondary to their prime object, as he saw it, of serving the people. To this end they should put aside their resistance and remember that it was Chieftainess 'Mampho who had helped 'take away the King's power and place it with Leabua'.

With Lejapoli's entrance, their fund was strengthened by the confidence and impetus he gave the faction by his assurance that, if they could not recruit the Chief, alternative avenues of direct appeal to the agencies of Central Government might yield results. In another way, too, Lejapoli changed the fund: his inclusion as a prominent BNP figure gave it greater credibility in its presentation as a people's movement, for it did much to play down the odium of political opportunism. Lejapoli's advent provided the core of the faction with a valuable recruit too in that he had skills and connexions that served to complement Litaba's. In transactional terms, opposition to the Chieftainess suited Lejapoli as, in the eventual reshuffle that took place in the administration, he achieved a prominent position.

One of Thoden van Velzen's points about an interest coalition comes to apply here, namely that it is a 'constructed social entity' in that it has 'an architect' (1973a:241). By contriving to build Lejapoli into his faction and meld the core, with their divergent aims, into a workable group focused around a target, Litaba displayed the skills of improvisation so necessary in effective factional leadership. Already the core of the faction had taken on a complexity absent when its links were serviced by the multi-stranded associations netting Litaba, Banda and Khemi together. Lejapoli was tied in to it through Litaba and his involvement was of a different order from that of the other members.

Still Five: pressure on the Chief

When, on 5.12.1969, a group of about a dozen men met in front of the Chief's administration buildings between 10.00 and 11.00 in the morning, we are apprised of a new stage in the faction's doings. To assess their position on that summer morning it is necessary to remind the reader that by this stage in the field, the Sons of Seeiso had met and had come out against the Chieftainess's claim to Lichaba's. Nothing had been done to close her office, but the base of popular feeling against her in the ward had broadened. It was in response to the fact that she had not accepted the decision of the Sons of Seeiso that we see the faction bending its efforts to maintain pressure against the Chieftainess. When, after the Sons of Seeiso decision, I commented to Litaba that the issue seemed to have resolved itself, he exclaimed, 'Ke 'Mampho! [That's 'Mampho !] She is no easy subject ! ' He knew now that the Chieftainess was locked in to resisting the demand that she cease to curtail her son's power.

The composition of this party of men reflected both the growing reaction against the Chieftainess and the broadening base of recruitment to the faction. The meeting was led by three men: Litaba and Lejapoli were assisted by one Seetsa, well known in the district as a radical local-level politician and hothead. The meeting was organized by spreading news of it by word of mouth to selected individuals. Among those present were two headmen and two chiefs of the Lichaba's area, one of them being the Headman Teboho who was to defy the Chieftainess at the meeting held about land allocation in his area (see page 273).

The gathering in front of the Chief's administration reflected a good deal of hard canvassing and organizational business on the part of the core. It heralded a process that was to place increasing leverage on the Chief to accede to the faction's demands. Whether they

approved of it or not, people were becoming aware that the existence of Lichaba's office was giving rise to public controversy.

After discussing possible avenues of action, the meeting embodied their resolutions in a petition to the Chief, drafted by Litaba.

The first point raised at the meeting and included in the petition was one of general dissatisfaction with Lichaba's office. It was claimed that the office was not legal, that it caused problems with appeals, and that by summoning people in the name of the Chief, it caused confusion because 'when those people appeared before the Principal Chief's office, they were usually told that they had not been summoned by that office and that they should try the next office'. Further, it was claimed that Chieftainess 'Mampho, who was the head of that office, did not appear in any Gazette as Chief or Chieftainess of Lichaba's sub-ward. (18)

For these reasons, the Principal Chief was asked to close Lichaba's office. Lichaba's administration had fallen under the Principal Chief's jurisdiction for generations. Once the Chief had brought Lichaba's under his own administration it would be up to him to decide whether or not to nominate anyone to represent him in administering it.

Moreover they claimed that Chieftainess 'Mampho had compromised her right to exercise tribal authority by standing as a candidate in the forthcoming general election, for chiefs were not supposed to take an active part in party politics, they asserted.

Furthermore, the staff of Lichaba's office, the petition alleged, all belonged to a movement known as the United Democratic Party, the Chieftainess's 'own party'. It was held that it was not right for a chief of a certain political persuasion to employ people of only that party to work in his office. If the Principal Chief still wished the office to continue in existence, he should reform it.

The Chief's attention was also drawn to dissatisfaction with Chief Leboea who represented him in his court. It was stated that Leboea was not punctual in the hours he kept, which the people found most inconvenient. It was also claimed that he was not an experienced administrator and, if he was kept on, he ought to be given a more informed adviser to help him with his duties. The common people were suffering because of Leboea's dilatory habits, his lack of expertise and his alleged bias against those he did not like. The Chief was requested either to get rid of Leboea or to get him a competent adviser.

Finally it was made clear that if the Principal Chief did not pay attention to these resolutions, they would be compelled to go over his head; they would bring their case first to the King's notice and, if that failed, then to Local Government.

On 18.12.1969 an estimated fifty-six people went to see the Principal Chief about the petition. They first interviewed the chief clerk, Rametse, who said that the letter had not been headed correctly and that they should reformulate its mode of address. The petition had

been headed, 'The Principal Chief of Seeiso's' whereas it should have been headed, 'The Principal Chief: re administrative affairs of 'Mampho's'. These changes were effected and Rametse instructed them to take the petition to the Chief's representative in his court, Chief Leboea, for conveying to the Principal Chief. When Leboea hesitated to take the petition to the Chief, he was asked whether he was not there to serve the people; if he was not willing to serve the people, it might be better for him to vacate the office. It is, of course, probable that Leboea knew the contents of the petition. Leboea took the petition to the Chief and returned to the administration buildings with him. The Chief told the petitioners that he had no time just then to see them, but would meet with them on 23.12.1969.

On that date a crowd estimated at over sixty arrived at the Principal Chief's office. Chief Leboea was not present at this interview. Rametse informed them that the petition was now in order and the crowd settled down to wait for the Chief and Leboea for more than an hour, after which Rametse was asked to fetch the Chief from his house. A messenger was deputed to summon the Chief and, after his arrival, the meeting took place in his courtroom. Rametse handed the petition together with a list of signatories to the Chief who, after having read these, asked for a verbal statement from those present. There were four speakers; only the points made by the first two, Lejapoli and Litaba, will be summarized below as they covered the essential features of argument.

Lejapoli's main concern was the administrative confusion being spawned by having two authorities. He pointed out that at that very moment, outside, land was being allocated by Lichaba's office. How could the Chief allow such a situation to exist ?

Litaba's argument centred on the fact that, on 28.1.1967 Paul had been installed as Chief of Seeiso's ward. However the ward now

found itself effectively under two Chiefs. Who were the people to obey? 'As we are the mouth of the nation, we say that the nation does not approve of this.'

The Chief informed the gathering in reply that he already had the matter in hand in that he had written to Local Government and was waiting for a reply from them. Rametse added that indeed the Principal Chief had written to Local Government but that what he had failed to tell them was that the Sons of Seeiso had been the first to complain about this matter; their letter to Local Government was also awaiting a response. His advice was for the Principal Chief to forward the people's petition to the Government as well. It was decided that the petitioners would draft a letter direct to Local Government themselves and that their letter would be forwarded via the Chief's office once he had read it.

After the meeting six men were elected to draft this new letter; they were Chief Lejapoli, Litaba, Seetsa, Lebona, Rangoane, and one other. The letter was written on Tuesday evening, 30.12.1969, at the home of Litaba. Its contents were given to me by Litaba as follows :

To the Permanent Secretary of the Department of the Interior and Local Government:

We, the undersigned, under the instructions of Seeiso's people, bring the people's complaint before you. We notice that here at our place there are two different administrations in the one area of Lichaba's. On 28.1.1967 the King and his Government per Matete Majara, the Minister of Local Government, before a large meeting of the people, installed Khosana [Prince] Paul Seeiso III as Principal Chief of Seeiso's. Chieftainess 'Mampho who was the regent was demoted from this office. Today, however, we notice that Chieftainess 'Mampho is also reigning here. She calls herself the acting Chieftainess of Lichaba's. We the people do not know when she was installed as such. The nation of Seeiso was not informed of this. What we experience nowadays is that she is causing friction between the people and the chieftainship of this area. We are surprised to see that in the days of Seeiso III, Chieftainess 'Mampho is acting in this capacity. This has never happened before, not since the days of Chieftainess 'Mampho I, nor her son Seeiso II, nor George Seeiso, nor in the days of Chieftainess 'Mampho II, when she was regent, was anyone installed to be Chief or acting Chief of Lichaba's. Chieftainess 'Mampho is making trouble here, by issuing orders that contradict the Principal Chief's. She allocates lands and sites, when she is not empowered to do so. She appears in no Gazette as the Chieftainess. (19)

The following day those who had written the letter went to deliver it to the Chief, who was absent. They were told by Rametse

that they might see the Chief on Friday, 2.1.1970. It was at this time that the faction approached Chieftainess 'Mamosala and ascertained where she stood in relation to the power alignments that were taking shape. We have seen how her presence was managed as a resource by the faction.

Bailey and Nicholas comment that 'To be recognized oneself as the champion of righteousness cramps the style of one's opponent by bringing in support from an otherwise neutral public' (1968:273). Our faction at this stage in their career were very much 'champions of righteousness', an image burnished by their taking the lead in representing 'the people's' complaints to the Chief as well as to Local Government, and considerably bolstered by the leadership and support now lent by the Chief and his wife.

In the management of the processes of petition that have been recorded above we can still discern clearly the outlines of the core of the faction. Lejapoli and Litaba assumed prominent leadership roles in pressing home the thrust of complaint. I see the faction at this juncture as still remaining essentially an interest coalition, but broadening so that it assumed many of the characteristics that are to be found in Thoden van Velzen's idea of the levelling coalition. Thus if we consider the question of leadership at this stage, we see a number of what he calls 'spearheads' emerging in the more public activities of the coalition, these tending to obscure the direct control of Litaba and Lejapoli and thus lending a more 'democratic' air to the movement. The screen of numbers was effective in a number of ways: it tended to focus attention on the movement only at those specific times when they came out into the open to attack their target, to foster an impression of their having come together spontaneously to register their reservations about Lichaba's office, and to obscure at least in part the

transactional ties that underlie much of the recruitment of an interest coalition. It is of course possible that the something like sixty signatories did represent a spontaneous welling up of popular sentiment. Given, however, the influence of the core of the faction and of the subsidiary leaders who emerged to spearhead attacks at this stage, it is more probable that these men also swung blocs or activated a clientele in recruiting petitioners. We have a difference here from the early stages of this faction's activity, when aversion to the Chieftainness was being discussed by the core with clear interests in common action being evident. Here the transactional linkages are not so easily abstracted and indeed it is possible that not all of the following were known to the inner core but might have been recruited severally by the multiple spearheads of leadership.

The collection of individuals who appeared as petitioners to back up their signatures was not given coherence, as was the faction in its beginnings, by a clear pattern of transactional links and face-to-face interaction. Here the solidarity of action drew substance from a shared aim against a target and they only emerged as a body in direct response to that target. Significant is the fact that the scope of recruitment was wider now than the bounds of the village. Their interaction pattern was less structured, and may be likened more to the jerking into action of a crowd. It was as if this crowd of people had fallen into this one pattern for this one action and would, kaleidoscopically, their petition presented, break pattern again. The leaders of the interest coalition provided the stimulus to freeze the pattern in its particular form at a particular time and, behind the shifting numbers, sustained the essential interests of their coalition.

The fund of the interest coalition shows augmentation on a number of levels. They had demonstrably strengthened their position

by the successful presentation of the petition and the recognition paid to it by the Principal Chief. They had also gathered in a valuable future contender in Chieftainess 'Mamosala. Perhaps most important of all, they had registered themselves as the representatives of the sechaba.

This ideology of representing a movement of the people determined much of the tactics of the faction at this time. We see increasing use made, for example, of such phrases as 'we are the mouth of the nation' and 'under the instructions of Seeiso's people'. This presentation is part of the tactics of going public, of which the formulation of their demands in terms of a petition is an instance. Frustrated in less formal approaches to the Chief, the faction sought the support of numbers and publicity. Equally representative of this stage was the use made of the formal adjuncts of bureaucracy. Their petition to the Chief was presented via the 'proper channels' and its recognition by the Chief bestowed legitimacy. Thus when a letter was written to the Permanent Secretary of the Department of the Interior and Local Government, it did not come from a group of malcontents at the local level but had rather the implicit endorsement of being channelled through the Chief's administration. All this serves to point up once again the composite nature and complexity of the faction's activities: it remained an interest group screened in some measure by the impression it created of being part of a levelling coalition, and making use of the institutionalized channels of communication and pressure in its approach. It is when one considers the activities of this faction over a time-span that one sees clearly how the faction altered form and mode of operation according to stages in its career and conditions in the field.

Although Thoden van Velzen stresses the spontaneity of a levelling coalition's actions against a target, and plays down the existence

of interested leadership, I would suggest that a levelling coalition may come into being and represent the end stage of a more purposively controlled series of activities. Levelling processes may serve to mask action managed at a more discreet level by a core with interests to protect.

Still Six: the run on the Chieftainess's bank

What has been termed the run on the Chieftainess's bank is part and parcel of the bandwagon effect initiated by the faction's activities. It is as though the tempo of the activity of the faction served as a catalyst to crystallize latent dissatisfaction with the Chieftainess's regime into strikes from a number of angles at once. As action coalesced against the Chieftainess, this was interpreted as indicative of her failing grip on the affairs of Lichaba's, and, emboldened by these signals and by increasingly general comment against her, more people started joining the bandwagon.

One of the effects of the protracted contest for Lichaba's was that it generated uncertainty among the people, who needed their affairs dealt with, and its headmen, who were placed unenviably in the position of having to choose between the Principal Chief and his mother. As Thoden van Velzen observes, a levelling coalition cashes in on general uncertainty or fear and hostility, for this is a situation in which loose stories thrive, and gossip

is clearly a weapon in the war-of [sic] nerves between the coalitions. Gossip is also a form of communication (Paine, 1967:278), which makes it feasible for people who have otherwise little or no contact ... to reach a communis opinio on the selection of a target. Furthermore, through gossip one gets a notion of the measure of support to be hoped for in case of conflict. (1973a:250)

We have seen how a presentation was built up to direct opinion against Lichaba's office. There comes a point, however, at which rumours take on their own volition without necessarily being helped along by interest-

ed parties, and thus it was in 'Mampho's when the movement against the Chieftainess started gathering momentum.

The interest group was certainly involved in encouraging these trends and, in turn, it was using the general climate of opinion in its recruitment. But in helping to encourage a run on the Chieftainess's bank, the faction recruited a slightly different, and more effective, following: that of those headmen of Lichaba's who could be interested in openly defying the Chieftainess. Some of these were men with old grudges against the ex-regent, and their attacks on her now savoured of a calling in of accounts.

The conflict process became severer for this, for disagreement was not only couched in abstract terms such as 'tradition', 'precedent' or 'the people', but was brought down to open defiance in public on the part of the very administrators over whom the Chieftainess was claiming authority, and about such keenly contended rights as the allocation of land.

Not only was the faction being submerged or obscured by the rapidly broadening front of criticism levelled against the Chieftainess, but it was in one sense being eclipsed by it as well. Having set the ball in motion, as it were, the faction's aims were being served by a number of attacks on the Chieftainess from different directions as a more truly 'levelling' process was coming into existence and cashing in on the existing mood of antagonism that had come about partly as a result of the faction's varied moves.

Still Seven: the sechaba

On a rainy morning eleven days before the general election of 1970 a large and restive crowd gathered outside the Chief's administration building to await a final decision about Lichaba's. They had

assembled in response to a circular sent to authorities in the ward:

I greet you chief.

Chief,

I am instructing you to call all the people under your care [my emphasis] together with your chiefs and headmen, and the headmen in your vicinity, to be at a pitso on 16.1.70 at 10.00 a.m.

Chief, the aim and the purpose of convening this pitso is to come and put right matters affecting the Chieftainship of 'Mampho's.

Chief, I shall be thankful if you would expedite this matter.

With greeting
Yours

[signed] Paul G. Seeiso
Principal Chief of 'Mampho's

We must attempt to weigh up the role of the sechaba at this pitso of 16.1.1970 (which has been described fully in an earlier section). Initially, they were excluded from the discussion that went on behind closed doors, and their presence outside, and pushing on to the verandah to escape the wet, became an important factor in the outcome of the meeting.

Let us start by looking more closely at the negotiations that led to the people being represented within the Chief's courtroom.

First it was thought that those who had been directly involved in drawing up the petition ought to represent the people, but a messenger of the Chief on the instructions of Leboea, said that he could not admit more than two as representatives of the sechaba. Initially Chief Lejapoli and Seetsa were chosen. After about two minutes Seetsa was asked to leave the private meeting and, when he came out, he said angrily that he had not been given a reason for his exclusion. At this point the people pressed on to the verandah, demanding to know why their chosen representative had been put out of the meeting. When the messenger could not give them a reason, they demanded to see Leboea. Instead of Leboea, a second messenger came out to deal with their questions, and again they demanded that their question be conveyed to the Chief. This second messenger summoned Leboea who told them that he did not know why Seetsa had not been accepted.

He was asked 'Do you recall that this meeting was called because of the petition that was made by the people? The BCP candidate, Shakhane Mokhehle, suggested that it would be wise to allow the people adequate representation. Especially, he added, in view of the fact that the people's representative accepted by the meeting inside was himself 'one of the family', i.e. of chiefly descent. Several men seconded his suggestion and, when Leboea asked them to put forward another representative, Shakhane pushed Litaba forward.

The pressure of the people on decision-making had a direct effect as we have seen, on the deliberations that were taking place behind closed doors. Their presence was visible, vocal and urgent and went a long way towards hamstringing Chieftainess 'Mampho in her attempts to delay a clear-cut announcement of her changed status in the ward. Although the faction's presence was unmistakeable in that two of the core members represented the sechaba, other and more differentiated spearheads lent their drive to the people's claims and served to signify that impetus for the demands came from a far wider front of concern than just that of the faction.

Two factors show how effectively the role of the faction had been obscured by the march of events. Firstly, this meeting, so soon before the general election, carried its own charge of political excitement generated by the importance of the nearing vote at the polls. The way in which the BCP candidate took up a rallying stance in the crowd illustrates what I have claimed above, that 'other and more differentiated spearheads' were lending their drive. Secondly, one may speak of flurries of activity that threw men forward. The threat of violence contained by the crowd, always incipient, found its outlet when the Headman of the village, Mpho, known for his support of the Chieftainess, was manhandled.

According to one chiefly informant, Mpho had been standing beside the door while discussion was proceeding inside. A headman from the Lichaba's area approached him and asked him whether he thought he was a 'policeman'. Mpho replied that as he was Headman of Mampho's, it was his duty to see that order was kept while those inside deliber-

ated. While they argued, a young man told Mpho to get away from the door, insinuating that his presence there was an insult to the people in its suggestion that the crowd was unruly. Then yet another man pushed forward and stated that the people had to be allowed access to the meeting: rain was falling, they had waited a long time and they had a right to know what their Chief was saying inside. Mpho remonstrated with him for his disrespectful behaviour, but was pushed from the door. In turn, he pushed back and was slapped hard in the face, and he retreated.

We can no longer at this climactic meeting speak decisively of the faction's role in events. Having generated activity against the target, the Chieftainess, their aims were achieved by the weight of support that developed its own momentum in the ward. The faction, although always present and directing, had become part of a movement with differentiated spearheads of leadership, motives for action and supports. This crowd was multi-spearheaded, was target oriented, lacked clearly interlocking transactional ties and its visibility was momentary in that it came together in response to specific circumstances and gained intensity in opposition to one particular target.

This type of 'levelling' action was admirably suited to the faction's needs. The weight of numbers provided at once a ratification for past activities in terms of popular support, and at the same time a signal that could not be ignored easily. The insistence of popular clamour could not be disregarded. The 'voice of the people' had changed from petition to active protest.

Still Eight: watchdog to the administration

Chieftainess 'Mampho did not immediately relinquish office after this pitso, yet it represented so decisive a statement of public disapprobation that it marked the end of her effective authority in Lichaba's. It is also a convenient place to end the analysis of our faction's activities against the Chieftainess, for the matter, so to speak, was now out of their hands.

Concentration on the part played by the faction in the campaign against the Chieftainess has diverted our attention away from the fact that subsidiary targets were selected for attack as part of the broad pattern of the campaign. I have already dealt with how opinion was orchestrated against the incumbents of positions in Lichaba's office. A campaign was also mounted against the Chief's representative, Leboea, running concurrently with that against the Chieftainess.

Leboea was dilatory in carrying out his duties and often arrived for work late. However, it is difficult to explain why he was singled out for attack. It was stated that he was a 'Chieftainess's man', yet a careful examination of what he said in Sons of Seeiso meetings would seem to indicate more of a placatory role. The motivation behind the attack on him was complex and I am not fully satisfied that I can explain the antipathy against him. Essentially, I think criticism was levelled at him because he represented, in Tom Wolfe's terms, a convenient 'flak catcher' (1971). Criticism of Leboea was useful in that it deflected complaint away from the Principal Chief; for even while Lichaba's office was in existence, there was much to criticize in the administration of the Chief. This, coupled with the personal antagonism that existed between some members of the faction and Leboea, would seem to provide motivation for selecting him as a target. Leboea's effective career as the Chief's representative in his court came to an end when he was assaulted by an irate applicant (see Chapter Seven).

As with opposition to Chieftainess 'Mampho, Leboea was selected as a target, publicized as unsuited for office, and his eventual replacement signalled the effectiveness of the 'watchdog' activities of the faction. They were to demonstrate this effectiveness once more when they objected to the appointment as Chief's representative of a man

who they claimed had been associated with ritual murder in the past and was consequently dangerous to have working in such a prominent position, for his presence might compromise the Chief's reputation. Some members of the faction were also suspicious of him and regarded him as an outsider and stranger to the village who had appeared without there having been any consultation with the sachaba. Lejapoli and Litaba approached the Chief about him and were successful in their representation.

It is important to differentiate between the type of activity that led to representation being made against this man and that which the faction was instrumental in initiating against the Chieftainess. The faction did not only relate to the political field through the 'plug-in' of the issue of Lichaba's; it was as though there existed a reservoir of concern about matters of local importance which the faction had the ability to channel.

The actions against Leboea, although tied in to the struggle against Lichaba's, point up once again the adaptive nature of factional activity, and reveal the complexity of motivation involved. For, not only was the attack against Leboea part of the general momentum of events set in motion by the upheaval of Lichaba's, but, I would surmise, it was also founded upon a desire to see an efficient, working and uncompromised administration.

When we look at the faction's role as a function of time we see that, although it changed form and although it changed fund and target, it did not necessarily fall away with the closing of an issue. By this I do not mean that the faction was an embryo party, but that at village level there existed a number of men who were prepared to, and insisted upon, making their voice heard. The composition of the faction changed according to target; the ideology at village level, however, remained

constant: that the people had a right to make their voice heard in local decision-making. Even when its actions were overlain by political aims and expediency, this basic ideology remained at once an expressed commitment, a useful platform and a strong lever.

Still Nine: fighting outside pressure

By this time our review of the faction's activities has taken us well into the emergency period in Lesotho, during which time a ban was put on conventional party-political activity. The involvement of men at the local level in bringing their influence to bear on happenings affecting the ward did not fade out during this time, hamstrung though they were by emergency regulations. When, for example, Litaba heard that the Local Court was to be moved from 'Mampho's to the nearby District administrative centre, he impressed the importance of this step by Government upon the Chief and urged him to resist it. He himself was instrumental in drawing up a petition to be sent to Government. Litaba was supported in these actions by 'The Mob' who agreed that the transference of the court had to be fought. This mobilization of local feeling was successful and, although for a time the Local Court was situated outside 'Mampho's, it was eventually returned.

During the emergency most actions of the Government were viewed with extreme caution and suspicion by those opposed to it. Firth mentions that factional activity may provide outlets for political energies where conventional political activity is denied. Thus although it was obvious that the moving of the Local Court was not in the interests of the local community and reflected on the prestige of both the Principal Chief and his village, it also provided the opportunity to challenge an action of Central Government at a time when challenge was severely curtailed.

Still Ten: 'underground' courts

It is hardly surprising to find, once the emergency was under way, that a notable change took place in the form of the faction, for Lejapoli was no longer included in it. The symbolic parting of the ways was signalled publicly on 27.4.1970 at a pitso held by Chieftainess 'Mampho about the misuse of firewood. When the Opposition took advantage of this pitso to raise the question of political repression in the village, it happened that those assembled started moving about so as to form themselves into clear-cut groupings along party lines. It was then that Lejapoli moved away from 'The Mob' with whom he had been associated.

The changed composition of the faction, with Lejapoli now excluded, reflected clearly the way in which the bitterness caused by the emergency hardened divisions, and made impossible the earlier rapprochement that had come about over certain issues at the tribal level. So deep were these divisions scored, that during the emergency 'The Mob' took over the role of holding informal moots to settle in a quasi-judicial fashion quarrels between Opposition members. The purpose of these underground moots was to avoid showing publicly any divisiveness in Opposition ranks. Again, I underline the flexible nature of factional activity. Its political interest here was being served by its function as a quasi-judicial body. It had adapted to changes in the field and tried to augment its fund in a way very different from its tactics of going public when directed against Chieftainess 'Mampho.

Conclusion

The schema presented at the outset of this analysis of factions has proved useful in that, with it as a background, it has been shown

that factional activity does not fit easily into a definitional mould. The most crucial fact about the engagement of the faction I have described is the way in which it altered both form and function in relation to the field. We have seen that while Thoden van Velzen's concept of the levelling coalition has much to offer heuristically, it may represent only a stage in the career of a faction or, far from being the spontaneous movement he would suggest, it may be the outcome of a carefully constructed series of engagements. Similarly, we have shown how a faction may make use of institutional structures, at times seeming to assume many institutional characteristics, and yet remain aside from a categorically established position.

The relative permanence of this faction needs comment. We have viewed the faction and factional activity in the village over a number of years, and have seen the persistence with which a local-level leader gathered and regathered about him a relatively consistent core of men through whom to prosecute local concerns. I must stipulate here, while suggesting a continuity in action, that I am not dealing with the genesis of a 'party'. The faction operated outside the bounds of conventional party-political activity in that it did not limit its recruitment to any one party structure nor make exclusive use of the organizational machinery of parties to achieve its ends. Consequently it avoided limiting its appeal and mobility as well.

One might see it rather as constituting a reservoir for action at village level, a sort of energizing force. Boissevain comments that such groupings 'provide the dynamic of any structure' (1964:1286; cited by Bujra 1973:132), and, largely unconstrained by the limits of formal institutional action, the faction served to intervene decisively in the decision-making of the ward. There were thus men at the local level with

the gumption and energy to seize on issues, formulate demands and take hold of public affairs.

The continued perseverance of the faction must also be seen in direct relation to the thrust of Central Government. Bujra says of the Third World communities from which she drew her findings:

the communities involved are the smallest political units in relatively modern nation-states. This is important both from the point of view of the people themselves, who have suddenly become aware of wider political horizons, and from the point of view of national leaders, since these are mostly non-industrialized nations where rural development is a central factor in public policy. The character of local political action may thus, in some cases, be a matter of direct practical relevance to the implementation of national policies. (1973:149)

The time-span over which we have observed the faction's activity covered a period in which the BNP was in power and during which it seized power after losing the 1970 general election. Much of the faction's activity must be interpreted in the light of resistance to the increasing power of Central Government. This core of local activism represents a type of political engagement with which Central Government in Lesotho will have to come to terms. As can be seen from the faction's machinations, men like this have developed a fund of expertise and are practised in political manoeuvre. Welded together by an Opposition ideology, they will present problems for a modernizing Government which does not take into account this level of grass-roots commitment.

The foregoing analysis has concentrated on laying clear the faction's activities in the field. By so doing, the impression might have been created of the faction's primacy in the political happenings of the time. It should be obvious to the reader that this field was made up of a whole complex of events. I wish to emphasize that it is very possible that I was not aware of the actions of all interested parties prosecuting the cause of this engagement. For example, I was not

informed on the motivation of most of the members of the Sons of Seeiso, and have only been able to speculate generally about Government attitudes. I have given such prominence to the faction's role because I had detailed field data on its activities and because I consider its type of action crucial as a subject for analysis in a Third World country.

CONCLUSION

the institution of chieftainship will die out in the course of time, but it would be a pity if its end is ignominy. (Luthuli 1966:122; cited by Weinrich 1971:105)

There can be little room for doubt, ... that increasingly the British Government tended to encourage the chiefs to look "upwards towards Government for authority and support rather than, as before, to the people". ... In our view estrangement between chiefs and people was in part the result of a growing tendency on the part of the Government to rule through the agency of chiefs--a tendency which was to become more marked after 1938. (Report on Constitutional Reform and Chieftainship Affairs 1958:34)

As administrators, the Chiefs serve both as a channel of communication and an agency of policy enforcement, through which the Government attempts to communicate and enforce its directives down through the districts to village level. Again, in their administrative capacity, the Chiefs are tax gatherers, as well as being an important agency for the maintenance of law and order, especially at village level. While it is true that these functions are not always efficiently carried out by certain Chiefs, it is equally true that incentives for efficient service--especially financial incentives--are minimal. ... But perhaps the major difficulty--certainly it is the major obstacle in the way of the efficient communication of governmental directives through the chieftainship down to village level--is the present fact of dualism, and the confusion and lack of confidence to which it gives rise, ... (Report of the Basutoland Constitutional Commission 1963:56)

the chief did not, in practice, act in important matters without the concurrence of his people; they as often as not followed the line they judged the chief was taking, but if for some reason they opposed him, and he expected their opposition to be firm, he would not often risk forcing the issue. (Report on Constitutional Reform and Chieftainship Affairs 1958:25)

The chieftainship of Basutoland has always accepted that at some stage or another the views of the Commoners can in fact prevail over those of the chiefs. Our chieftainship like any other institution, can always be expected to incur a number of serious and minor human errors. But it has never been an institution of tyranny. (Senate, Official Report of the Debates, 26 May 1966, col. 1779; S.P. Makotoko)

We ... ask our chiefs not to fear anything. They should not give their

power to the present Prime Minister, because that is not their power, it is the power of the nation. (Senate, Official Report of the Debates, 20 April 1966, col. 1081; E.M. Molapo)

One does not have to be educated to become a chief. No one can buy chieftainship. Chieftainship comes from heaven. (Senate, Official Report of the Debates, 20 April 1966, col. 1088; E.M. Molapo)

A 'concatenation of events' has been presented. From their distillation it was hoped that certain trends would become discernible. It is my task now to make a more general evaluation of the material that has been put forward.

On the face of things, the Lichaba's contest could be represented as having merely described a process of cyclical change. I have been informed that Chief Paul has been reinstated, that one of his brothers is now warden of Lichaba's office, and that his mother can still make her voice heard. Has the wheel of change turned just one revolution then, with breach leading to crisis and in turn to resolution? This is only a surface reality. The Lichaba's contest allows one to prognosticate about more general, deeper, non-cyclical trends. If we take the chieftainship as our analytic weather-vane, we gain indications as to path and outcome.

Chieftainship today is drawn to Government; it is pulled away from the people with whom resided in traditional times the source of its power, legitimacy and prerogatives and to whom it was in turn obliged to render chiefly favours and dispensations. Bureaucratic demands on the chieftainship serve to formalize the office, and cumulative and erosive change has shorn the multiple bondings that held chief to people. The importance Government comes to assume in a polarized country is that chieftainship must adopt a stance relative to it, and we have seen how central was the fact in our field that Chief Paul was viewed as a supporter of the King and aligned against the BNP, while his mother was placed in the Government camp. Chieftainship cannot stay neutral to the power source which effectively controls its destiny.

Having to place their allegiance relative to a system external to

the traditional hierarchy, with its customary legitimating principles and self-containment, exerts pressures on authorities. Chieftainship is influenced by and has to react to countervailing forces. Weinrich (1971) redirects attention to the tragic implications of this necessity. In Rhodesia individual chiefs may falter and break down under the strain of accommodating the desires of the people, those of African Nationalists, bureaucratic imperatives and the overarching presence of white overlordship. The chief in Lesotho is involved in an analogous bind. He must, in particular, respond to the demands of Government, because here lies the effective power in the State. He also knows that the stance he adopts vis-à-vis Government loops back to his people.

Chieftainship's association with Government sets up a cycle of decisions through which, ultimately, the nature of chieftainship becomes weakened and altered. Although there may be short term gains in either supporting or opposing the Government, the situation has arisen where the Chieftainship can only be spoken about as relative to Government.

Conversation with informants yields a host of sayings designed to probe chieftainship's complex and often ambivalent nature: 'A chief is a chief of fools, lunatics and witches'; 'To work for the chief is to tan a hide for the Devil'; 'The chief is a hornless cow'; 'The chief is a bag of shit'; 'The chief's lands are not to be counted'; 'The chief is a lion with sheathed claws'. The idiom points to a densely layered institution, full of the contradictions that gather about the exercise of power. A chieftainship which must act with an eye on Government becomes one-dimensional. Its existence moves into the province of the 'official' and laid down. Although it may still retain areas of power, it is no longer 'lion-like', frightening and also mysterious in its potential. It can no longer 'thunder'. (20)

Because chieftainship must follow the realpolitik of seeing how the wind lies in Government quarters, it is in danger of becoming a commodity. If chiefly support is used as a resource, thrown in behind or with-

held from Government, it is converted into and reduced to one more factor in the political balance. It endangers its merit to be considered a force in its own right, whose place is protected by custom and tradition. Thus when Chief Paul allowed the Opposition to prosecute his cause, to entangle his tribal claims with a party-political game of tag against his mother, he subjected himself to the buffets of the arena, from which his status 'as Chief' could not protect him. The more so his mother, who entered politics far more decisively. The chieftainship cannot but enter the arena, but in so doing, as an institution it becomes the loser. In trading and transaction in national politics the coin of chieftainship is worn smooth. Thus chiefs may be spoken of as 'selling out' to one or other side, or as misrepresenting their people, or overstepping the bounds of their role. The necessity of having to bargain is leaking away chieftainship's autonomy and credibility.

In Lichaba's the ward saw an unedifying struggle between a mother and her son. The extent to which the matter became a political football was in itself a demonstration of the changed nature of chieftainship. The chieftainship was then laid open to the charge of prostituting itself for political expediency, allowing itself to become a vehicle for the expression of partisan interests. When chiefs and chieftainship are talked about in these terms it emerges why statements in Senate such as 'Chief-tainship comes from heaven' become so weighted. Although it may take as one of its validating criteria 'being tied into the natural order of things', the chieftainship is forced to come into the marketplace of political life to try to insure its position.

The awkwardness of its quandary lies in that this entry involves it in a separation from the people. For how can the chieftainship claim to be expressing the 'will of the nation' when, in national forums, chiefs must align themselves in terms of a power division dictated by party politics? A divided country, split down the middle between two major parties,

makes it inevitable that the political affiliations of a powerful chief will alienate him substantially from a major section of his ward. Already distanced from his people in life style and formalization of office, the necessity of making political judgments opens the gap between him and sections of his people yet further. There is considerable evidence to indicate that the chieftainship has often been the fulcrum for opposing interests in Lesotho's wards (see, for example, Jingoos 1975). Commoners, from the early years of this century, have cast critical eyes on the privilege of chieftainship, its role vis-à-vis the colonial Government, and the role it should play in a changing society. However, the radical divisions preceding independence and the post-independence struggles in Lesotho saw, I would contend, a country polarized as never before. The consequence of this was to make the chief's actions in the national context intrude into even the most isolated beer house and homestead. It cast a public light on the chief's role, and set up an intensified process of de-mystification in which chieftainship could not fail to offend some. As a corollary, people's attitude to chieftainship had to be affected, and we have seen in our field how at times members of the faction utilized chieftainship for political ends. Although I have been at pains to point out that this is a complex process involving very mixed motivation, it shows how chieftainship is used as a political commodity and becomes manipulated by those in the ward with partisan political convictions. The people exist between the chieftainship and the Government, their traditional expectations taking more clearly now the form of an electorate's demands for the aggregation of interests. This in itself is reflective of the alienation between chiefs and subjects. Chieftainship is not to be obeyed and honoured, respected as the visible expression of the will of the people, but it, the issues it creates, and the opportunities it presents, are used to give focus to national political causation.

From what vantage point must we look at chieftainship? From Government's point, I think that chieftainship has been successfully limited and

tied to Maseru by an increasing amount of impinging legislation. Khaketla's expostulation that the major chiefs who fell in behind Jonathan were signing the 'death warrant' of the chieftainship is not too exaggerated, if we take it to mean that they increased dependence on Government. The people have seen chiefs subject to Government's dictates, have seen the chieftainship's powers reduced by in the emergency. More importantly, they have seen how the chieftainship has become a commodity. In the ward of Seeiso's, they have seen Chieftainess 'Mampho switch political allegiance in terms of national power. It is difficult to retain a coherent belief in an institution that, from above, has been drained of autonomy; from below, has lost its roots, and is subject, from this shaky base, to oscillate in relation to the locus of national power.

Senators speaking against constitutional monarchy in 1966 likened a powerless Paramount Chief to 'a monster'--'without eyes, without brains, without ears, without hands, without feet' (Senate, Official Report of the Debates, 20 April 1966, col. 1077; E.M. Molapo). The image was extended to the rest of the chieftainship by E. Moliboea: 'what would happen to them when they have no hands, no noses, no eyes, no mouths and no feet. How will they live?' (Senate, Official Report of the Debates, 21 April 1966, col. 1145). Is the imagery any more than a parliamentary rhetorical conceit? We have seen from the happenings in Lichaba's that the 'brain' of chieftainship is being usurped by Government; chiefly decision-making is curtailed. The 'eyes' of chieftainship are becoming blinkered by the necessity of scrutinizing Government's position. Its 'ears': it is alienated from the people, and even where the sechaba, through faction leaders, act as a gadfly, that input may be compromised by political expediency. The chieftainship lacks power to execute; its 'hands' are tied, and its 'feet' rest on no firm foundation.

Barth's idea that choices will be channelled by the 'parameters of value' operative takes on meaning against the intrusion of centralization

and politicization in our field. Chiefs made choices in relation to both these imperatives; in turn, these fed back to the ward, setting up their own demands and subtly altering elements in the constraints equation. Similarly, we have seen how the people's role in decision-making became conditioned by response to or against Government, altering their relationship with the chieftainship. The trend of reaction here is again channelled in terms of Barth's constraints causation. Even when we consider the role of the Sons of Seeiso, we see how clearly Government's presence was recognized, and party politics was reflected, in the logic of their decision-making. Individuals acted in this field, giving inherent dynamism to the structural process. By identifying the constraints operative on them, and by following their actions, we were made aware of the generating of new forms in the decision-making balance.

Chapter Six
THE LOCAL COURT

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INTRODUCTION⁽¹⁾

Historical review

As early as 1922, according to Poulter, there were moves for legal reform prompted by dissatisfaction with the way chiefs were running courts. At that time chiefs had wide judicial powers and 'were adjudicating on disputes of virtually every conceivable nature between the Basotho themselves and were exercising their executive functions concurrently' (Poulter 1970a:310). This system had a number of shortcomings. Cases were generally heard by a President and a panel of assistants, who could take over in the President's absence. The delays, seemingly endemic then to litigation, and the not infrequent lack of communication among the various people hearing cases, were such as to frustrate litigants and to facilitate their being fobbed off by members of the court who could blame others for delays and inadequacies. Hailey writes, 'it was a common complaint that the Chiefs were exploiting their Courts by giving the people vexatious orders and fining them heavily for disobedience' (1953:81).

Inefficiencies like these led to a desire for reform and this coincided and was intimately tied in with changes that were affecting the relationships between chiefs and their subjects at every level. The chiefs' involvement in a cash economy made them unwilling to redistribute to the people, while education and rising political aspirations caused the commoners to resent the continuing demands of their rulers. One way in which this course of alienation was expressed was through pressing for change in the courts. A further contributing cause was that the chiefs

were feathering their own nests and giving privileged positions to their sons by "placing" them. In this way the number of authorities increased and the number of people entitled to hold courts became greater each year. (Poulter 1970a:311)

Judicial reform set in motion by the Native Courts Proclamation (No. 62 of 1938) resulted in change in three areas that concern us. Firstly, only warranted courts were recognized as having the legal right to levy fines and impose official sanctions. This was the start of the centralization of the judicial system which has led up to the Local Court structure as it exists today. Secondly, warrants were issued only to a certain number of authorities so as to cut down on the number of courts. From an original 1 340 courts, the number was reduced to 121 in 1946 and to 106 in 1949. Unwarranted courts continued to function, but only as courts of arbitration without the sanctions to enforce their decisions. Thirdly, the reforms marked the start of the official separation of the executive and judicial powers of chiefs. While at the outset chiefs had some control of the personnel of the courts, such power was progressively circumscribed until today chiefs have no official control over the Local Court system.

The difference between the relationship of a chief to his court before and after 1938 is well illustrated by the High Court decision R. v. Leteketa Rantletse [(1926-53) HCTLR 226]. Chief Matlere of the Mokhotlong District ordered the accused to remove his hut and reside in another village. The accused refused to obey the order and so Chief Matlere sent a headman and 30 messengers to demolish the hut. The accused, in resisting this attack, killed one of the messengers. The question arose whether he was justified in using force to repel the invaders. The court held that he was because the messengers were trespassers and he was entitled to defend his property against them. Section 8 of Part I of the Laws of Lerotholi states -

"No person shall be deprived of his hut or huts except under the authority of an order of a competent Court."

The crucial determination by the High Court was, therefore, that no court had in fact given its authority. Only Chief Matlere had authorized the "eating-up," as it is called, of the accused's hut, and thus it was an unlawful act. Harragin CJ elaborated on the consequences of the 1938 changes -

"I do sympathise to some extent with the Chief in this case, because there is not the slightest doubt that before 1938, the Chief was the Court, but since then he has only become the senior member of it and he omitted what no doubt was to him an entirely unnecessary step in putting the matter before the Court ... I also think that Chief Matlere, wrong though he may be in law, was only carrying out what no doubt for a number of years every Chief has done, and I can only say

that I hope this case will bring home to the Chiefs of this Territory that their authority to take drastic action does not lie in themselves, but in the Courts of the Territory, and that care should be taken in future to see that the letter of the law is carried out." [HCTLR 228] (Poulter 1970a:312; ellipsis in original; author's footnotes inserted in parenthesis)

The Local Court system today

Poulter's exposition of the law administered in and the jurisdiction of the Central and Local Courts is exemplary and will be given in full:

... Present Constitution of Central and Local Courts

The recognition, constitution, powers and jurisdiction of these courts is now regulated by the Central and Local Courts Proclamation [reprinted, as amended, in Volume X (1965) of the Laws of Basutoland at 186]. They are established or recognized by warrants under the hand of the responsible minister acting with the concurrence of the Chief Justice. ... At present there are thirteen Central and fifty-eight Local Courts. ...^[2] The Central Courts hear appeals from the Local Courts, in addition to having jurisdiction in cases of first instance. ...

(a) The law to be administered ...

This consists of:

- (i) the customary law prevailing in the country, so far as it is not repugnant to justice or morality or inconsistent with the provisions of any law in force in Lesotho.
- (ii) the provisions of all rules or orders made by the King or a Chief, sub-Chief or Headman under the Chieftainship (Powers) Proclamation [Proclamation 61 of 1938 as amended], which are in force within the area of jurisdiction of the Court. The Chieftainship (Powers) Proclamation, which was the 1938 Native Administration Proclamation embellished with a new title, has recently been repealed by the Chieftainship Act of 1968 [Act 22 of 1968]. ...
 Parts II and III of the Laws of Lerotholi consist of rules and orders made under the Proclamation and they remain in force despite the enactment of the Chieftainship Act, except in one instance. ...
- (iii) the provisions of any law which itself authorizes Basotho courts to administer it. ...
- (iv) the provisions of any law which the court may be authorized to administer by an order made by the responsible Minister with the concurrence of the Chief Justice.

(b) Original Jurisdiction

Subject to any express provision granting such jurisdiction, no Central or local [sic] Court has jurisdiction to try cases in which a person is charged with an offence in consequence of which death is al-

leged to have occurred or which is punishable with death or imprisonment for life. Nor can these courts try cases in connection with marriage other than a marriage contracted under or in accordance with customary law, except where and in so far as the case concerns the payment or return or disposal of dowry. ...

The courts have the civil and criminal jurisdiction set out in their respective warrants, and, broadly speaking, this jurisdiction is based on the cause of action having arisen in, or the defendant being ordinarily resident within, the court's area in civil actions, and the offence having been committed therein in criminal proceedings. ... The warrants specify certain financial limits for jurisdiction in civil proceedings and also lay down the maximum punishments which may be imposed in sentencing offenders.

(c) Appellate Jurisdiction

Any person aggrieved by any order or decision of a local court may, within 30 days from the date of such order or decision, appeal to a Central Court. ... From there appeals lie to the Court of the Judicial Commissioner. (1970a:312-14; author's relevant footnotes inserted in parenthesis)

The Local Court in the village of study (3)

courts ceased to form a natural and daily part of the ordinary Mosotho's life; such courts as continued to operate were no longer so directly associated with the local chieftainship as such, and thus ceased to be implicated in the nexus of other relationships, economic, disciplinary, political, administrative and ideological, which characterised the chieftainship in the traditional society. All this meant that the Basuto courts, like the European ones though to a lesser degree, could not be regarded as ipso facto the authentic exponents of the "Law". The very affirmation that such-and-such a decision was not "our Law" implies the existence of this law as an entity existing apart from its expositors. (Hamnett 1970:297)

The Local Court was on the outskirts of the village in contrast to the Chief's administration building, which had a more central position. The courthouse and stone huts for the use of court personnel were fenced off with barbed wire, symbolically cutting them off from the hubbub of village life. The court building, like that of the Chief's administration, was strictly utilitarian and institutional, ignoring the traditional patterns of village architecture. The building was divided into a courtroom and an office. The President sat behind a table, separated from the body of the court. Litigants, witnesses and spectators were seated on

neatly arranged benches. In contrast to the Chief's administration complex, the Local Court was not surrounded to the same extent by busy and vociferous litigants or petitioners; those awaiting cases usually sat on the grass outside the courthouse, quietly talking or gossiping or discussing their chances. There was an air of formality which was reflected in the demeanour of people attending this court.

The court personnel were a President and two clerks (one a woman) who doubled as prosecutors. The court also employed messengers. The staff were outsiders who were subject to transferral to other courts and other districts. For example, the President was transferred to it during my fieldwork and his home village was in another ward. When he arrived in the village he was not widely known and there was interested speculation about what he would be like. By the close of my fieldwork, he had been retransferred. His separateness from the flux of village life was driven home by his living apart in the special quarters within the fenced-off enclosure, and the formality of his western-style dress. The court staff were civil servants who did not have connexions with the tribal structure in the way those sitting in the Chief's court did. Their authority, as Fallers says of Soga judges, 'rested upon appointment from above more than upon consent from below' (1974:9). Although one of the clerks was the brother of a powerful neighbouring principal chief, as far as his court duties went, he was clearly seen as a clerk first, rather than as of the chieftainship.

The clerks were responsible for accepting and scheduling cases, arranging for the attendance of witnesses, and seeing generally to the business of an efficient timetable. One duty was to screen cases to ensure that the court did not have its time wasted by cases beyond its jurisdiction or with cases so ill formulated as to preclude their being heard. Despite this safeguard, such cases did slip through.

For example, a litigant, 'Mapitso, brought a case against a man because, she alleged, he had charged her in a headman's court where he claimed from her more money than she actually owed him. When the President had ascertained the facts, he asked:

Q. How did the clerks allow you to open the case? Did you come here yourself or did you send someone?

A. I sent my brother to open the case.

The clerk was then called to explain why the case had been accepted. She said that the man who had come to open the case on behalf of the litigant had quarrelled with her when she refused to open the case. After the clerk had replied affirmatively to the President's question, 'Did he quarrel with you? Did he force you to open the case?' the President dismissed the case.

The President sat without assessors. He kept records of proceedings, and evidence was written down in narrative form and read to the litigant or witness and signed by him. There was not the flexibility of procedure that was found in the Chief's court, and generally the formula was to have the plaintiff give his statement, backed up by his witnesses, then the defendant's statement and witnesses, sometimes a final statement from each party, and then the judgment. Evidence was subject to cross-examination by the parties and the court. It sometimes happened that parties led their own witnesses, as did the Prosecutor in the criminal cases. Witnesses were excluded from the court before giving testimony and the dignity of the court was preserved by the messengers. Litigants who threatened to disturb proceedings were excluded, and great care was taken to see that all stood in respect for the President whenever he entered and left. There were few outbursts of temperament in this court compared to the sometimes heated exchanges of the Chief's court, and such as there were, were commented on severely by the President. By his comportment, the President effectively kept a distance between himself and the litigants; during breaks in court proceedings, he would generally retire to his living quarters. Court tone and procedure then were fairly fixed and formal; I recorded few--and only slight--departures from fixed procedure. Witnesses were called and

questioned according to the procedural rules rather than, as often happened in the Chief's court, according to what I have termed the logic of the case. The calling of witnesses was subject to the sanctions of the subpoena, so cases were seldom postponed or delayed, as in the Chief's court, to summon witnesses.

This court was more formalized than the Chief's court, and consequently further removed from the lekhotla. Its position as the lowest court to operate with official warrant will be important throughout my discussion, for it was one of the most obvious manifestations of the encapsulating structure operating in the village community. Implicit in this introduction has been a comparison with the Chief's court. One main thrust of analysis in the forthcoming sections will be to evaluate what place this court occupied in relation to the local community, and to what extent it was an alien imposition.

THE NATURE OF THE COURT

Very little use seems to be made in practice of precedent. By and large, decisions of one Basotho court are not circulated to another, there is no system of publishing reports of such decisions, nor are decisions of the Judicial Commissioners' courts circulated systematically or published in an accessible form. One should also bear in mind the essential difference between the common law and customary law. The former is self-sufficient; it depends on itself and can only be altered by itself or by statute. Customary law on the other hand depends on the usage of the people and can change from time to time. A decision on a matter of customary law given ten years ago cannot be blindly followed today as it may no longer represent the law. However for there to be constructive and uniform growth and development rather than haphazard fluctuation in the law it would seem desirable for some system of precedent and publication of reports to be introduced. (Palmer and Poulter 1972:112-13)

Because of the lack of standardization in judicial decisions and because the customs and laws of the Basotho have never been codified, a court at the local level is relatively isolated. Consequently, an assessment of such a court must place emphasis on the President, for each court will, in

varying degree, be characterized at any one time by the decisions and judicial interpretations its President is likely to give. It is possible that individual court Presidents may develop idiosyncratic styles. With this in mind, the role played by the President in the court of study will be central to this section.

Court participation

A somewhat anomalous position has resulted in civil cases because whereas there has been a shift from the "inquisitorial" to the "accusatorial" system, legal representation has not been introduced and thus the onus lies on the parties to carry on any cross-examination. Formerly they could look to the judge to ask the necessary penetrating questions to ascertain the truth or falsehood of testimony, and many litigants still lose cases today through a failure to appreciate the fundamental change that has occurred ... (Palmer and Poulter 1972:497-8)

While one cannot say that litigants lost cases simply through expecting the President to intervene on their behalf, nonetheless it was clear that his entry into cases was of a different order from that of the Chief's court. Informants have told me that the transition to the Local Court system led to initial confusion. Litigants were bewildered by the fact that they were not 'helped' in their cases in the way they had come to expect from traditional courts. We have seen that the Chief's court functionaries played a dynamic role in hearings, and helped a great deal with probing cross-examination and extracting information from witnesses. The court also functioned as an advice forum to sort out matters. The Local Court does not operate in this way and the President's intervention is far more measured, reflective of the formalization of law at this more official level.

At the outset of a case the President was sometimes forced to intervene for the sake of clarification after the plaintiff's statement because of its vagueness or lack of direction. It must be remembered that certain litigants were less adept than others at formulating their cases

with a necessary clarity and precision. 'Mapitso, whose case was mentioned above as having been dismissed, faced this difficulty:

'I appear before this court charging Mafetsoa with the fact that he brought me before Lesoro's court. In this Headman's court Mafetsoa charged me with failing to pay him the amount of R20 which he said I had borrowed from him while we were in Klerksdorp. All I know is that I borrowed R12 from Mafetsoa and I have already paid that money back. The Headman's court said I had to pay the R20. I don't know what the R20 is for, because I only know of R12. I have come to this court so that the court can decide what to do for me.'

'Mapitso's final sentence must be seen in conjunction with Poulter's statement about the expectation of litigants that the court is there to sort out their affairs for them. This is not a function of the Local Court, and the expectation is perhaps conditioned by the role headmen's and chiefs' courts play in Lesotho. With so little to go on, the President was forced to question 'Mapitso in some detail:

- Q. I do not really understand what you mean. Will you explain it to me better? What are you here for?
- A. I am here complaining about the decision made by Headman Lesoro's court.
- Q. What was the decision of that court?
- A. The court said I had to pay R20 which I know nothing about.
- Q. Where were you when you borrowed money from Mafetsoa?
- A. We were both in Klerksdorp.
- Q. What did you do with the money?
- A. Mafetsoa's mother was sick and I borrowed money from Mafetsoa for trainfare so she could go home.
- Q. Why did you borrow money for his sick mother?
- A. His mother was staying with me so I was responsible for her.
- Q. You tell me you borrowed Mafetsoa's money?
- A. Yes.
- Q. Then when he wanted his money back you charged him in court?
- A. I am charging him because I paid that money back long ago.
- Q. If, as you say, you paid it back long ago, why are you before the court now? What worries you?
- A. I am very worried because he said I borrowed R20 and not R12 and the Headman's court ordered me to pay R20.
- Q. Yes, but I do not understand. You are the person who owes Mafetsoa money.
- A. I did owe him money but I have repaid it.
- Q. If you have paid, why are you in court?
- A. I am here because Lesoro's court is trying to make me pay R32 in all: R20 plus the R12 I have paid.
- Q. It would seem that as you knew you owed Mafetsoa money you thought you had better come to court first. Why are you in court? Why does Mafetsoa not bring you to court to demand his money?

A. I do not know.

Q. That means you are playing tricks with Mafetoa, so as not to pay his money, by charging him before he could charge you.

A. I do not know, Ntate.

The President's intervention in this and similar instances was concerned with testing the veracity of statements, but also with clarifying the issues, with establishing what was being contended in cases prefaced by sometimes very imprecise and inarticulate opening statements. I have the strong impression that the President was irritated by cases that did not come to him correctly formulated and which did not set out their issues clearly. The President's task is to try cases on the evidence brought before him; his is not a court whose aim is to lokisa litaba or arbitrate.

Litigation in the Chief's court sustained a fairly inexplicit and unfocused formulation of grievance as, for example, when Headman Labone Lerata complained to the court about the behaviour of 'Mapuso. At no stage during that hearing was Labone asked by the court to articulate a specific charge against the difficult young woman. In this sense, his intent in bringing her to court remained inexplicit and, to an arguable extent, was accepted as implicit by the court. This was not so in the Local Court where litigants were compelled to formulate their intent in terms of a specific cause of action.

The President sometimes found it necessary to explore a litigant's intent so as to discover something about the relations between the parties. Such an instance occurred in a case brought by 'Masehloho, whose son Lekata had been hired as a herdboy by Ntoala, and had stopped working before his contract expired; Ntoala had consequently refused to pay the agreed remuneration. The President questioned Ntoala briefly to establish how many days of the contract remained to be worked, and then went on,

Q. Why don't you pay him?

A. No, I don't want to pay him because the contract is not finished;

he has broken contract.

Q. Are you telling the court that if Lekata goes back to finish his contract you are willing to pay him?

A. If he returns, I shall pay him.

Q. If it happened that the boy ran away, leaving the flock on the pasture, what steps would you take?

A. I'm sorry, I would have to cross that bridge when I came to it.

The President appeared to be testing how flexible Ntoala's attitude was towards the contract agreement: whether any real grudge would interfere with a fair settlement.

One might compare this example with 'Matli's case in the Chief's court where the court seemed to know a good deal about the defendant's intent in refusing to let the young girl go to her mother. The Local Court President did not have this detailed local knowledge, and thus it is significant that on occasion he made litigants spell out explicitly their aims, motives and relationships. There were occasions when the Chief's court used a 'local shorthand' where whole complexes of relationships, particularly among disputing administrators, were understood in terms of a kind of common code. The Local Court President did not have this intimate local perception and in certain instances was forced to examine at length to make explicit that which might have been taken as implicit in the Chief's court.

The Chief's court was helpful to litigants in formulating cases and in deciding whether they could be forwarded to the Local Court as criminal cases. In this way they assisted in directing litigation before litigants had committed themselves. The Local Court President also imposed a 'judicial framework', but it was of a different order. In certain instances he told litigants that their cases had been wrongly brought in that, for example, they should have been criminal, when they had been presented as civil actions. But he might then dismiss such a case. The litigant in this instance would lose both in time and money. If, with such advice, the President was assisting litigants in gaining a better grasp of the mechanics

of formulating and handling cases, that must be seen as a secondary consequence and not necessarily as a primary object.

In a commonsense way, the President and Prosecutor also had to ask questions to establish the 'sociological' grid operating in a case. This sometimes involved detailed examination to grasp the social relationships underlying a particular case. Similarly it was often material to discover where the parties lived. The relevance of such background was of evident importance in land cases when it was necessary to know which authorities ruled the parties claiming the land in dispute, because land allocation, as we know, proceeds through local authorities who are also responsible for keeping records of land inspections and allocations.

In certain cases information about the residence of parties and their witnesses came to assume a less directly evident but nonetheless significant sociological importance. By this I mean that a court develops expectations, nurtured by the ordinary facts of everyday life, and tests evidence against such perceptions. There was an expectation on the part of the court, for example, that within the confines of a small village, loud conversations or insults would be overheard, that nothing could be hidden from neighbours and those who lived nearby.⁽⁴⁾ Within the established network of kin and residence in villages, there was suspicion adhering to the stranger, the one whose rights to live in one's village were not established.

Questions would be asked by the court to ascertain how an individual fitted into the social frame and why he was qualified to speak with knowledge on a certain topic. For example, in an insult case the Prosecutor asked a long series of questions, in leading his first witness, designed to validate why he, not an inhabitant of the village where the insult had taken place, had the right to testify about its affairs. In short, the witness was placed within a framework of residence, kin and familiarity,

all of which factors were material to the case.

It was in cases such as these that the court retained a local stance, and where, although it operated in a more formal setting and with a more official procedure, it was washed about by everyday village life which forced it to interpret events in terms of village idiom and expectation. In this sense, the court still revealed close ties with the village culture that surrounded it and gave many of its cases a particularly localized content. Consequently the court and litigants did share a substantially common range of referents. In one assault case, for example, the Prosecutor recorded her awareness of the complexities that intertwined ties between litigants could lend litigation by remarking, 'This court cannot come to the real cause of the fight because all the witnesses and the accused are related. I say this because in this case the fight was caused by a child who was crying ...'

Explanation

In civil cases no lawyers are permitted to represent clients in the Local Court and, although their employment is allowed by the Central and Local Courts Proclamation (Regulation 10 of 1965, section 14) and is entrenched in the Constitution (section 12 (2) (d)) for criminal cases, in no case that I recorded or witnessed was any party ever represented by a lawyer in the Local Court. The inexperienced litigant, while somewhat at a disadvantage in this court, may however be permitted to authorize a 'husband or wife or guardian or other nonlegal representative' (Palmer and Poulter 1972:497) to appear in his stead in civil cases, and he would be wise to choose someone with greater expertise in litigation than he himself possesses. More will be said in Chapter Nine about the seeking of informal legal advice in the village of 'Mampho's.

In a few of the more sophisticated courts, such as Matsieng, the wealthier people may have special pleaders (akhente) to help them

conduct their case, but this is contrary to traditional practice and theory which place on the judge and the assistants the main task of sifting the evidence and arriving at the truth. Indeed, Sesuto conceptions of the role of the judge and the purpose of cross-examination differ profoundly from our own. To them, the judge is not an Olympian being, whose chief function is to referee the struggle between plaintiff and defendant and then decide whether, or to what extent, the case has been proven or refuted; they expect him to descend to the arena and to discover the truth himself with the help of his assistants. (Ashton 1952:234)

We have seen that the Chief's court judges did enter into cases in this participant fashion, and played a large part in helping litigants prepare, sort out and manage the mechanics of their cases. In contrast, the Local Court President was more detached, more of a referee, except when in order to reach a decision he had to seek clarification or satisfy himself of the priority of the 'facts' of a case. But neither was he an 'Olympian being'.

The President was careful in his explanation of the law applicable to the case and in trying to render his judgments intelligible. Take, for example, the case of Moalose who came to court demanding from his wife's mother and brother the return of bohali. It was soon established that no divorce had taken place between Moalose and his wife. Before coming to judgment the President outlined the procedure to be followed in order to obtain a divorce:

'... May I say to the parties before this court that in any case where there is trouble between a husband and wife, it is the custom that if the parties want to divorce each other, in the first place they ought to go before a court of law and before that court state that they would like to be divorced for certain reasons. The plaintiff in the case may state his reasons for demanding a divorce--it may be because his wife is a vagabond and does not stay at home; it may be because she does not cook or work, or lets the room get dirty ... The wife may produce evidence before the court that she is being ill-treated or thrashed or that her husband has committed adultery with another woman. Bear in mind that Basotho courts are authorized to deal with divorce cases and after a divorce case then the husband may claim the return of the bohali.'

In judgment he spoke as follows:

'This case is dismissed because the plaintiff brought a case before he had a certificate of divorce between himself and ... his wife. Go before a court, get a certificate of divorce, then you may claim bohali. But you must understand that such a case cannot be made if you have been ill-treating your wife, thrashing her, failing to support her. If she brings a witness to this effect before the court, the case will go against you ...'

Such explanation of the law was often a feature of his judgments. In the example that follows, from a case in which a contract was disputed, his explanation was designed to instruct the litigants in the nature and safeguards of contracts in contemporary Lesotho. In former times verbal contracts were safeguarded by the form of the witnessing that attended them, and their observance in small communities was underwritten by their public nature. Now, of course, explicit written documentation is generally desirable. It is interesting thus to consider a case where no written contract was drawn up.

The plaintiff produced in evidence a letter demanding payment for his son's having acted as a herdboys for the defendant, seemingly thinking that it constituted some sort of evidence of a contractual obligation. The defendant, a Chieftainess, claimed through her representative that she had not hired the boy; the man who had, to her knowledge, hired the boy, sometimes worked in an administrative capacity for her, and the parents of the boy might mistakenly have thought that he was hiring the boy for the Chieftainess and not for himself. In his judgment the President advised on the necessity for entering into written agreements:

'In this case we do not find any agreement letter as is usually made. I believe that the plaintiff did trust that his child had been employed by the chieftainship ... But I also know that although in the past there were no written contracts in Lesotho, yet it happened that at last the people were advised that in anything they did, especially concerning hiring and herdboys, there should be an agreement drawn up. In this case you don't find that however. What was shown before this court was just a note, not a letter saying how a child would be paid. The point is that it was not written by the two parties, but by the plaintiff's wife, who is the only one whose name appears on the letter. She is the only one whose name is signed on the letter. The law is that when an agreement is made it should be signed by both parents and the employer, together with their witnesses. This did not happen here, however ...'

It is also worth remarking on the care with which the President expressed his reasons for finding as he did in this case:

'... this thing happened a long time ago; we have learned even that the person who was employed, Moloi, is no longer alive. Although he has passed away, however, there is a proverb, molato ha o bole ('a debt does not rot'). If Moloi had been alive, he would have had to be the first witness in this case. He was the only one to judge in this case, not as has happened here, where the plaintiff says one thing and the defendant another. ... there is no proper evidence on which this court can find that the defendant ought to pay the heifer ...'

Consistent with the care he took in explaining the law, was the President's concern to ensure that certain litigants understood the reasons for his imposing a particular judgment. We find, for example that, in a criminal case in which a villager was charged by his headman for not complying with his orders which were to notify a distant relative of his kinsman's death, the President asked the accused, before he imposed judgment, whether he knew the law he had contravened. When he said he did not, the President read to him:

Every adult male person residing in a village in which any death may occur or, if there are no adult male persons in such village, such adult male person as may be ordered by the Chief, sub-Chief or Headman, shall assist in digging the grave for and the burial of the deceased person. Any adult male person failing or refusing to assist when ordered to do so shall be liable on conviction to a fine not exceeding £3. (Laws of Lerotholi, II, 30; Duncan 1960:139)

The President often cited the law in terms of which he reached his conclusion. This was commonly from the Laws of Lerotholi, although, as we shall see below, not exclusively. Sometimes the laws were cited during his examination of a litigant to outline relevant points; most often they were included in his reasoning in the judgment. This citing of law served a two-fold function: it served obviously to ratify the President's decision, but equally it may have helped in some measure to inform and instruct litigants about the law. This second function is not insignificant when it is considered that litigants come from a largely peasant population in which illiteracy exists as a reality and for whom access to information about 'written' law is not easy.

Earlier I reported Poulter as stating that little use is made of

precedent in Basotho courts, and I must comment on this point here. I had bought for my own use a copy of Duncan's Sotho laws and customs, a general presentation of Sesotho customary law based on a collection and analysis of some judgments of the Judicial Commissioner's Court; the second part of the book consists of the Laws of Lerotholi. One day, while discussing a case with the President, I showed him the book and asked whether he knew it. It appeared that he himself did not own a copy and he asked if he might borrow mine. From that time on, the President on occasion made reference to cases mentioned in Duncan. The judgment in Moalose's case, in which he was suing his wife's mother and brother for the return of bohali, was an instance of this. After he had outlined grounds for divorce proceedings, as given above, he went on to give a reasoned account of cases from Duncan concerning a woman's leaving her husband to return to her parents, and the return of bohali after a divorce.

In concluding this discussion of the court's efforts to give litigants access to the line of reasoning that decided their cases, one must raise the question of how effective the President's explanations were. I would surmise that his use of Duncan did not prove particularly illuminating to the ordinary litigant who could not, after the close of his case, go back and look at the relevant sections. His quoting from the Laws of Lerotholi may have been more effective but, even here, I would suggest, its effectiveness might well be directly related to the living currency of the particular law or principle. It would seem to me that, with the evolution of the present Local Court system, there is a sense in which the law has been 'removed' from the hands of the people, in that it no longer draws vitally on communal discussion and debate in the tight forum of the village lekhotla. Important cases are now mainly decided at the level of the Local Court and higher. Here decisions are given, and not debated, and although I have shown that the Local Court President was careful in attem-

pting to show the logic of his judicial reasoning, it was debatable that his explanations were always fully comprehended or that they passed into what might be termed the stock of legal knowledge at the grass-roots level.

Judgments

My consideration of judgments is in line with the question of how 'familiar' a locale this court was for ordinary litigants. Consonant with the President's full explanations, was that for the most part his judgments presented clear summaries of cases and reflected lucidly his evaluation of evidence and his assessment of behaviour. There were certain judgments that seemed to fall within a known, traditional framework in that they discussed at some length the relative merits of the behaviour of both parties and apportioned blame accordingly before finding finally in favour of one of them. Sometimes strongly discursive, the judgments that fell into this category were often larded with proverbs, sayings and observations about 'the customs of the Basotho'. It is true that some of these judgments were conditioned by the type of cases concerned: insult cases, for example, were predictably heavily normative, and the norms invoked often reinforced traditional behavioural expectations and standards. This judgment, the one in which one was more aware of 'justice' than of the letter of the law, of moral issues more often than legalistic ones, reflected most directly that the roots of this court were fixed within the earth of the traditional lekhotla, within a framework of judicial logic that used to have a wider currency.

But it will not do to emphasize this too strongly. For this was a court in which the law applied was not confined to customary law, and in which the forensic naïvety of litigants sprang often from their unfamiliarity with procedures or legal interpretations. We have seen that there were cases dismissed because they had been incorrectly formulated or be-

cause they fell without the court's jurisdiction. Equally, there were litigants whose cases were judged strictly in terms of the letter of the law or what the President deemed to be the letter of the law. An illuminating example here is the question of compensation. Poulter says of this:

In line with the traditional overlap of civil and criminal sanctions, the Rules permit a court to direct that any fine or part thereof shall be paid to the person injured or aggrieved by the act or omission in respect of which the fine has been imposed. (Palmer and Poulter 1972:500)

He adds in a footnote, 'However we are informed that very little use is in fact made of this practice', and I certainly recorded no instance of it. There can be little doubt that this complicated litigation for some of the litigants whose cases I heard. One decision that appeared to me to reflect a preoccupation with correct procedure was the following:

Puka was suing his cousin Khemane for compensation of R20 for wood allegedly chopped from Puka's willow tree. It seemed, according to their statements, that Khemane had planted the tree but that subsequently Puka had been allocated the land upon which the tree stood. As soon as the President discovered that they had not been to court before about this tree, i.e. to establish its ownership, he dismissed the case, stating that the correct procedure to follow would be first to bring a case about the tree and, if that case awarded the tree to Puka, he could then proceed to claim compensation for the wood taken from the tree.

Poulter wonders about the degree to which the Local Court retains perhaps the most notable element of traditional dispute-settlement, what he calls 'proceedings in the nature of arbitrament': 'What is not so apparent is whether the regular courts still try to achieve the traditional result of a solution acceptable to the parties or whether they stick closely to the letter of the law' (Palmer and Poulter 1972:501). In the cases I recorded in this court there was no emphasis at all on trying to achieve reconciliation between the parties. The closest this court came to the forms of conciliation was that the President sometimes used such phrases as 'Go home and keep the peace'. The use of moral saws such as 'Honour thy father and thy mother' could at a stretch be interpreted as a

type of pointer to mediational gestures on his part. However, I must stress that even after having used preceptive social unguents, the President would proceed to judgment in terms of the law. The case I recorded that showed greatest concern for the ongoing relationship between the parties was in itself an exceptional one:

A father charged his son for stealing a bag of wheat and selling it to an Indian who was travelling about the area buying up crops. It was established by the President that the boy was not mentally stable and that he had stolen a fowl and two tins of maize and sold them on a previous occasion. The court then put a singular question to the plaintiff, because, I am sure, of the unusual nature of the case. He asked the boy's father what he would like the court to do with him. The father replied that he wanted the court to make his son stop selling his possessions without his consent. Because the boy had pleaded guilty the President proceeded immediately to judgment after this and no witnesses were called. In summing up the case in his judgment, the President stressed the boy's mental condition and noted the fact that the child had never been taken to a doctor. However, one must note that he counterpoised against this sympathetic summing up the flat statement that theft was against the law, and sentenced the boy to R20 or two months in gaol, suspended for six months.

Despite the fact that reconciliation did not appear to be an object in this court, the President was interested in attempts at out-of-court settlement. He often enquired, for example, whether disputes had been before the family court, and significance was granted to attempts to settle differences at that level. For instance, both the Prosecutor and the President held it up as an unfavourable point against one accused that he had gone to Maseru to avoid a family court called to deal with his assault on his father's wife. Let us look more closely at the way family decisions were given meaning in this court.

Lipuo was charging 'Mamahlaho, his maternal aunt, with having closed the gateway of his yard with small aloes. Evidently there were three gardens close together, Lipuo's, 'Mamahlaho's, and one belonging to 'Majulia, the mother-in-law of 'Mamahlaho. It was essential that the pathway remain open because Lipuo used it as a gateway for his sledge and his cart. Lipuo called a senior relative to see the closed yard and this man arranged for a family meeting, sending a young girl to summon 'Mamahlaho, who refused to come. He himself then went to call 'Mamahlaho, who told him she could not be bothered with such things as she was busy. He said in court that he had told her that whenever she brought matters before the family for dis-

cussion she was given a reasonable hearing; why then refuse to attend a case when she herself was to be charged?

'Mamahlaho's defence in the Local Court was that she had been instructed by 'Majulia to close the gateway, and she insisted on making the point that her son, Rangoako, was 'Majulia's heir and not, as she thought Lipuo was implying, himself, for he had said that he was the one who supported 'Majulia. The President asked her whether Lipuo's witnesses were 'the children of the family' to which she agreed. He then asked, 'Is their evidence against you?' She said it was, because they did not like her son Rangoako.

In his judgment the President said that it was obvious that this case had come about because of friction within the family, and it seemed to him that the real cause of the case was 'Mamahlaho's concern that 'Majulia's possessions pass to her because her son was the heir of the family. He pointed out that 'Mamahlaho was previous in her expectations because, even if her son were the heir, as she was stressing, he would be the one to inherit, and not her. She was not in court, he said, on behalf of Rangoako. He told her in conclusion to remove the aloes with which she had closed Lipuo's gate and to respect the family court in future.

Sanctions

The Local Court can invoke all the sanctions of a duly constituted court of law. Moreover these sanctions are conferred on the Local Court by the encapsulating force of Central Government and do not depend for their efficacy on the social pressures of relationships, reciprocal obligations and submission to the authority of the head of one's community. Law in the Local Court 'has teeth'. (Indeed, the threat of sending a case to the Local Court was one of the few strong sanctions available to those making decisions in the Chief's court.) Take, for example, the case of Saami:

He had appeared in the Local Court for having chopped wood from an evangelist's yard. He took advantage of a postponement in the case to seek refuge from the law in South Africa,⁽⁵⁾ but was later apprehended at a feast in a nearby village and charged in a criminal case with contempt of court. He was sentenced for this offence to a fine of R20 or two months' hard labour.

Lesotho is a poor country even by Third World standards, and some of the fines meted out by this court were severe in the light of the poverty that is the lot of the ordinary peasant. For instance, one woman,

found guilty of using abusive language, was fined R30 or 3 months' imprisonment, two months or R20 of which were suspended; she could not pay the fine and went to gaol.

Even though the litigant bringing suit here risks paying costs, the utility of this court is unquestionable, and is connected largely with its capacity for enforcement. With the declined powers of chiefs and headmen having led to a diminished authority at village and tribal level, the Local Court provides a dispute-settling mechanism which has the backbone to enforce its decisions and, as such, is indispensable to the peasantry. If one's land is ploughed by another, or if one is persecuted by a headman when one returns from the mines, one needs an authoritative court which can take firm steps to settle one's troubles or provide redress.

RELATIONSHIP WITH THE ADMINISTRATION

Channels

I have mentioned that reforms have removed the official judicial system from the control of chiefs. However, it would be misleading to describe this separation as absolute and, in fact, less direct links still remain between the Chief's administration and the Local Court.

The tendency for the courts to continue to identify themselves with the chieftainship expressed itself in sometimes quite open affirmations of solidarity. In one case, the Paramount Chief's Court came very near to saying that as a matter of law parties must appear before the chief in his lekhotla la tlhopho before going to the judicial courts at all (Moqhetsola J.C. 19/50), and referred to the judicial court of first instance as an "Appeal Court". (Hamnett 1970:318-19)

The conviction persists that cases ought to proceed before the Chief first, before going to the Local Court. So firm is this belief that there are those who say that the Local Court cannot accept a case that has not gone through the channels of the lower unofficial courts. Hamnett records that few Basotho believe that the litigant has the right to 'open the court'

himself without 'the mediation and authority of the chief' (1970:139) and observes in a footnote that the Clerk at the Rothe Local Court actually refused to accept cases that had not gone through those channels. (1970:357).⁽⁶⁾

My field assistant insisted that it was 'wrong' for a case to go before the Local Court without having passed through the lower channels of a headman's and/or chief's court. Early on in my fieldwork he commented disparagingly on a case that appeared before the Local Court in which one Tumelo sued a woman called 'Mamoseou for compensation for defamation of character. The President dismissed the case, a civil action, reasoning that 'Mamoseou's husband ought to have been charged. My field assistant said that if the plaintiff had taken this case before a chief's court he would have been given sound advice on how to proceed. Implicit here is a recognition that a chief's administration court ideally serves a valuable function in sorting out cases and helping litigants to formulate their grievances; in fact, as Hamnett concurs, in fulfilling a mediational role.

What then are the links between the Local Court and the administration of the Chief? The most obvious is that the Chief's court sent those cases in which it considered a criminal action to be necessary on to the Local Court accompanied by a docket. The Chief's court also advised litigants when their best course was to take their cases before the Local Court. The mediational function of the Chief's court in forwarding cases to the Local Court is to be seen in the following example, as is the utility of the formal court in cases where the tribal courts cannot extend their sanctions over a balky subject.

Mosiuoa was charging Sebui with chopping down a wattle tree at his home. The judicial history of this case is interesting: when Mosiuoa returned home to find his wattle tree cut down, he went first to see the Headman of 'Mampho's village, Mpho, who ordered him to go to the village chairman about the matter. The chairman wrote a letter to Sebui's Headman, Teboho, asking him to send Sebui before the 'Mampho's Headman's

court. On the appointed day Sebui did not turn up, so that court then sent Mosiuoa before Lichaba's administration court which also wrote a letter to Teboho instructing him to ensure Sebui's attendance. Sebui defied that court too, and it advised Mosiuoa to take the matter further. He brought his case against Sebui accordingly in the Local Court.

Another facet of the administration's role in facilitating judicial arrangements is that it endorsed litigants' letters authorizing representatives to appear on their behalf in the Local Court. In this sense, it was there to identify them and to ratify that they had a legitimate right to be represented by the person they chose. In one instance of which I have record, the Local Court President took the trouble to go before the Chief's court to ask why such a letter was stamped by the Principal Chief when the person to be represented lived under a nearby chieftainess; in his view, the letter should have borne her stamp and he refused to continue with the case in his court until the matter was resolved.

In other ways too the Local Court was dependent for clarification upon the Chief's administration. In some land cases, evidence was sought from the Chief's land register book and in these the crucial evidence was often that of those who had worked with the Chief's administration in the process of land allocation. Perhaps the close relations between the Local Court and the Chief's administration can best be illustrated by the prosecution of tax defaulters:

Johane appeared before the Local Court charged with not having paid tax for ten years. His defence consisted of a hard-luck story. He said that when he was in South Africa he had been caught with a bag and two tins of dagga. He had been sentenced by the court in Bethlehem to four years or R400. When he left gaol, he had thought to go back to Bethlehem to get a job there with his former employer, but when he went to report himself at the Bethlehem charge office, they said he was an inhabitant of Lesotho and, as he had dealt in dagga, he should return to his own country. A policeman escorted him to the Ficksburg Bridge on the border. He asked the court for mercy in view of these vicissitudes.

The court proved sympathetic. The President commented that Johane was still a young and strong man who had spoiled his character through selling dagga and now owed taxes for ten years. To give Johane a heavy sentence, he said, would be to ruin him, as in gaol he would associate with

habitual criminals. The court sentenced him to one month or R3.50 suspended for thirty days. Then it instructed him: he should go before the Chief and get a letter from him so that he could be recruited and go to work on the mines to get money to pay the taxes. The Chief might find that the backlog in taxes could be reduced.

The President said to yet another tax defaulter that the court was not at liberty to let him off, for that might displease the Chief.

In addition to such obvious links as these, the Local Court maintained a relationship with what can be termed subsidiary lower channels and courts through the support and recognition it granted them. To illustrate the suspicion that sometimes attached to cases that did not come through the 'proper channels', I give below the President's questions to Ntholi Lerata, a plaintiff who appeared in the Local Court claiming among other things that the present acting Headman of Lerata's village, Labone Lerata, should be demoted. (His intention in this case, as will be shown in Chapter Seven, was to claim the headmanship of Tlapi, for whom Labone was acting. Tlapi was insane and Ntholi was after both the headmanship and control over the property.)

- Q. Did you consult your family first, before coming to court?
 A. No.
 Q. Why not? You must know the custom and law of the Basotho.
 A. I did not because most of my family hate me.
 Q. Did you consult Lerata's [village] court about this affair?
 A. We had a court meeting, but not at the lekhotla.
 Q. Were the people of Lerata's and your family all present at your court?
 A. No, some were present, some were absent.
 Q. What was the decision of that lekhotla?
 A. The lekhotla said I was the rightful heir to possess all Tlapi's things.
 Q. Why didn't you go to Tlapi's lekhotla to ascertain that you were right?
 A. We did not because Labone who is acting on Tlapi's behalf would not have liked to see us at that lekhotla.
 Q. Have you been authorized by Tlapi to claim the headmanship of Lerata's?
 A. No. Tlapi is insane and therefore we cannot do anything, because he can't do anything for himself. I am the next in line to Tlapi. I and other men who are present here found that we would have to see to matters ourselves, and tell Labone to leave the headmanship.
 Q. But do you recall that Basotho custom and law says that even if

- someone is sick, someone must represent him, with his authority?
- A. I know this, but what am I to do because Labone won't hear anything I say?
- Q. But what I would like to know from you--do you agree with me that as you came before this court, you should have come with a letter authorizing you to come and claim all Tlapi's possessions? You cannot just come here alone, mentioning a village court at which not everyone was present.
- A. I do understand.
- Q. Why aren't you authorized then?
- A. I have already told you that Labone who is acting as Headman will not do anything because he hates me.
- Q. But do you agree with me that if you have no authorization either from Tlapi or his representative you have come before this court unlawfully?
- A. Yes.

It is true that the President was essentially exploring the legitimacy of Ntholi's claim here, and that this was part and parcel of the 'legal facts' upon which he would have to base his decision, but that legitimacy resided largely in the ratification the lower channels would bestow.

Headmen in the judicial process

The headman in Lesotho still plays an indispensable role in judicial affairs. From the outset of the social process that gave rise to litigation in the Local Court, headmen were often involved. In an earlier section I said that the court developed certain expectations arising from a studied view of village life; similarly, there was the assumption that headmen should be aware of events taking place in their villages, and they were expected to describe such events when necessary in the Local Court. Before a case has even come to court, the headman performs an advisory function for his subjects and in fact channels litigation to the Local Court (or to whatever forum he deems appropriate). The involvement of a headman at the outset of a case is not limited to this advisory capacity. He is often drawn in to the events themselves. In an assault case for example, he may be called in to try to separate the fighting parties, or to seize the weapons used and, if there is a case, to see that they are pro-

duced as evidence.

The centrality of the headman's role in the judicial process can be gauged from the examples that follow.

In a case in which Sebui was charged with contempt of court for not having appeared in court after signing a summons, his defence was that he was not well on the day of the case. He had made arrangements to notify the court by writing a letter, he claimed, and entrusting it to a man to be delivered. The Prosecutor asked him whether he thought his letter had come through the proper channels. When he said he did, the Prosecutor asked why he had not notified the Headman of his village about his sickness because the Headman was the proper channel through which the court should have been notified.

A headman is also responsible for deputing messengers to investigate complaints and grievances. He must ensure that they do their duty because such messengers fulfil two vital functions: they keep the headman informed of the facts of trouble cases within his area, and should provide neutral assessment of and testimony on the dispute in question. For example,

Mosotho appeared before the Local Court claiming compensation for damage that had been done to his sorghum by turkeys belonging to one Mpouoa. He had captured the turkeys and taken them before his Headman and claimed compensation there, telling the Headman that he wanted R4.50 for the damage. Mpouoa disputed the amount claimed and the Headman sent two messengers to assess the damage. They, according to Mosotho's statement, did not fix an amount, but only said that his claim was too high. When he refused to reduce it, Mpouoa in turn went to the Principal Chief's office which gave him a note which stated that the messengers had to give a firm decision. The following day they returned to the land where the messengers assessed the damages at R1. Because he disagreed with this assessment, Mosotho was before the Local Court. There, both messengers were in court to give evidence.

Thus the headman, directly or indirectly, occupies a most important position between the individual and the court. This position may lead to abuse as well.

For example, in one case concerning compensation, the claimant stated before the court that the doctor's certificate, essential to testify to the severity of the injuries he had sustained at the hands of the defendant, had been lost on purpose by the Headman, in whose charge it was in previous litigation because, he said, the Headman was the defendant's father.

In yet another case there was a strong suggestion of a headman's lending his authority to bias administrative proceedings against one of his subjects and, although it could not be shown conclusively, this was commented on severely by the President.

Headmen were often referred to in court as authoritative sources. I recorded numerous instances of headmen actually giving evidence in court for a subject, their presence serving to provide authoritative testimony and also to confer legitimacy of a sort on their subjects' claims. Ostensibly the litigant for whom his headman is prepared to testify has bona fides, he is known, he lives within an ordered village framework and, more than this, the rightness of his case is endorsed to some extent by the presence of an authority. An official refusal to testify, as happened in one case I recorded, may be prejudicial. In land disputes the 'expert' witnessing of the headman is especially necessary if the litigant's case is to be accorded credibility. The headman's role in the process of allocation is a crucial one and a case which does not bear the corroborative stamp of the tribal authority may be thought suspect. Consider the following example.

Matsosa was charging Ralikoae and Koos with having raked and sowed sorghum on his land. He had convincing certification as to possession of the land and was also able to produce his Headman, Ntsabane, to attest to the lawful allocation of the land. The Headman's evidence was clear, concise and convincing: that he and his land advisory board had allocated the land to Matsosa.

When Ralikoae responded to the charge he claimed that he had been hired by Koos who was under Headman Feke, and had been told that they would be sowing Koos's land. He mentioned that he did not know in which area the land fell, under Headman Ntsabane who had testified for Matsosa or under Feke, under whom Koos lived.

When Koos responded to the charge he in turn claimed that the disputed land had been allocated to him by his Headman together with the members of his land board. The importance accorded the Headman's evidence is implicit in the question:

President: Where is your Headman now, the one who allocated you the land?
 Koos: Feke is not before the court, but I did invite him to come.

After a postponement Headman Feko did appear to testify for Koos but, after a court inspection, it was clear that he had been lying in court. In his judgment the President indicated that his decision had been influenced by the confident and knowledgeable evidence of Headman Ntsabane for the plaintiff.

The headman, involved so closely within the framework of village life with the lives of his subjects, remains, as I have demonstrated, an authoritative testifier to much that is of essence in their lives.

Closely allied to this role of the headman is that of other expert witnesses involved at grass roots in the concerns of the peasant. Thus the functionaries who show the peasant the parcel of ground he is to use often appear in court to testify in land cases. The force of their evidence can be illustrated by the words of one, culled from many examples:

'I know the land in question. I was present when it was allocated to the woman called Nuku who is well known by the name of 'Mamookho. The person who was giving the land to her was her mother, 'Manuku, and that allocation was confirmed by Chieftainess 'Mampho, and we were the ones who were ordered to confirm the allocation. The land will be seen recorded in the Principal Chief's land register book. In that book the land appeared as 'Mamookho's land. That is all I know.'

The President's decision again gave weight to this clear and convincing statement.

Similarly important is the testimony of other minor officials such as poundmasters, maboella caretakers, and the messengers of a chief or other authority. These are officials whose duties intersect at many critical junctures with the lives of peasants. In the preceding section I dealt with the connexions between the Local Court and its environment and paid particular attention to the links it had with the Chief's administration. In a more subtle fashion, these 'official' witnesses who testified before the court also attest to the vital and living strands which connect the court to the local milieu in which it is still embedded. (7)

Criticism of the administration

As so much litigation arose from processes in which the Chief's administrators were involved, and because the Chief's court was unable to back up its decisions with binding sanctions, it was inevitable that certain cases would surface in the Local Court and that, in the course of litigation, the court would pick up administrative derelictions. As a consequence, the President made some observations highly critical of the Principal Chief's administration. In one judgment, for example, he remarked that he could not understand why the preliminary hearing of the case in the Chief's court had created a delay in litigation. In other cases the President had more serious observations to make. A case that gave rise to such comments was one in which three young women from a village close to 'Mampho's were charged in a criminal case with fowl theft:

The report of the theft had been made to the 'Mampho's village Headman who had deputed two men to act as messengers to investigate the incident. They were instructed that when they reached the village they were to contact its phala and undertake the investigation with him. Instead, they went straight to the house of the first accused where they found two other women, the second and third accused, but not the owner of the house. They left without searching the house and went to see the phala. (The implication of this is that they gave the accused time to hide any evidence, such as the feathers of the missing fowl.) The fowl's owner noticed one of the accused then going into a donga to relieve herself and, when she walked up to investigate, she found her fowl's feathers near the spot where the woman had defecated. It seems that the inefficient search had allowed the woman time to get rid of the incriminating feathers so that the theft could not conclusively be linked with her and her friends. Both the Prosecutor and the President were scathing in their comments on the way the messengers had acted.

The Prosecutor's address to the court included the following statements:

'May I point out that should the messengers of the Chief have been proper messengers, the missing ... fowl would have been recovered at accused number one's house. In the administration, especially of 'Mampho's, I find that there is great carelessness ... What kind of search did they carry out? There are young men in the village--why were they not sent to help?... Any sensible person would ask himself--they had been ordered by Mpho the Headman of the village to see the phala when they got to this village--what was their idea, not to do that? ... Any sensible person will think as I do ... It is quite clear that the messengers did not go to search, but to help the thieves run away and hide what they had stolen ...'

After summing up the Prosecutor's criticism in his judgment, the President concurred in his suspicions and added, 'what they did was not according to the law. It is clear that they went there to hide something.' He made this more explicit later by remarking, 'It is clear that the messengers were involved in this theft ...'

In the case in which Mosiuoa was charging Sebui with chopping down a wattle tree, the President said in judgment of Sebui, who was employed in several administrative capacities by the chieftainship, that it was unfortunate that a person '... upon whom the people's eyes are, has been found to lie before the court'.

One cannot raise the question of the court's criticizing the administration without also asking how effective it was in censuring administrative derelictions and, of seminal relevance, the extent to which the ordinary litigant could rely on the court for redress in a cause stemming from negligence on the part of administrators. This brings us to the next section.

On the 'supremacy of law'

Fallers (1974) deals with the problem of the relationship between administration and the 'supremacy of law' in colonial Busoga when he examines what happens when chiefs sitting in courts have to review the administrative acts of fellow officials. Our case is slightly different for we are looking now at instances of administrative malfeasance or negligence cropping up in a court no longer under the control of chiefs. However, the central issues remain unchanged (in Lesotho or in the Watergate scandal) and are connected with the question: 'could the King's officers be held accountable in the common courts for the legality of acts carried out in the course of their duties?' (Fallers 1974:4). Or, as Fallers later emphasizes it, 'the degree to which administrative acts were subject to judicial review in the ordinary courts' (1974:12).

In the case in which Mosiuoa charged Sebui with cutting down a

wattle tree in his yard, Sebui alleged that: firstly, he was chopping wood from a tree that belonged to the Principal Chief, and secondly, that he was acting on the orders of the chieftainship who had instructed Headman Mpho to tell Sebui to chop some wood for one 'Majames. In other words, he tried to take refuge in the fact that, as a member of the administration acting on his Chief's orders, he was within his rights to chop wood from a tree which he considered the property of the chieftainship. His witnesses were Motia, a Headman who was present, so Motia alleged, when Sebui showed 'Majames which tree she might use for wood, and Headman Mpho. Not only did the court find in favour of Mosiuoa, but it censured Sebui and his witnesses for having lied in court. The court awarded Mosiuoa R1 for his tree and ordered Sebui also to pay costs of R1.25. My assistant expressed some reservations about this decision, however, saying that in his opinion the case should have been reopened as a criminal one, for had Mosiuoa found Sebui chopping his tree (the offence had occurred in his absence), there might have been bloodshed.

In this instance Sebui's defence was patently questionable, as the court discovered when it went to inspect the tree and found it well within the confines of Mosiuoa's yard of which the fence had been broken down, as Mosiuoa alleged in court. Here then, despite the closed ranks put up by the administrators involved, the court could satisfy the claims of the plaintiff and acted effectively to sanction the administrator concerned.

I have record of two cases that appeared in the Local Court arising from derelictions in the keeping of the 'Mampho's pound. In both, the President did not give a clear-cut decision. He referred the first case, concerning a heifer that had disappeared from the village pound, back to the Chief's administration for further investigation as to grounds for a later criminal action. This, despite the fact that the plaintiff had been

making unsuccessful attempts for seven months to have the Chief's court resolve his problem. In the second case, one Poho charged two of the Chief's administrators for compensation: he had failed to plough because his beast had been kept in the pound for an unreasonably long period. This was because he had resisted paying for its release because he was being held responsible for crops it had damaged while in the care of the poundmaster. The President dismissed the case without costs, saying that the poundmaster, and not the chieftainship, was to be charged, as he was the one responsible for the events that had led to litigation. Both these cases were caused by the apparent malfeasance of the 'Mampho's poundmaster who had disappeared to Johannesburg by the time litigation commenced.

My assistant commented to me at the time of the first case that the President himself should have seen the Chief or the DAS to summon the missing poundmaster to facilitate the bringing of a criminal case. Perhaps the President was passing the buck, but implicit in his reasoning was that the onus for investigating the missing heifer was surely upon the administration. Ultimately the Chief's pound was the Chief's responsibility, and the only way in which this matter could really be sorted out was for the Chief to have the missing poundmaster recalled from South Africa, hold a preliminary hearing himself and then submit the matter to the Local Court for prosecution. However, the question was more complex in the second case because there the plaintiff tried to gain satisfaction by charging administrators under the Chief who were directly responsible for the process that led to the impounding of his beast. In their defence, both administrators held that they were only servants of the Principal Chief and, as such, were not directly answerable for acts carried out in their administrative capacity.

How satisfactory then were the decisions of the President in

finding that in both these cases it was the poundmaster who was to be charged? From the point of view of both litigants, they could find no one answerable for the losses they had suffered. The President's logic does not come to terms with the fact that an administration may not always act to investigate itself, and indeed at that time the administration in 'Mampho's was very defensive about administrative shortcomings. Thus the court did not seem effective, although one cannot argue perhaps with its decisions in terms of the strictest legal interpretation of the cases, in penetrating and assigning responsibility within the web of administrative acts undertaken under what was ultimately the umbrella of the Chief's responsibility. Here we have a problem of demarcation of zones of responsibility and, on the evidence of Hamnett's work, it is a problem not confined to this particular court or administration either.

The separation of judicial and administrative affairs has gone far to excluding the superintendence of the courts over the actings of chiefs, on the grounds that the law leaves the decisions to them.
(Hamnett 1970:321)

Ideally, of course, I would suggest in both these cases that the Principal Chief should have set his own administration in order. It seemed, however, that in both instances the administration was not prepared to look too closely under the blanket, and that when the parties looked to the Local Court for redress, that court did not see fit to press the matter too closely either.

CONCLUSION

The object of this section will be to attempt to place the Local Court within its social matrix in order to discover to what extent it is an alien intrusion, an adjunct of the encapsulating structure, and to what extent its roots still draw on the vital interaction and consciousness of the local community. I shall adopt Hamnett's criteria of 'objective' and

'subjective' jural processes in order to examine the position of the Local Court of study. As an ideal type, Hamnett says of the objective system:

the court restricts its attention to the issue before it and to facts and circumstances bearing thereon; legal concepts are precisely defined and narrow in their scope; laws of evidence are close and specific and are strictly observed; ... the judge is socially and psychologically isolated, supposedly without parts or passions; he arrives at his judgment by isolating the issues of fact and law, both from each other and from every empirical and juristic consideration not bearing upon them, and by basing his decision on an assumed omniscient knowledge of pre-existing law as it applies to the case before him. (1970:302-3)

In how far does our court conform to this model? I have pointed out that the judge was an alien in several significant respects in this community; that procedure in this court was well defined and generally rigidly adhered to. In contrast to the Chief's court, the President remained more neutral towards the litigants, not getting as involved in cross-examination and distancing himself to a greater degree. Relations between the members of the court and litigants were functionally specific rather than diffuse, their education, qualifications, standard of living and life-style, and their appointment from above serving to set them apart. An ex-President described to me at length how careful one had to be to resist being drawn into local affairs and being subjected to local pressures. This has bearing also on the very charter of the court itself, for it is no longer an everyday part of village activities, but a place by definition set aside for the processing of judicial matters.

The specificity of the judicial role, defining as it does the office and jurisdiction of the judge, leads to the creation of precise rules as to the competence of the court and to an exact formulation of the sphere of its activity and concern. (Hamnett 1970:305)

Cases were decided on the evidence led in court and this cannot be stressed too strongly for it has implications that touch on many aspects that define the nature of this court. Among other things, the President did not bring his own personal knowledge about the litigants and their

circumstances (if any he had) to bear upon cases, at least not overtly. There were occasions when the President I saw at work deliberately emphasized this aspect, for example when, in the course of one case, he asked what everyone meant by referring to the Nokeng. It was explained that this was a river that demarcated the area of a certain chief. It was a well known river that the President could hardly have failed to know.

Writing about Soga courts, Fallers says that,

like common law ones, [they] operated with a finite set of causes of action which were made explicit in the acceptance of cases for trial. To be placed on the docket, a cause had to be framed in terms of one of the recognized categories, however implausible the plaintiff's case might turn out to be, and the court clerks recorded cases in terms of these categories. (1974:7)

This was true of the Local Court too, and was another contrast with the court of the Principal Chief. The very superimposition of a distinction between civil and criminal action is a graft on the traditional jural process, and its implications for the claiming of compensation, for instance, were marked. The value accorded documentary evidence also contributed to possibly excessive complications for the litigant. An assault case, for example, would normally make no mention of compensation, it being left to the injured party to bring his own suit to claim.

One such plaintiff, Liao, suing the man who had been found guilty in a previous criminal case in the Local Court of assaulting him, had his claim for compensation jeopardized by the fact that his doctor's certificate had been lost in the course of litigation (allegedly by the defendant's father, a headman to whom it had been entrusted in the course of litigation). The defendant was able to claim that the plaintiff's injuries (his sight had been impaired in one eye) were not as severe as he said. Only after he had obtained a second certificate, was the plaintiff awarded compensation. This involved him in four cases in all and resulted in a delay of two years and three months between the date of the assault and the final case.

Faller's point that the relatively legalistic legal institution 'places greater stress upon "applying the law" than upon "settling the trouble"' (1974:10) is relevant too. I have argued that reconciliation

was not an object in this court and that the enduring quality of relationships between the parties was introduced into cases only when matters touching upon it had to be explained to the President for his fuller understanding or when the litigants themselves brought such matters up as part of the detail of their cases.

Fallers's discussion of narrowed and separate causes includes the following:

the moral over-simplification involved in the legalistic mode of social control creates a tension between law and general morality. Most situations of interpersonal conflict, looked at holistically, are complex. By the time they reach court, all parties have done things that are, in everyday terms, immoral, but the categorizing concepts that make up a legalistic sub-culture--that frame causes of action and require decisions in terms of inclusion or exclusion ("guilty" or "not guilty"; "liable" or "not liable")--must, in order to achieve their rule-like quality, deal with only a narrow segment of the full moral reality of a situation. Of course the plaintiff in one case might be the defendant in another litigation between the same parties, but the two causes must be kept separate. A's allowing his cattle to trample B's crops is not excused by B's having previously defaulted on a debt to A; rather, these are, in legalistic terms, two distinct events, founding two separate causes of action. (1974:9-10)

This assessment is, of course, true of our court too, and its application served to hamper litigants in that it had the result sometimes of fragmenting litigation. Consider this example where, out of one incident, arose four separate cases of which I have record.

Morake stole a sheep belonging to Headman Mohlomi. In an effort to make him and his accomplice admit to where they had hidden the remains of the sheep, four men, Lephethesang, Masilo, Elia and Puka, beat Morake up on 3.1.1969, causing him severe injuries.

On 7.1.1969 Morake appeared in the Magistrate's Court charged with stealing the sheep, and was given the benefit of the doubt for lack of evidence.

I have record of only Elia's being charged in the Local Court some months later with assaulting Morake; he was found guilty and fined R5 or one month in gaol.

Then appeared a case in that court, Morake claiming compensation of R120 from his four assailants. Because of their cooperative demeanour and the fact that the plaintiff could not produce a doctor's certificate, the court reduced the amount claimed and ruled that each had to pay R12

compensation plus costs totalling R1.45.

Six days later Headman Mohlomi brought a suit against Morake in the Local Court claiming R12 compensation for his stolen sheep. Because of the judgment in the Magistrate's Court, Morake was given absolution from the instance and Mohlomi failed to get compensation.

To attempt to declare where justice lay in that series of litigation is beyond my competence. I use it to indicate the extent to which a less traditional, more legalistic jural process might lead to delay and a splintering of litigation. It also illustrates how strictly the necessity for providing proof was adhered to, and this onus rested largely on the litigants themselves.

Lastly, the law itself is undergoing change of which ordinary litigants do not necessarily keep abreast. This court has, in many respects, passed out of the orbit of the familiar and known, and not the least of these is that the law, both customary and statutory, which it enforces, ranges from the most widely accepted and known principles of customary law to specific and specialized dictates from Maseru. Even within the sphere of customary law, it would be misleading to assume that its intricacies must be known and shared by all simply because it is customary. There is little doubt that there exists in varying degree a hiatus between the 'law of the people' and the 'law of the court' that, however conscientious the President, cannot be fully bridged by explanations of the law on his part. In all these respects then the court conforms to the paradigm of an 'objective' locus for litigation, presenting some problems to the litigant by virtue of its relative formality and exclusivity.

I fall back once more on Hamnett for an outline of the 'subjective' jural process as an ideal type in order to see to what extent the court retained elements of a less formal or more traditional dispute-settling process:

the issue is not narrowly defined but extends to cover the history of the parties' relationship with each other and with other persons and to bring into judicial consideration all facts and circumstances that throw a light on this relationship; legal concepts are loosely defined and broad in scope; rules of evidence are generous and adaptable; ... the judge ... is fully integrated with his society and in formulating his judgment he pays special and conscious attention to the values of that society and to its current situation at the time of hearing. (1970:303)

Although it is apparent that our court did not correspond to any great extent to this type of jural process, nevertheless there were sufficient characteristics of it adhering to enable one to argue that it is not (yet?) totally objective either. For example, although causes were narrowly defined, litigants were not expected to confine their arguments solely in terms of the cause, but could digress to debate peripheral concerns. There were two instances of the cause's being formulated in very wide terms to cover various loosely connected issues; one of these was the case from Lerata's brought by Ntholi Lerata, and the other 'Madiana's case against Sam, both of which are described in Chapter Seven.

Writing about litigation falling altogether within the customary mode, Hamnett states,

The small scale of the immediate legal community and the unitary character of the chiefly role mean that disputants join issue around a complex of enmeshed relationships, where rules of evidence and criteria of relevancy expand or contract to meet the perceived range of interaction between all persons involved. (1975:109)

I have record of very few instances when the President deliberately prevented litigants from pursuing the statements and questions of their choice. We have seen, however, that the President did not necessarily know the 'complex of enmeshed relationships' and that the members of the court were theoretically divorced from local nexuses. Yet background details about relations were often brought out in court, as I have mentioned. Although the court kept itself at a distance from litigants, the President's tone was not unvaryingly formal: he often showed himself

sympathetic to the plight of litigants. His tone was sometimes conversational or persuasive and he was generally patient and careful in his explanations. He did not give a strong impression of mystifying or deliberately creating a mystique of his role.

I have suggested that this court kept to letter-of-the-law decisions and interpretations, but a close look at the judgments I recorded also indicates that the President did not simply present his conclusions categorically and without explanation. He also on occasion pointed out to everyone concerned, when relevant, where they had gone wrong and how they might have chosen a better course of action. Thus there was the impression that justice, and not only an application of the law, was the President's concern, even when his judgments found for one litigant and against another. The concept of reasonableness that emerged showed a customary and shared range of norms that persisted fairly consistently despite the introduction of new laws, changing status relations and the encapsulation of traditional norm systems.

Another factor to take into account here is that one came across a distinct awareness among members of the small community that the court might possibly be 'tamed' or brought under local control in certain instances. The first way of doing this, of course, would be by bribing a President to favour one, and at times rumours of this type surfaced in the village about certain cases. About one case, for example, my informant indicated to one of the court personnel before the judgment that the outcome of the case was a foregone conclusion, and was told, 'You're getting old now ...' The judgment in that case was not what was expected, and it did excite speculation that 'the President will be receiving visitors at night from now on'. This sort of rumour is extremely difficult to evaluate. One can only point out that some people believed it possible to influence the court in this way. I spoke earlier of the ties that

associate this court with the chieftainship and there is evidence that in the past, chiefs did strive to bring courts in their villages back under some measure of control, and did expect preferential treatment from the President as from a fellow member of an elite class (see, for example, Sheddick 1954:32). I can speak of no evidence I personally found that this was so in the village I studied.⁽⁸⁾ However, the court can be 'domesticated' in a less overt fashion by being used in specific ways for displaying local tensions. In one sense the very utility of the court (its ability to render binding judgments) and its very exclusiveness (deciding cases on carefully specified grounds) render it useful as a more disengaged demonstration forum for the encapsulated order. This point will be elaborated in Chapters Seven and Eight.

Thus although the court is an official Government creation, it has not fully cast off its ties with the encapsulated community. Its judgments might serve to reinforce traditional values and customary channels of dispute-settlement, but at the same time it does function primarily to apply 'the law'. The norms it invokes range from traditional proverbs and customary principles to precise references to statutes and precedents. Its sanctions similarly draw upon a wide range, from the 'teeth' of the law to the most traditional reprimand or warning, as when the President threatened a defendant whose evidence he strongly doubted, with the possibility of retribution from beyond the grave:

'I wish you luck, if you really mean that these people are 'building a wall' to make you lose your land. How unlucky it would be if you are telling lies yourself before the court, and if some time ago you did indeed come to an agreement with the late Thabiso to plough shares on his land. It depends on you, what your conscience says about this land. But may I say that if you did plough shares with Thabiso for three years as they said, let Thabiso demand his land from you, and Thabiso alone will question you.'

Chapter Seven

THE LOCAL COURT AND THE TRIBAL ARENA

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INTRODUCTION

It is a commonplace that courts provide loci for political confrontation. In the village of study the Local Court served as an arena which refracted something of the current political tensions. To make use of the well worn tip-of-the-iceberg analogy, the proceedings of such cases seldom encompassed the complexity of motive and challenge that lurked behind the intently followed litigation.

Situated as it was in the Principal Chief's village, it was inevitable that the court should reflect the local tensions that were generated during the contest for Lichaba's prior to the general election, and that the unease besetting the chieftainship and the administration should find expression in this forum. In the three cases that will be the object of analysis, the court seems to have been used in a manner that comes close to Turner's definition of arena, as 'a framework--whether institutionalized or not--which manifestly functions as a setting for antagonistic interaction aimed at arriving at a publicly recognized decision' (1974:133). For the court, situated both spatially and symbolically apart from the Chief's administration complex, provided a forum whose decision had a more authoritative public stamp than that provided within the tribal orbit. Furthermore, for the very reason of its being divorced from the channels of the chiefly administration, the Local Court accorded a publicity and formality to affairs of a different order from that of the Chief's court.

THE FIGHT IN THE ADMINISTRATION

The reader will remember that during the struggle to oust the

Chieftainess from Lichaba's there was resentment expressed against Chief Leboea, the Chief's representative in his court. He was held to be biased in certain of his judgments, he came late to work and kept erratic hours, and was held to be generally incompetent. It was also alleged that he leant to the side of Chieftainess 'Mampho and neglected the cases of those whose sympathies were against her. One such was Chief Moshuti Seeiso who had previously held office in the administration but who had clashed with Chieftainess 'Mampho at the time of her son's accession and was later dismissed, allegedly as a result of this antagonism. Coinciding with the time the faction was starting to make its presence felt over the Lichaba's conflict, an incident occurred that was to attract wide attention in the village.

As the story was told to me the day it happened in December 1969, Chief Moshuti, impatient with being put off repeatedly by Leboea when making representations about a land in the Chief's court, became so incensed that Chief Leboea had to seek refuge from him in Lichaba's office. A fracas developed there and blows were struck. By the following day, one of Lichaba's functionaries, Napo, had written a letter to forward a case to the Local Court against Chief Moshuti on charges of obstructing the law, assault and insult. When this case appeared in the Local Court, it was difficult, from the evidence led, to form a clear picture of what had happened. The prosecution witnesses claimed that Moshuti had insulted them and had hit one of them with a stick, but their evidence was conflicting in details. Moshuti's defence was that it was he who had been beaten up in Lichaba's office. In view of the contradictory stories of witnesses, the President had little option but to give Moshuti the benefit of the doubt.

Noteworthy about the case was that the Crown witnesses, apart from Chief Leboea, were all members of Lichaba's office, while Moshuti's witnesses included the Principal Chief's clerk, Rametse. In these terms then alignments in the case reflected the schism in the administration. Furthermore this factiousness was fed by the consistent line taken by the defence in cross-examination: Moshuti in particular repeatedly challenged the status of Lichaba's office with such questions as, 'Is it a lawful office?', 'Who is the Chief of that office?' and, 'Where is

that office situated?' Rametse also managed to muddy the waters by suggesting that he could not understand how the case had been forwarded to the Local Court without passing through the Principal Chief's office where he, as chief clerk, should have written the docket letter; he had had no instructions about any such letter. This devaluing of the status of Lichaba's office was used both as a kind of indirect defence and also to score political points in this public forum, for the case attracted wide attention and the court was crowded during its hearing.

Moshuti's defence also conveyed the impression that he had been man-handled because his political views diverged from those held by the Lichaba's office staff. In a similar vein, he alleged that he had been put off five times by Leboea in attempting to transfer a land to his younger brother. Both these allegations were strongly supportive of the Chief's cause in the ongoing Lichaba's debate because Leboea was presented at this time as championing the Chieftainess and undermining the efficiency of the Chief's office.

We may consider this case then as a conductor for the tensions that beset the village at that time. The obvious symbolism of the case was not lost on villagers, for in a way it reflected the Lichaba's contest in miniature. The outcome was interpreted at village level as a loss to the forces of Lichaba's office and a gain to the supporters of the Chief. The case was also a public humiliation for Leboea and might have contributed to his leaving office subsequently.

We must ask the question: why did a fight involving one of the Chief's administrators not receive an initial hearing in the Chief's court? The answer is to be sought in the embroilment of the administration. The assault on Leboea was a challenge to his standing in the Principal Chief's administration. In turn, the case was forwarded to the Local Court by Lichaba's office. We can see how the existence of that

office, making this sort of point about its own autonomy, could complicate administrative affairs. By forwarding a case direct to the Local Court, without consulting the Principal Chief, that office was signalling a point against him in the ongoing Lichaba's struggle. A hearing at the Chief's court level would have been compromised in this context, for even the act of submitting such a case to the Chief's court would have been a political index. This kind of dispute, so obscured was it by the loaded political relations of the protagonists, could not be resolved in the weakened Chief's court. So even if the case had been heard by other representatives of the Chief or by the Chief himself, for the purpose of airing the grievance rather than pushing for a decision, the forum would have been problematic.

The point has been made in earlier chapters that in certain instances, disputants must reach beyond the tribal sphere for solutions. Where status relations were ambiguous, and often where party politics had sharpened these ambiguities, the Chief's court was not able to mediate decisively. The case was brought against Moshuti in the Local Court, I would surmise, precisely because of its distance from the entangled loyalties of the tribal sphere. That court also has the power to punish an offender, a power which may have rendered it attractive to the humiliated Leboea. It is in cases of this nature that we see how the Local Court has come to assume an indispensable function for the local community. The facility with which this local agency of the outside structure was mobilized, and the adroitness with which the accused and his witnesses handled their presentation in it, is a sign of the extent to which the Local Court has become absorbed into the range of options open to the local people.

THE SOCIAL DRAMA AT LERATA'S VILLAGE

The form and content of the previous case closely reflected events in the Lichaba's field. The case itself was one of the confrontations, and its outcome had meaning for the contest. Our second case study does not have this immediate correlative effect. One of the striking features of the struggle between the Chief and his mother was the way in which national events became mirrored at the local level. In this second case national political tensions led to a schism in a small village in Lichaba's sub-ward. In turn, this schism was exploited and became fused with the political split of Lichaba's. Initially the exacerbation of political tensions acted as a catalyst to trigger off a series of crises which in themselves reflected both national political divisions and the undercurrents set up by the clash for Lichaba's, and brought to the surface in Lerata's village latent and underlying friction about the headmanship.

The village of Lerata's is situated close to 'Mampho's. During the time of fieldwork, the Headman of the village was Labone Lerata, acting on behalf of his senior kinsman Tlapi who was incompetent to rule because he was a lunatic. Prior to Labone's incumbency there had been two other Headmen who had acted in Tlapi's stead, Ntholi and Motsumi, both genealogically senior to Labone. Both had proved unsuitable for office.

The drama began because of the activities of a mokhibo dancing company that had been formed in the village to dance at important occasions such as political rallies. The members of the company, mostly women, were drawn from all three main political parties. An idea of the function of the group can be gained from one informant's description of the song they used to honour the various parties. They would accompany the song with gestures incorporating the sign (for example, the clenched

first salute, with thumb raised, representing the BCP) of the particular party being praised. The name of the leader of whichever party was being honoured was worked into a repetitive refrain of 'Ntate--- [Leabua, or Mokhehle, or whoever], come and fetch me! ' It would appear that initially the company functioned amicably but, as the general election drew nearer and campaigning became more intense, political differences began to make themselves felt.

The first occasion of which I have record of there being dissension in the company was at a ceremony to mark the completion of a water installation scheme at Lerata's. A prominent member of the Government was to be present at the celebratory feast and consequently the mokhibo company was to sing the BNP version of their song. Some of the BCP members of the company were unwilling to participate and made their reluctance known to their leader, 'Maliau, who said that political differences ought to be shelved just as, in the past, they had sung at all political gatherings without discord. To settle the matter, they went before Headman Labone who also ruled that the song must be sung, and it was.

About a fortnight later the Prime Minister held a political rally at Koma's at which the mokhibo group performed. Evidently Jonathan and his wife singled out 'Maliau for special praise, giving her fifty cents and a scarf. This public recognition of 'Maliau distressed a young woman of the group, a BCP member, 'Mapuso. 'Mapuso was an intelligent, lively young woman whose husband was away on migrant labour. She was proving a trial to her husband's family, who found it difficult to control her, and especially to her two sisters-in-law who found her quarrelsome and lazy. She was uninhibitedly irreverent and insolent and contemptuous of authority. During the next few weeks her name was to become a byword in the area.

After the rally at Koma's the BCP members of the mokhibo company, including 'Mapuso, resolved to break away from the company to form their own troupe since they were no longer prepared to perform at BNP functions. They went to see Headman Labone to inform him of their intention. He ruled that it would be better for the company to dissolve altogether rather than that factionalism within it be allowed to splinter the village. If they could not sing peaceably together, he said, it would be better for them not to sing at all.

But the dissenting BCP faction ignored his decision and formed their own group. Soon after, when they were setting out to sing at a BCP rally at another village, 'Mapuso went to stand at the cliffs near her house and shouted insults at BNP members in the village. It was for this that Headman Labone took her before the Chief's court (see pp.64-5, 78-80).

The dissent at Lerata's about the mokhibo group stirred up old feuds. Taking advantage of the division in the village, for which Labone was made into a scapegoat by certain sections, those with grudges against him and an interest in securing his dismissal reopened the case for Ntholi's claim to the headmanship. Perhaps the mokhibo dissenters felt that they could use Ntholi's claim to pay off Labone, for when on 13.10.1969 a deputation of villagers went to Lichaba's office to press Ntholi's suit, 'Mapuso was among them. Another of his supporters was Motsumi. Ntholi based his claim on the allegation that Labone was neglecting Tlapi's interests, selling thatching grass for his own profit and using for himself the gratuity that Tlapi was paid by the Government.

To counter Ntholi's ambition, another deputation went to the Principal Chief's court (see p. 57) where they said they had heard that a deputation would appear to press for Labone's demotion. They stressed that this was contrary to custom because a small section of the village

could not make such decisions by itself: a village pitso should have been held and, if any action were to be taken, it should have been backed by the ratification of that pitso. They also maintained that the group was supporting Ntholi because Labone had sanctioned 'Mapuso for the abuse she had shouted from the cliffs.

It is at this point, with each deputation appealing to a separate office in the administration, that we see how the split caused by the Lichaba's affair had its effect on the drama at Lerata's. We have a reciprocal influence at work here, for villagers used the divided administration to prosecute sectional interests while, simultaneously, the two offices exploited the Lerata's deputations to make their own points. Lichaba's office ratified Ntholi's claim to the headmanship, while the Chief's administrators affirmed Labone's status and overruled the Lichaba's decision.

Influenced perhaps by the reawakening of old quarrels about the headmanship and the encouragement that had been given to old claims by Lichaba's office, Ntholi continued to press his demands by bringing a case before the Local Court. Without seeing Ntholi's action in terms of the backing he had had in Lichaba's office, it is difficult to understand how he could have brought so ill-founded a case.

In November 1969 Ntholi appeared in the Local Court with a two-fold suit. His first claim was that Labone ought to be demoted from the headmanship of Lerata's as his, Ntholi's, claim had more validity. Secondly (and surprisingly, in view of Motsumi's erstwhile support), (1) Ntholi asserted that Motsumi was misusing Tlapi's lands and that Tlapi's possessions ought in future to be administered by him.

Ntholi's case faltered from the start when the President wanted to know from him firstly, whether the question of the headmanship and the administration of Tlapi's property had been discussed in the lelapa of Lerata's and, secondly, whether he had first advanced his demands through the Headman's court at Lerata's (see pp. 342-3).

Ntholi was forced to admit that the matter had not been thrashed out in the lelapa but he claimed the support of a sort of ad hoc court of some of Lerata's villagers. When pressed by the President on this point, he said that it was obvious that he could not have taken the matter to Headman Labone's court for it would clearly have been opposed to his claim. He was unable to produce a witness to represent the opinion of his ad hoc court.

Ntholi's case broke down completely under the testimony of an old woman, 'Magauda, related by marriage to Tlapi, who interrupted the court proceedings to make the following points:

- a. she had been guardian of Tlapi and his property for years;
- b. she was the one who saw to Tlapi's being clothed and fed;
- c. she had instructed Motsumi to plough one of Tlapi's fields in order to help cover the costs of supporting him;
- d. Ntholi had omitted to tell the court that he himself was ploughing one of Tlapi's lands but was contributing nothing to Tlapi's support;
- e. she was of the opinion that Ntholi had brought this case in an attempt to gain control ultimately of the gratuity that Tlapi was paid by the Government. He had previously, she claimed, been to Local Government to try to have this gratuity paid to him instead of to Tlapi.

The weight of evidence in this case was against Ntholi and he was sternly reprimanded by the court for trying to undermine the authority of acting Headman Labone Lerata.

Ntholi's ill-founded case had its genesis in the unsettled times preceding the general election, when political unease found outlet in many ways, from beer-house argument to slogans built into road workings, and threatened the unity of social life in small villages. Basic differences were exacerbated by the Lichaba's split, which in turn registered national political divisions. In the resultant confusion, sectional interests could exploit the situation to reawaken past feuds. There were even rumours at this time that Chieftainess 'Mampho had visited Lerata's to encourage 'rebellion' against the acting Headman, perhaps hoping to exploit the grievances of certain of the villagers to gain votes later for herself.

The administration of Lichaba's and the Chief's administration revealed their antagonisms by their separate handling of the two competing factions from Lerata's. It is not surprising that Ntholi, with his

superiors utilizing the upheaval for their own political ends, sought also to prosecute a claim in a time of uncertainty.

This case, like the previous one, indicates the tip-of-the-ice-berg nature of certain litigation in the Local Court at this period. In both, we can trace back the link of causation to the trouble at the head of the ward and ultimately to a divided Lesotho.

THE BCP VILLAGE CHAIRMAN

In 1968 an election was held in 'Mampho's to choose two assistants to the village Headman, Mpho, these being the chairman (molula-setulo) and the secretary (mongoli) of the village. The men chosen, Rangoane and Khemi respectively, were influential members of the BCP and we have seen the extent of their political involvement by their support of the activities of the faction in the Lichaba's struggle.⁽²⁾ Village talk identified Mpho as a supporter of the Chieftainess. Given their divergent political allegiance, and the emergence of the Lichaba's contest which served to clarify political differences, antagonism between the Headman and his assistants was to be expected. With a situation of incipient conflict like this coming into the range of the Lichaba's field, it was almost inevitable too that it would be used, by one side or the other, in their ongoing confrontation. The faction that opposed the Chieftainess exploited allegations of misconduct among the Chieftainess's supporters to direct their campaigns to discredit her legitimacy in office. In an almost identical fashion, Rangoane was to provide Government supporters in the village with a target, so that discrediting accusations against him would reflect on the credibility of the Opposition at village level. And Rangoane provided his critics with ammunition by allowing his political leanings obviously to influence the way he carried out his duties. There were three cases in particular talked about over

which he presided at the Headman's court level which drew accusations of bias.

Government supporters made much of Rangoane's alleged discrimination against them, but it was Rangoane himself who set up the situation for his first public humiliation.

Rangoane laid a complaint with the Chieftainess against Sebui (who was in charge of overseeing the chopping of trees around 'Mampho's to supply firewood) for chopping wood with a villager without the knowledge of either himself or Mpho, the Headman of the village.

The Chieftainess appointed a special ad hoc court to hear the dispute at the level of a headman's court. The Headman himself could not preside over the hearing because he was to appear as Rangoane's chief witness.

Rangoane claimed that Sebui had told him that he had permission from both the Chieftainess and the Headman to help the villager chop wood, but that when he checked up on this, both the Chieftainess and Headman Mpho had told him that they knew nothing about it.

Sebui, in turn, asserted that he had worked through the proper channels when seeking permission and that he had been to see both the Chieftainess and Mpho.

It was at this point in the hearing that it became evident that Rangoane had been gulled, for when Mpho came to give evidence, his statement flatly contradicted Rangoane's. He related in detail how he had been in the Chieftainess's presence when Sebui had brought a villager to ask for firewood. His evidence made clear that he was satisfied that permission for the chopping of wood had been granted via the proper channels.

The case now turned into an appraisal of Mpho's relationship with Rangoane for, when the court questioned Mpho, it became evident that Rangoane had gone ahead with the case not knowing that his witness Mpho was going to give evidence that would cast doubt on his story. In fact, Mpho told the court that he had deliberately refrained from telling Rangoane that he was aware of Sebui's taking this villager to chop firewood. Under further questioning, Mpho admitted that there was friction between him and Rangoane, and made the point that Rangoane on other occasions had not reported administrative matters to him. Mpho added that he was of the opinion that Rangoane was trying 'to spoil his name among the people'. As Rangoane had attempted to do this, Mpho had deliberately kept him in the dark about the matter of the wood to make him feel 'how painful it is not to be informed of administrative matters'.

Thus, what had started as a complaint by Rangoane had turned into an examination of Rangoane's role in office. The court decided to postpone the case until the Chieftainess could appear to give evidence.

But the case was never resumed. The reason for its indefinite postponement may have been that, coinciding with these events, a petition protesting against Rangoane's alleged injustice and incompetence was circulating in the village, calling for his dismissal. In October 1969 a village pitso was called by Headman Mpho. Chieftainess 'Mampho, as Chief of 'Mampho's, presided over the pitso which was opened by Mpho.

Addressing the Chieftainess, he said that the people of 'Mampho's wished to bring something to her attention; he would ask Sam to read her the letter in which they expressed their views. (Sam, a member of the BNP, had been one of the three men co-opted to hear Rangoane's case against Sebui.)

Sam explained that the letter was addressed to Mpho, the Headman of the village, who had decided to lay the people's complaints before their Chieftainess. He then read out the people's complaints, summarized below:

1. We complain about our chairman because he does not listen to our complaints; he only listens to the complaints of members of the BCP.
2. When people who are not BCP go to him for firewood, he will not give them any.
3. The same is true of our cases; he does not deal justly with cases in which a BCP member is involved, but favours that BCP person.
4. For the reasons stated here, and others we have not even mentioned, we ask you please to dismiss the chairman from his position in the village.

The letter had about 60 names supporting it, mostly of women.

The Chieftainess asked Mpho whether he objected in any way to the petition and he said he did not. He said that the letter had been handed in to him and that he was passing the complaints of the people on to her.

The Chieftainess's clerk, Ralisa, asked those whose names appeared on the petition to step forward to confirm it. Seemingly none of the women whose names were down would come forward at first. As Sam read their names out, some denied knowledge of the letter, while others said that, although they had been interviewed about the petition, they had not realised that their names would be recorded. Only after repeated requests did some twenty-odd people step forward.

(3)

There were very few men's names down, but among them were Lejapoli and Lebona, both of the BNP. Lebona had been another assessor appointed to hear Rangoane's case against Sebui. These two spoke up against Rangoane, Lejapoli saying that Rangoane did not consult the village

land advisory board, but simply allocated land to any BCP member who asked for it, without even seeing the Headman. This sort of thing, he said, would cause trouble between the chieftainship and the people if allowed to continue. Lebona pleaded for Rangoane's dismissal because it was clear that he and Headman Mpho did not work together in peace.

One woman came forward to say that she and some others knew nothing about the petition although their names were on it, but only one person spoke in Rangoane's favour, and that was Khemi, the village secretary. He said that Rangoane was being framed for political reasons, that two names on the petition belonged to people who resided elsewhere, and one to a woman who had been in South Africa for four months. Rangoane, he said, did not favour Opposition members; he could cite cases where he had let people off who belonged to the BNP, and charged others who were Opposition.

The Chieftainess and her advisers retired to Lichaba's office to make their decision. When she announced her decision to the people, Chieftainess 'Mampho spoke contemptuously of people who, although afraid to speak their minds in public, yet came 'creeping' to her 'like summer rain'. This sort of devious and irresponsible approach was as undermining as communism, she said. She had made a mistake in allowing the people to elect their own chairman, because now they came complaining to her that they were not satisfied with him. She had already noticed the bad feeling between Headman Mpho and his chairman Rangoane, but it was the people's fault, not hers, because she had not influenced them to elect Rangoane. It had always been the chieftainship who appointed assistants to the Headman. Although the petition was full of their names, only about twenty of them had the courage to make themselves known. For these reasons, she had decided to dismiss Rangoane from the chairmanship of the village. She herself would select a replacement.

This petition must be assessed against the ongoing Lichaba's dispute. Although it is highly likely that the charges against Rangoane were founded--the fact that his supporter, Khemi, referred to other instances of his breaking the rules would confirm this--nevertheless, because of the timing of this petition, coming as it did shortly before the faction managed to involve the Chief and while they were still engaged in making representations to him, it can be seen as a counter-presentation: an attempt to neutralize the growing strength of the Opposition, and a probe to discover how much support the pro-Government parties could muster. Furthermore, by drawing in the Chieftainess to make a decision concerning the administration of 'Mampho's, it bolstered her authority and showed that her critics, too, were vulnerable to the type of accusations that were

being made against her administration and supporters. Significant is that the petition was taken to the Lichaba's head when the Principal Chief was absent from the village.

Rangoane was advised to appeal to the Principal Chief to reverse the decision about his dismissal. He did not do so but, instead, a case appeared in the Local Court ten days later which had obviously been fomented by Rangoane in order to challenge the validity of the petition that had resulted in his losing his position. The widow of Rangoane's brother, 'Madiana, brought a case against Sam, the man who had read out the petition at the pitso; she charged him with using her name without her consent on the petition to have Rangoane dismissed from the administration.

Rangoane asked to be allowed to represent 'Madiana who, he said, was not well, but Sam would not agree because the case indirectly involved Rangoane. He would first like to cross-examine 'Madiana, he said, before someone else appeared to represent her. The President concurred.

When Sam cross-questioned 'Madiana, she stated that she had heard him reading her name out at the pitso; she did not see him writing her name on the petition, nor could she produce a witness who had seen him do so. Then Sam put this question:

Q. Tell the truth as a Christian. At Church last Sunday you told people that you did not mean to charge me at first, but that Rangoane persuaded you to do so.

A. We are not here to discuss Church affairs.

Court: Please answer that question.

A. I will answer it, but remember that what I said in Church was not what I said here in court. The Church committee forced me to say that Rangoane persuaded me to charge Sam, or they would take steps against me. (4)

Q. Where did you get the money to charge me?

A. That is none of your business.

Court: Please answer that question.-

A. I asked Rangoane to give me that money because he is the one who supports me. I have no money of my own.

'Madiana's witnesses included Khemi, the village secretary. Both he and the other witness related how they had heard 'Madiana's name read out at the pitso. Neither had seen Sam writing down 'Madiana's name. He had read from a list which he took from his pocket.

Sam's defence, assisted by his witness, Headman Mpho, was that he had merely been instructed by the Headman to read out the list of names at the pitso. He had had nothing to do with putting 'Madiana's name on it.

'Madiana's final address to the court stressed her helplessness as a widow, and how it would affect her livelihood if she could not clear her name of complicity in Rangoane's dismissal. She concluded that the whole affair, petition and all, was 'framed'.

The President ruled that the case had no foundation, and dismissed it without costs.

The theme of this section has been that the Local Court represents an arena in which local political confrontations may be reflected or may take place. While waiting for 'Madiana's case to begin, I was approached by one of the influential men of the village who told me that, if I was interested in studying Sesotho law, I was wasting my time attending this case. He said the case was a political one and would serve only to confuse me as the question of law had been subordinated here to the facts of political point-making. His words were given added meaning by the crowd that packed the courtroom, among whom were represented most of the local political Big Men.

It was never clear to me whether or not 'Madiana's name had been used on the petition without her consent. What is probable is that Rangoane, using his position as her main means of support, placed pressure on her to charge Sam. 'Madiana showed signs of great nervousness in court and her demeanour suggested that she felt she was out of her depth--and she was--in this dispute. Nevertheless, the point must be made that Opposition rumour held that many of the names on the petition were those of women working on the roads and being paid in mealimeal by the Government. I would surmise that there was very definite political interest

involved in the drawing up and presenting of the petition, but that the facts of the petition were correct in that Rangoane had misused his position, and that the situation arising between him and Mpho was leading to an untenable administrative position. For our purposes the whole drama is interesting, not so much as to whether the various allegations were 'true' or not, but in its force as a counter-presentation in the political and administrative struggle of the time. It is striking that, as in Moshuti's case, the witnesses appearing in 'Madiana's case so clearly represented the divisions in the administration. Mpho appeared for Sam while on Rangoane's side there was Khemi, the village secretary, who, as we have seen in previous sections, was one of the chief opponents of the Chieftainess.

CONCLUSION

The three cases that are the subject of this chapter had their roots in the Lichaba's contest, for it was this administrative schism that laid the tribal field open to sectional discords, and that undercut the Chief's administration in its ability to contain and regulate its own tussles. With the administration divided against itself and, as the witnessing in certain of the cases showed, with the very administrators who were there to settle conflict now drawn into discord themselves, clearly a forum outside the tribal was needed in which such politically loaded cases could be played out.

There is a paradox in how the Local Court was used. Because it was not part of the tribal arena, not enmeshed in the complex of local struggles as the other courts were, it offered the 'disengaged' forum needed. Chapter Three identified the Local Court as of the outside, encapsulating structure, but showed how that structure can be mobilized by members of the enclosed order, and consequently how it demonstrably

penetrates the semi-autonomy of the local field. This will be increasingly so, it was suggested, in dispute-settlement that the tribal sphere is incapable of resolving. There is another way of looking at this interpenetration, however. Chapter Eight will also show how the Local Court was essential to the enclosed community, not only for the authoritative settlement of run-of-the-mill litigation, but as a display arena of a very specific type. Similarly, the cases dealt with above needed this sort of forum to enact publicly the local political questions that were being tested. This chapter demonstrates the real extent to which the Local Court, the official 'Government' court of the village, has become a part, in certain types of conflict, of the local political arena.

And here lies the paradox. In putting the court to work for the specific end of publicizing local political dispute, there was a degree to which the court became 'domesticated' by the skills of the local tribal sphere. Although the verdicts it gave were obviously important, they were not the only concern of the litigants, who were also making use of the court to gain publicity for political goals. In the process, the court was rendered less of a detached adjudication locus, and was exploited for sectional ends.

Chapter Eight

LOCAL COURT: LAND, POWER AND THE LIE

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INTRODUCTION

However barren his field and poor his harvest, every Mosuto relies on getting a subsistence crop from his land. When he is told that some or all of his lands will be taken away even if only for one season, certainly if for a number of years, all he can see is hunger. (Wallman 1969:106)

For the ordinary man, land represents some security at home, something on which his dependents can rely when he is working away. It is a precious resource to peasants, for 'if they had more land they would have more food, and ... if they cannot get more land they can get food only by working for it in wage employment' (Hamnett 1973a:39). Challenging a man's right to use a land is thus a flash-point: he must reassert his right to it, or have his economic options even more curtailed than they already are.

For the traditional authority, control over the apportionment of land is a visible adjunct to legitimacy. Especially in the overcrowded lowlands, land offers a bargaining ground for political power plays; it can be used as a token in an exchange of signals about mutual status. Paine suggests (1974a)⁽¹⁾ that the act of reindeer theft, far from being the simple taking of one man's property by another, may be part of an intricate game of challenge, a gesture through which relationships and statuses can be tested. The land litigation that is my subject here is invested with this sort of meaning.

In a country where land has so loaded a value, where it is at a premium and where competition for it is endemic, it is inevitable that it will form one of the major areas for litigation, and so it was in the Local Court. I am concerned in this chapter with one specific type of land case, one in which what was ultimately being tested was political power, of which control over land and its allocation was an index.

I am also looking at one technique of challenge, which involves building up and presenting in court an 'alternative reality'. This technique will be discussed in the framework of that cultural signal Gilsonen dubs 'lying' in his assessment of how 'individuals in a Lebanese village negotiate and transact about the most important area of value in any culture, social personality and the significance with which behavior is invested' (1976:191). The power of the 'the lie' rests in that it influences what we know of each other; its transactional force stems from the uncertainty it creates, wherein one may postulate an alternative or 'improved' reality about oneself. Thus, Gilsonen sees it as 'ultimately woven into the system of power and control in a society' (1976:191).

Transposing Paine's and Gilsonen's concepts to Lesotho, my analysis is based on a series of four connected cases precipitated by the desire of Chieftainess 'Matoka, one of the authorities of Lichaba's sub-ward, to reassert her claim to allocatory rights and lands in an area under the jurisdiction of the Principal Chief. Her renewed negotiation about allocatory control in the Sekonong area was based in the ambiguity that a previous history of discord with the Seeiso chieftainship had created. Reopened negotiation was signalled by her making allocations of land in the disputed area. Like Gilsonen's 'lying', these moves were concerned to measure power and status, but through the language of land allocation.

A brief review of the history ⁽²⁾ of the disputed area throws light on the uncertainties of jurisdiction on which the Chieftainess's renewed claims rested.

1. Moshe, Chieftainess 'Matoka's late husband's grandfather, was placed between the Seeiso and a neighbouring principal chieftainship, from each of which the Moshe chieftainship was granted a portion of land on which to settle.

2. The Moshe chieftainship claimed independence from both principal chieftainships, which the Seeiso chieftainship denied them, and the Seeiso chieftainship forcibly demonstrated their suzerainty over the Moshe chieftainship.
3. In the Seeiso land grant was an area of reeds which came to be known as Mohlakeng (the place of reeds) or Mosheng (Moshe's). It was situated on the banks of the Sekonong River, and came to be a source of great contention.
4. It is claimed by the Seeiso chieftainship today that the grant of the reedbeds was not an outright grant to Moshe for his own use, but that they were placed under his caretakership in the same way that other reedbeds in the Seeiso area had caretakers for the Principal Chief. (It must be said, however, that the reedbeds came to be known as Mosheng, while the others never took the names of their caretakers.)

The question of the reedbeds is a complex one. Duncan cites Chief Letsie, explaining the position concerning reeds and other wild resources:

All the reeds, grass, and modi belong to the Government or Paramount Chief, and he again distributes them to the minor chiefs, and they again to their retainers, as they are required. If a man planted reeds they would belong to him.
(1960:100)

As was related to me, if a reedbed is under the jurisdiction of a subordinate chief, he may be required to deliver up a portion of those reeds to his principal chief. It was not the actual distribution of reeds which was in dispute in the Sekonong area, however; what was being contended there was the allocation of land in an area where there was formerly a reedbed in which the reeds have now largely been ploughed under. This complicates the issues. Judging by the involved litigation that arose about this area, rights to it were not easily determined, and perhaps the true facts of its 'ownership' will always be lost in the intricacies of the past. I am convinced, however, that the Chieftainess's claims in the former reedbed area rest on a fine point of law and that litigation over that area will continue, for although it is well established and commonly accepted that 'reeds belong to the principal chief', what happens, as in this case, when reeds no longer grow there? Given

the scarcity of land in Lesotho, it is certain that rights to the area will be hotly contested.

Although the account given above lacks detail, certain constants can be extrapolated from it. The first is that the Moshe chieftainship seems to resent the suzerainty of the Seeiso chieftainship. Secondly, that territorial disputes between the two chieftainships have in the past led to conflict. Thirdly, that the history of the reedbed area is now a tangled one whose very complexity throws up ambiguities that lend themselves to litigation. Resentment against subordination surfaced in the cases to follow, for it appears that Chieftainess 'Matoka was still trying to reassert control over territory that she regards as hers.

CASE SERIES: HOW TO REOPEN
NEGOTIATION ON A DISPUTED AREA

It is clear that there is a quarrel between the Principal Chief and Chieftainess 'Matoka about the border, and the remedy for their quarrel is that they ought both of them to consult a court of law about the border. They must not expect that their subjects should have to discover the border for them.

(Local Court President, commenting in the judgment in the case between Moroma and Ntsuso)

Moroma (phala of the Principal Chief) v.
Ntsuso (subject of Chieftainess 'Matoka)

Moroma's opening statement provides an introduction both to this case and to the series to follow. It falls logically into three parts: 1. an account of what made him bring the case, 2. a validation of his claim to the land, and 3. a statement about within whose jurisdiction the land falls.

1. 'I charge Ntsuso with ploughing my land at Sekonong without any arrangement. I saw Ntsuso ploughing my land and decided to charge him. First I went to him and asked him why he was ploughing my land.'

This accords with the almost stylized pattern of this type of land

case, when claim to a land is asserted by the act of ploughing it.

2. 'The land belonged to my father, Johannes Moroma. The land was allocated to me after my father's death by the Principal Chief, Chieftainess 'Mampho, who ordered Steyn Moroma [his uncle] and one Thabo Phiri to go and confirm me in the allocation of this land. I have been living from this land for twenty years. The land has no contours ...' (He went on to provide other details about the land.)

Again, Moroma's statement conforms to the run of these cases in that he laid down the 'pedigree' of the land, and right at the outset he presented a strong claim in that he knew the previous land holder, could cite the channels through which it was allocated, and had detailed knowledge of the land itself. The deciding of land cases hinged on such validity factors, and uncertainty in these provided early clues as to which party had the better claim to the land. The defendant in this case was to provide a less authoritative claim in these respects.

3. 'Ntsuso said that he had been allocated the land by Chieftainess 'Matoka. He is her subject. I am the subject of the Principal Chief. The land is at Sekonong which belongs to the Principal Chief. I am a phala under the Principal Chief in that area. The Principal Chief and Chieftainess 'Matoka do not go and plough each other's areas. There is a boundary between them.'

This, the most important part of Moroma's statement, is an early indication of what will emerge as a central theme of the series. This was a test case. The land was the lesser issue: what was really at stake was under whose jurisdiction the Sekonong area fell, and thus who had the right to allocate lands there. Should Ntsuso be awarded this land by the court, the Chieftainess would have won ground in opening the question of her right to allocate there.

Moroma's status as phala is important, as the President indicated in his judgment: 'He is not merely a subject, but one of a certain position'. Claiming a land belonging to a phala under the Principal Chief would imply, firstly, that the Principal Chief's authority in that

area might be doubtful, and, secondly, by demonstrating control over his land, 'Matoka might be reaching to bring Moroma under her as a subordinate phala. It emerged in the case that there had indeed been previous litigation between the Chieftainess and Moroma, when she had claimed (without success) that, if Moroma did not want to be ruled by her, he ought to leave her area. The witness who introduced this evidence, appearing for Ntsuso, was one Mohale, an adviser and administrative official under Chieftainess 'Matoka, who appeared throughout this series as her troubleshooter. When Mohale claimed that the courts had been wrong in previous judgments about Moroma's place in the hierarchy, this interchange took place between him and the President:

- Q. What do you mean by saying you think so? Under whom does Moroma fall, and under whom does Chieftainess 'Matoka fall? Are they not both the subjects of the Principal Chief?
- A. They are both his subjects.
- Q. What right then does Chieftainess 'Matoka have to chase another subject away?
- A. She has the right because if Moroma did not want to be ruled by Chieftainess 'Matoka, he ought to have left her place.
- Q. But didn't you tell the court a moment ago that they are both subjects of Chief Seeiso?
- A. Yes, I did.
- Q. Can you show me the law that says any subject can chase another away from his area without the Chief's permission?
- A. I am sorry, I know nothing about such a law.

Ntsuso's questions to Moroma on his statement raised three issues basic to this type of case:

1. 'Didn't you receive Chieftainess 'Matoka's letter instructing you to come before her to talk about the land?'
2. 'Where is this land situated? Do you mean to tell the court that there is no subject of Chieftainess 'Matoka's who ploughs in that area?'
3. 'Why didn't you come to stop me while I was ploughing your land?'

1. Concerning the letter. Before a person is deprived of a land in Lesotho, he ought to be notified thirty days in advance by a letter

in which are set out the reasons for the deprivation so that he can appeal against it should he so wish. From Moroma's reply it would appear that he received no notification that Chieftainess 'Matoka was going to allocate his land to another person. Although witnesses for the defendant alleged that such a letter had been written requesting Moroma to appear before the Chieftainess to discuss the land, the President in his judgment maintained that, even if a letter in the proper form had been written to Moroma, it would have been irrelevant because Moroma was under the Principal Chief through whom any such notification would have had to proceed. The defendant and his witnesses alleged that Moroma's land had been taken after he failed to appear before Chieftainess 'Matoka in response to her letter. Of this, the President said in judgment:

' ... Moroma was right not to attend the Chieftainess's court because he has his own Chief. If Chieftainess 'Matoka wanted to see Moroma, according to Basotho custom and law, it was her duty to write to his Principal Chief and ask him to send Moroma to her. This was not done.'

It was important, of course, to Chieftainess 'Matoka's attempt to exert control over the Sekonong area that the 'proper channels' of the Principal Chief's administration be bypassed. The channels represented the very power relations the Chieftainess was trying to question. It is with small points, such as the alleged existence of the letter, that the construction of an alternative reality is attempted. Negotiation proceeds through such points for, had the letter been accepted at face value, it would have provided a base from which to extend the legitimacy of her argument.

2. 'Where is the land situated?' Whether or not any of Chieftainess 'Matoka's subjects ploughed in that area was a recurrent question. The plaintiff and his witnesses denied that it was so; one

even said explicitly, 'This land is among some other lands; it is nowhere near the boundary between the Principal Chief and Chieftainess 'Matoka'. In fact the defence failed to establish their suggestion that, as other subjects of the Chieftainess were ploughing there, she had the right to allocate lands in that area. If they had successfully suggested that lands of the Principal Chief's subjects and those of Chieftainess 'Matoka's were intermingled in the area, they would have established at least that there was confusion about exact jurisdiction there.

The President showed by an early question his recognition that the case concerned boundaries and jurisdiction between Chiefs rather than just a small parcel of land for, after Ntsuso's questions to Moroma, he asked whether there was a boundary between the Principal Chief and Chieftainess 'Matoka, and invited Moroma to describe it in detail. Later Mohale was to give his version of the boundary, but he failed to offer proof that Moroma fell under the Chieftainess's jurisdiction.

3. Reasonable prevention. The third question was a common one in this type of case, and was put to imply that the plaintiff had not tried to prevent the defendant from ploughing his land because he did not have the right to do so. In this instance Moroma fielded the question by saying that he did not want to cause bloodshed, implying in his turn that he could rely on the courts to uphold his claim.

Moroma's witnesses were convincing in that they testified knowledgeably to the history of the allocation, the land in question, and its situation. After a postponement Moroma was able to call the Principal Chief to give evidence for him. The Chief seldom appeared in court to testify in land cases for it was often simple to check facts in the land register book. His presence in court in this case was significant, for it seemed to suggest that he recognized that the Chieftainess's

allocation of land in this area constituted a threat to his own standing. Although it was material, the Chief's evidence lacked the sharpness of detail expected of so prominent a witness and drew from the court the question, 'Morena, have you ever been to see this boundary?'

A. No, as a new Chief I have never been to see it.

Q. Don't you think it would be advisable for you to go and show Chieftainess 'Matoka the border?

Even without his adding his testimony to strengthen Moroma's, however, there were enough weaknesses in the defendant's case to preclude a decision in his favour.

Chief Jani Seeiso (an authority under Chief Seeiso) v. Mohale Moshe (subject of 'Matoka; witness in first case)

The same strategy appeared in this case as was used against Moroma: to select a land belonging to an authority under the Principal Chief (this time a more prominent one), to reallocate the land (this time to Mohale), and then to have Mohale plough the land. Again, the reallocation was tested in court, and the President confirmed that the land belonged to Chief Jani. In his judgment, he said that, seventeen years before, Chief Jani had turned up a new land in the veld when he first ploughed the land; if that land had indeed fallen within the Chieftainess's area, then that would have been the time to have contested the allocation. Again, Chieftainess 'Matoka's goal was more than a land, for one of Mohale's witnesses stated that the land had been allocated to Mohale only after there had been discussion between Chieftainess 'Matoka and Chief Jani, when she had tried to persuade him to turn his door away from the Principal Chief and face towards her. (3)

It is interesting to observe that Chieftainess 'Matoka's activities at that time were stirring up interest and concern, especially among those authorities in Lichaba's whose areas were close to hers.

Some of these headmen, I was told, went to the Principal Chief's administration to complain about her interest in lands in the disputed area. In the course of discussion the subject of past litigation with the Chieftainess about this area was brought up in which, it was held, decisive evidence was given by men who were the Chief's authorities there. After several appeals, that litigation went against Chieftainess 'Matoka, and it is ironic that Moroma, the plaintiff in the first case above, was one of those who testified significantly against her.

Seven months after Chief Jani's case, yet another disputed allocation came before the Local Court.

Thipa (for 'Malerato) v. Mosiuoa

This case differed slightly from the previous ones in that Thipa, appearing to represent the plaintiff, was claiming the land as well as ten bags of maize and sorghum as compensation for what she would have harvested from the land which had been reaped by the defendant, Mosiuoa. Again, the land had been allocated to Mosiuoa by Chieftainess 'Matoka, who instructed Mohale Moshe and another man, both witnesses for the defendant, to show Mosiuoa the land. We find the same formula here of a dubious letter having been written to the plaintiff, and again the letter's not being accepted as legitimate by the court. Thus the case was essentially a repetition of the two previous ones. In this instance the land was situated in Headman Mohlomi's area, an inexperienced Headman of Lichaba's who was one of those who appeared before the Chief's court to discuss Chieftainess 'Matoka's actions.

As in the previous case in which Chief Seeiso III appeared as witness, the political dimensions of the dispute were reinforced by the personal appearance of Chieftainess 'Mampho who, as she had then been regent Principal Chief, knew about the allocation. She testified

that the land had been allocated to the plaintiff's husband in 1952 when it was noticed that the reeds were dying out at the reedbed and lands started being allocated there. After the death of her husband, the land was reallocated to the plaintiff in 1963.

To counter the effect of Chieftainess 'Mampho's appearance, there was for the first time the personal appearance of Chieftainess 'Matoka as witness for the defendant. She testified that she herself had allocated the land to the defendant after having written a letter to the plaintiff to which she had failed to respond. Under questioning by the court, the Chieftainess claimed that the disputed area fell under her jurisdiction and alleged that she was being 'oppressed' by Chieftainess 'Mampho who had taken some of her territory unlawfully, using the weight of her position as head of the ward to back up her actions.

After having inspected the land, the President maintained in judgment that it was quite clear that the reallocation was a contrived one, that the land in question was situated in Mohlomi's area, and that it belonged to the plaintiff.

Against the Principal Chief

After these three cases, Chieftainess 'Matoka herself brought a case against Chief Seeiso III about two lands in the area of Moroma, lands that had been used by his mother, Chieftainess 'Mampho, while she was regent, and of which he was theoretically the holder, now that he had assumed the title of Principal Chief. In order to cope with the case, a meeting of the Sons of Seeiso was called to discuss the persistent litigation through which Chieftainess 'Matoka was testing his authority.

The first to speak was Chief Jani Seeiso who mentioned that the Principal Chief was being charged after he himself had been charged

about his land without success by Chieftainess 'Matoka. He saw this new case as a continuation of the same issue and suggested that the Chief not take such an important case himself but be represented by someone more experienced. After discussion his 'uncle', (4) Chief Lehloa, was chosen as his representative. It must be noted, however, that one of the Chiefs assembled there suggested that the case not be contested in court at all, but that previous judgments be shown to the Local Court, their numbers quoted and the point made that Chieftainess 'Matoka had lost in a previous case over these very two lands.

Chieftainess 'Mampho told the gathering that this matter was a repetition of a case she had previously had with Chieftainess 'Matoka which she had won. There was also discussion by the gathering of a suggestion that 'there was something behind the case'; Mohale's name was mentioned as a man who might possibly be influencing Chieftainess 'Matoka to further his own ambition.

In preparation for the case it was decided that witnesses should be chosen, as follows: Chief Jani Seeiso, and Headmen Ntsabane, Moroma and Mohlomi. These men were chosen because they all had specific knowledge of the area, as follows:

Chief Jani used to be the chief allocator of lands at Mohlakeng. During the years that he allocated lands at Sekonong, Chieftainess 'Matoka had never complained.

Ntsabane was said to know the history of the ownership of the two lands now in dispute which were situated in an area which Chief Seeiso II was said to have confiscated from Posholi Moshe, 'Matoka's father-in-law, after he had defeated him and burned his village. Ntsabane had been present in the days when Seeiso II took the lands from Posholi. Ntsabane told the gathering that for three or four years after the lands were confiscated, Posholi had not taken steps about them, nor had his son done anything about the two lands in question. When the lands were hoed, he said, the Principal Chief used to slaughter sheep and goats at that place to give food to the people working there for him, and people of the Moshe chieftainship also used to work on those lands.

Moroma was chosen as a witness because the two lands are situated in his area. Near these two lands are other lands belonging to people who were allocated them by Steyn Moroma. Chieftainess 'Matoka had not contested these allocations.

Mohlomi was chosen because his and Moroma's areas are contiguous to Moshe's. Besides this Mohlomi was the one to keep an eye on these two lands belonging to the chieftainship because he could see them from his village while Moroma could not. If any stock grazed on these lands, Mohlomi always sent messages to inform Moroma.

This was the preparation in the Principal Chief's village for the case which came to court nine days later. At that time the Local Court had been transferred to the nearby District administrative centre, and was under a new President. There was such a crowd present for the case that

it was heard in the local hall.

Before the case commenced Chief Seeiso stated that he was sick and therefore wished to be represented. He also stated that the lands in question were not actually his, but belonged to Chieftainess 'Mampho, his mother. He mentioned that there had already been litigation between her and Chieftainess 'Matoka who had lost that case. The court asked him whether he was not the heir of his father, the late Chief George Seeiso, and as such, surely responsible for all matters relating to his property. In reply Seeiso maintained that his father's younger 'brother', Chief Lehloa, was to be held responsible. The court reprimanded Seeiso, saying that he was the one charged before the court and that therefore he should take the case, and not Chief Lehloa: that he should 'speak like a chief'. The Principal Chief responded to this by saying that he had been wrongly charged: if Chieftainess 'Matoka wanted to charge him, she should do so about his own lands and not those of his mother.

Chieftainess 'Matoka objected to Chief Lehloa's taking over the case. She said she had specifically charged the Principal Chief and not his mother because, she alleged that, in previous litigation with Chieftainess 'Mampho, she had sheltered behind the fact that she was only regent for her son and therefore not responsible for those lands. 'She would say that the day Seeiso was installed, I might take steps against him. Now today I charge him.' The court asked whether she wanted the Chief to speak for himself or be represented and she repeated her objection to his being represented. The court then asked her why she did so when she herself, after she had given her statement, wanted to be represented by Mohale. She replied that she was old and sick and did not have the mental agility of Mohale.

Shortly after this the court adjourned, Chieftainess 'Matoka pleading that she was ill. She lay down in the sun outside the court and eventually a postponement was agreed to. (5)

ANALYSIS

Gilsenan considers lying to be important because

it is part of the language by which men set up what they hope are socially authentic and legitimate grounds for conduct. The adequacy of their claims may at any time be tested, ... One has always to think in terms of the long perspective, of anticipated consequence for one's "name" and "place," for one's performance is expected to be relevant to future phases of social action. (1976:213-14)

It is the lie directed outwards, the lie that affects one's interaction with others, that takes on sociological significance. The sort of lying with which I equate Chieftainess 'Matoka's series of strategic 'bluffs' can be seen in terms of 'strategies and judgments in social

relations, ... a technique for gaining or showing superiority' (Gilsenan 1976:193).

To describe her actions simply as 'trying it on' is not enough, because it gives no insight into the actual technique which, as I shall argue, was a readily understood signal in the Lesotho context, and was defined by the probability that her allocations and claims would be tested in the forum of the Local Court. To say that she constructed a 'lie' is not to suggest that she had no valid historical claims to the area. It refers rather to the way in which the cases appearing in court were planned and presented. Their construction depended on acts which can be construed as lies in that, in terms of the power relations extant at the time litigation was fomented, the Chieftainess had no proven right of allocation in the areas in which she reallocated lands. (6)

If we define a lie as an act or statement which has the deliberate intention of deceiving, misrepresenting or misleading, then the 'lie of allocating' was the first and basic one: it took the form of creating a situation in which one of her own subjects could go and plough a land used by another man, the subject of another authority, and it underlay and gave rise to a series of other subsidiary, secondary and supportive lies. All these were designed with the intention of challenging and perhaps modifying a status quo which, to her, was in itself a misrepresentation of her rights and power. I am thus calling the act (and the planning that must have accompanied it) that made possible a man's ploughing another man's land a lie, for its aim was deliberately to distort the facts as they were known to exist 'on the ground'. In brief, Chieftainess 'Matoka manufactured a cause for contest.

The lie is commonly thought of in the conventional wisdom of every-

day life as simply a matter of truth or falsehood. The search for the 'truth' of allocatory rights in the Sekonong area must soon be abandoned, so obscured is it by claim and counterclaim. What lying does involve is a dichotomy between appearance and so-called reality and, moreover, it may often be a question, as in this instance, of the reality's being laid down by the more powerful party. What the Chieftainess succeeded in doing was to construct an alternative reality so compelling that those who denied her demands were forced to enter contest with her on her own terms, i.e. in terms of certain rights as disputed in the Local Court. The effectiveness of engineering a situation in which one man can plough another man's land lies in the fact that the land user cannot but go to court in order to reclaim his rights: to ignore the act of aggression would be to lose effective say over the land and its crops.

The Chieftainess's overall goal, to gain control over portions of the Sekonong area, can be conjectured about in fairly simple terms. Financially there were tangible rewards to be gleaned from increasing one's area for (to take only one obvious example) one's income as a chief in Lesotho depends directly on the number of taxpayers under one's jurisdiction. Land carries associations of power and standing, a more subtle but equally compelling motive and, by pursuing a course that might have provided more lands for her people, the Chieftainess was surely seen as acting in their best interests. For these disputes must have been contrived with the cooperation of at least some of her subjects who must have known that she was exerting herself in provoking litigation which, if successful, would ultimately have benefited them as well.

What is less evident is why Chieftainess 'Matoka embarked on a course which, on the evidence led before the court, had a somewhat

forlorn hope of success. It is characteristic of the lie that is recognized as such by those to whom it is directed (as it was in this instance by all concerned), that it elicits the reaction of 'what is this person really after--what is behind this?' Thus when a subject of Chieftainess 'Matoka ploughed a land belonging to one of the subjects of the Principal Chief, it constituted a signal readily to be interpreted, and the desired reaction was there: that the Chieftainess had opened discussion once more of her rights to the area in question. In addition, by setting herself up clearly as the one who decided to reallocate the land, the Chieftainess increased her visibility emphatically. She laid down alternatives in such a way as to invite judgment, not so much of the man who ploughed the land, but of herself.

Indeed, the lie is usually accessible to the observer, not in its original form in the actor's intention, but as a judgment made by others (or an other) of certain verbal or behavioral signs. ... Lying often manifests itself to us socially as an attribution made by others to the actor of a specific intention, whether or not such an intention "in fact" existed. The modes and conditions of such attributions are sociologically as significant as the strategic purposive use of lying by a subject. (Gilsenan 1976:191-2)

It is helpful to examine the different spheres from which Chieftainess 'Matoka's actions elicited a judgment, for 'It is here, in the examination of the lie in action, that we learn the full meaning of the classification "that is a lie" (Gilsenan 1976:192). I have mentioned that, within her own area, the Chieftainess must have had some assistance in setting up her 'alternative reality'. But that parochial endorsement could not, of course, take her far towards her goal. What she needed was to invite a definitive and objective judgment from an audience or referee excluded theoretically from the complexities of the local power situation. The Local Court constituted both the public forum in which her cause could be aired as well as the 'outside', disinterested agency for adjudication, and the Local Court was the most

probable agency to which the land users could appeal, given the way she handled the provocation of the situation.

The course of a dispute in the Local Court is circumscribed by procedural forms which ascribe significance only to the evidence led in court, where the historical antecedents of the dispute were not raised. In other words, the Chieftainess set in motion a dispute that would most probably enter a confrontational locus in which it would appear in terms of the 'reality' on which she wanted to invite judgment, and in terms of which she wanted it discussed. It would be judged then as a land case on the merits of the evidence presented in court. The Local Court for her purposes would be a better forum than the Principal Chief's, where she might not have had the opportunity of so circumscribed a hearing, but where, in all probability, the court itself would have dealt summarily with the 'bogus' case in reasserting the original status quo.

Here we enter the province of considering that aspect of the lie which makes it function as 'a technique for the restriction of the social distribution of knowledge over time' (Gilsenan 1976:191). To an extent, the court is a closed system; the reality of a case is what is said in court. Thus if one says certain things convincingly enough, one does have a chance of success. We have seen, however, that the presentations that supported the Chieftainess's land allocations were not convincing enough, for they were cut through by the testimony of members of the administration who did have knowledge of the tenuous nature of her claim. The advantage of the restricted forum was also rendered less so when, for example, the President himself went to inspect a contested land and found that it was nowhere near the boundary, as the defendant's witnesses had suggested. It is noteworthy concerning this point that in judgment on the third case the President, having inspected the area where the disputed land was

situated, had reached the degree of awareness where he could say that this was a contrived case.

One cannot assume that Chieftainess 'Matoka necessarily expected her allocations to be upheld by the court. While this was always a possibility, and would have provided her with substantial reason for further action, it must not be taken for granted as her ultimate and only goal. Simply by forcing events in such a way as to have a case of this type appear in court, she won tangible ground. At worst, she succeeded in airing the dispute and drawing attention to her cause.

Consider Gluckman:

Men may sue knowing they will lose, but that they thus bring to the kuta a kinsman who has slighted them and who will be rebuked. Or a man will commit an offence to induce another to sue him, with the same end in view. (1955b:21-2)

Implicit here is that people may go to litigation to make public the state of their relations with each other, and not necessarily to have their cases upheld. That the Seeiso chieftainship was aware that they had to meet with Chieftainess 'Matoka in public forum in order to neutralize her moves was evident in that both the Principal Chief and his mother testified in cases in the Local Court and also because, during their 'rehearsal', they turned down the suggestion that, instead of going to court about the Chief's lands, they simply refer the court to the previous judgment which awarded these lands to Chieftainess 'Mampho.

The Chieftainess was concerned with staking out her rights to the area contested through 'processes of definition and transaction' (Gilsenan 1976:216). She forced the Seeiso chieftainship to enter a bargaining position with her, by drawing them into litigation about small parcels of land, in which it was not inconceivable that a lack of vigilance might have resulted in her obtaining concessions that

would never have been made in direct confrontation about the whole area. It is a measure of her success that both Chief Seeiso and Chieftainess 'Mampho had to appear in court in these lesser cases in order to exert control over the process of redefinition she had set in motion.

But Chieftainess 'Matoka also succeeded, in these apparently futile cases, in engaging in competition with her superiors. Gilsenan makes the point that 'status is negotiated in behavior that emphasizes visibility and making claims in the public domain about one's acts and biography' (1976:200), and moreover that the 'social-status performances' (in this instance the court cases) 'take place for the most part before those with whom one is consociate...' (1976:198). In the meeting of the Sons of Seeiso, we saw how Chieftainess 'Matoka's 'performances' had forced the ward and, in particular, the Principal Chief and his mother, to take her seriously. A measure of this is the preparation preceding the Chief's case with her. When it is remembered that, according to Gazette listings, Chieftainess 'Matoka is directly under the authority of the Chief of 'Mampho's, we can see how far her series of moves took her.

Her timing must be judged in the light of the Lichaba's contest as well. I would surmise that it was not accidental that these manoeuvres coincided with the upheaval, the decline of Chieftainess 'Mampho's fortunes as effective powerholder, and Chief Seeiso's full assumption of responsibility. It is well within the bounds of possibility that Chieftainess 'Matoka imagined that by resuscitating this litigation at that time, she might take advantage of the weakness of the administration as well as of Chief Seeiso's inexperience. The evidence for this contention is that great care was taken to ensure that the Chief was kept out of the firing line in the case against him and the running of the case put into the experienced hands of

Chief Lehloa.

By recreating in new form her claim to the Sekonong area, Chieftainess 'Matoka was utilizing a situation already fraught with ambiguity and uncertain verdicts.

Uncertainty as to the precise degree of lying or truth on both sides will always be present and subject to active assessment in problematic situations. ... The conjunction or disjunction between appearance and reality, shifting and ever critical, is hedged with ambiguity concerning judgment and value, act and intention, what is concealed and what is revealed. (Gilsenan 1976:192)

If she succeeded in nothing else, the Chieftainess succeeded in keeping the question open.

I have discussed this series of cases in detail with informants. What was local reaction to the struggles of the Chieftainess to make her claims? One man said that she was acting like 'the first chiefs' when she was accompanied to court; men and women rode with her, ululating on horseback 'like the first Basotho'. The boys and young men of her area were proud of her actions, and identified strongly with being of her chieftainship. 'Even now, if you come to the boys of Mosheng, and flog them, they say, "What will the Chieftainess say if she sees one of us with wounds and we have never done anything about it?" Those boys will pack on you, all the boys of Mosheng.' The Chieftainess thus augmented the respect of her subjects, and was seen as acting in their best interests against the overarching authority of the Principal Chief. She gained in status and legitimacy and brought her people behind her in a common cause.

CONCLUSION

Of the land cases recorded in the Local Court, there was a significant proportion that corresponded, perhaps on a less dramatic scale, to the ones Chieftainess 'Matoka precipitated. Their presentation also seemed to indicate the 'something-behind-this-case' implications of jurisdictional dispute. There would be the fact of a man's having ploughed or

sown or reaped another's land. Once again, there would be the careful construction of two separate and conflicting realities, each backed up by plausible evidence such as forms attesting to the allocation or official witnesses. Most importantly, it sometimes happened that two headmen would appear in court, each asserting that the land fell in his area, and each vouching for the correctness of his subject's claim. In such cases, one of the headmen had to be lying.

Why would a headman appear in court and lie in support of a false claim to land? Informants give the following insights. The headman may have been bribed. More relevant here is that there may have been tension between two neighbouring headmanships where boundaries or perhaps old land claims still rankled. If a headman can assist a subject, gain a land in another headman's area, then like 'Matoka, he has reopened negotiation on a disputed area. Equally important is the question of status. If a headman can assist in gaining a subject a land, he has by implication, in certain instances, demonstrated that he is superior to the other headman in land strategy, and has shown that he can help his subjects in winning access to this scarce resource.

It is here, in cases where aggressive claim is laid to the land of another, that one sees how important the Local Court is to the enclosed community. If a man simply ploughs one's land, and defies attempts by headmen and chiefs to sort the matter out, the Local Court is an effective forum which can provide redress. (7) If the man has no valid claims to the land, the Local Court has the teeth to nullify his seizing it. In a country where land is in such short supply, those who are helpless, the widows and the aged, are vulnerable to such gambits, and the Local Court can function to protect them. Alternatively, however, the Local Court also provides an arena in the type of case represented by Chieftainess 'Matoka's manoeuvres, where reassertions through the metaphor of land may be made,

and the court may be used as a platform for demonstrations.

I was led to conclude on the basis of these cases that the use made of this particular form of lying about rights to allocation and use of a land assumed the dimensions of a cultural form, so readily was it recognized and tested in court. It was almost 'part of a style, of a wide range of variations on the cultural theme of appearance and reality' (Gilsenan 1976:193). It was a cultural form that appeared to provide a bridge between the prize of a scarce resource and an almost stylized way of contesting to claim access to it. The fundamental 'possession-is-nine-tenths-of-the-law' opening gambit, followed by the detailed patterning of how claim to the disputed land was validated; the collusion between land grabber and headman; all led back to the fact of an acute shortage of land and the political status conferred by control over it.

Chapter Nine

CONCLUSION :

LAW-CODES AND BROKERAGE

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INTRODUCTION

It is ... often a mistake to assume that all Basotho know their customary law in detail, especially the younger generation from among whom, no doubt, future court presidents will be chosen. Moreover legal practitioners are not permitted to appear in civil causes before the Basotho courts, ... and thus the courts are without the benefit of their argument and research. (Palmer and Poulter 1972:127)

This conclusion is less directed towards summarizing the trends and conclusions of the work as a whole, and aims rather at concentrating upon a particular aspect of the gap, adumbrated in several of the preceding chapters, between the local level and the outside structure. Specifically, discussion will turn on how this interspace is manifest in the use of judicial resources at the local level. This approach is dictated partly by the demands of presenting significant data within a limited space, but it is also justified in that the chapter will touch on and draw together a number of the trends and processes that have emerged as cardinal. Thus there will be discussion of the inter-hierarchical position of the Chief, the bureaucratization of his administration and his alienation from the people. His court will be seen as veering in identification between the encapsulated and the outer systems, and as exploiting, at times, its control of one of the primary interfaces that connect the semi-autonomous social field with the centralized forces of Government. Consideration of judicial process in the Local Court in terms of its 'objectivity' and 'subjectivity' will be re-examined and the political and transactional implications of control of and access to a court will be scrutinized.

My first concern is to debate to what extent the ordinary litigant or disputant at village level apprehends the laws to which

he is subject and the procedures that govern the administration of those laws. Drawing heavily on Paine's discussion (1973) ⁽¹⁾ of Bernstein's concept of 'restricted' and 'elaborated' linguistic codes (1964,1965,1972), it will be shown how the law operative in the Chief's court and the Local Court constitutes a code that is in the process of change, and how villagers have differing degrees of access to and command of the various modes of the law-codes.

In so doing, it is necessary first to construct a model of traditional jural activity in the past as being conducted in terms of a restricted code which arises, says Bernstein,

where the form of the social relation is based upon closely shared identifications, upon an extensive range of shared expectations, upon a range of common assumptions. ... where the culture or subculture raises the "we" above "I." (1972:476)

This will be followed by the contention that the progressive encapsulation and consequent modification of the tribal system saw the introduction of a different order of properties to the law-code, so that the law operative in village courts today is a compound of elements of both the restricted code and a code that may be likened to the one Bernstein labels 'elaborated', one which

is not concerned primarily with the maintenance of consensus and solidarity and ... is likely to be used where consensus is either absent or not an issue. Its concern is the communication of "specific referents" of a situation or a problem. (Paine 1973:38; citing Bernstein 1965:156)

Attention will be directed to what Paine terms a 'disjunction', in this case between the peasant and his grasp of the law on the one hand and, on the other, the law as administered by the courts. It has been suggested that such disjunction is not confined to law-codes, but is part of a more general problem of inadequate channels of communication and connexion between the local community and the encapsulating order.

Where disjunctions such as these exist, there will emerge men to bridge them, and the second part of this chapter explores the role of a broker ⁽²⁾ who has this ability. The broker's command of the codes operative in the village courts serves as a starting point for an appraisal of his role for, as Paine points out, 'The operational strength of a broker lies in his command of a repertoire of codes, both R[estricted] and E[laborated]' (1973:30).

The broker's fluency in law-codes enables him to enter into transactions with clients in which his role may be seen as purveyor of legal expertise. It will be shown that the efficacy of the broker's code utilization is a function of a more complex role repertoire. His articulation of law-codes is simply one of the connexions he is able to make for a client. Others have their source in his involvement in local-level politics and in his long association with the chieftainship. Friedrich observes how local communities strive to come to terms with encapsulating change and mentions that

in terms of leadership the immediate result is the increased frequency and prominence of a certain kind of political specialist: the man who interrelates and articulates the needs, aspirations, resources, and traditions of his local village or tribe to the corresponding demands, supplies, resources, and jural order of the province and the nation. (1968b:199-200)

I have discussed at several points how the composite role of the chief as political middleman ⁽³⁾ has become obscured by hazy intervals along the interfaces between the inner and outer interest structures. I have also indicated that alternative channels are being sought and are becoming regularized to link up the two structures. A broker may be a 'political specialist' who can achieve this sort of confluence too, for one of his main resources is information which is not universally accessible. A notion of the law at village level as a code is inseparable from seeing the courts that control and define that code as

embedded in the ongoing decision-making processes of the society. Successful brokerage in this context depends on the broker's securing and maintaining access to decision-making channels and information.

THE CODES

The law-code of the lekhotla

Chieftainship was one unitary role, within which sub-roles might be distinguished ad hoc but had no structural or institutional corollaries. Little distinction existed even between the "public" and "private" roles of the chief. Relationships between commoner and chief as well as between commoner and commoner were diffuse rather than specific, their base total rather than segmental. The proliferation of chiefs and courts and the large number of matters considered in the court meant that "every Mosotho was his own lawyer" and legal competence or technical knowledge was the possession of the generality of men rather than the arcane skill of the few. The immediate legal community (by which is meant the group frequenting the same lekhotla) was small and its members all knew one another and were personally known to the chief. (Hamnett 1970:307)

This section develops an analogy between the operation of law at a traditional level in villages largely unaffected by change, and Bernstein's concept of the restricted code. My model of traditional judicial process is, of necessity, an ideal one, adopted for its heuristic value. Many of the elements of the model are adumbrated in the description Jones gives of the 'traditional judicial system' of the Basotho:

Each village group formed a close knit community and looked to one person as their head, in the Basuto idiom they turned the doors of their huts towards his, and the open space before his huts formed the khotla, the place where the men of the village met together to talk, to do any sedentary work they might have, and while doing it assist with their comments and advice the head of their community in his administrative and judicial business.

The Basuto traditional judicial system was also designed for such small units. Disputes and breaches of the community's

peace were dealt with by the chief or headman in the khotla. Justice was free and the main objective was to get to the bottom of the trouble and to bring about a settlement of it. The parties and their witnesses gave their evidence before the khotla subject to the comments of their fellows and to the cross-examination of the chief who gave his judgment before them, either directly or after consultation with some of the older and wiser men. The main function of the judge was to determine whether or not the "law", that is the tribal usage, had been broken in which case those who had broken it, it might be either or both of the parties, paid the customary fine; he had also to determine what compensation if any should be paid to the person who had been most wronged. Compensation and fine were usually paid in livestock, normally in cattle, and the fine went to the chief as head of the community. Justice under such a system was normally speedy and satisfactory and was accepted by the parties, for it was subject to effective public sanctions--neither judge nor litigants could afford to disregard the opinion of the rest of their community who were listening to the case. (1951:8)

In tracing an analogy here with Bernstein's restricted code, I focus on the social determinants of the code, and largely ignore its linguistic aspects. This is not to do violence to Bernstein's model, for: 'The codes themselves are functions of a particular form of social relationship or, more generally, qualities of social structures' (1965:153). The key elements of the restricted code for our purposes are: that it is based on common social assumptions, that status is an important determinant of the code, and that the code reinforces the form of the social relation.

Concerning the first point, Bernstein suggests that the restricted code will arise in a closed community (1964:61), and that it will be 'played out against a backdrop of assumptions common to' the users of the code, 'against a set of closely shared interests and identifications, against a system of shared expectations; in short, it presupposes a local cultural identity' (1964:60). Bernstein's criteria for the emergence of a restricted code presume a social milieu similar to that in which Jones places the traditional men's lekhotla, i.e. in a small, closed, lineage-based village. The

law-code in such a community, it is reasonable to assume, was firmly ensconced in a familiar framework: both the customs and norms regulating behaviour and the procedures involved in enforcing the code were known to participants in the judicial process.

The routine of judicial activity will establish in such a community what Bernstein calls 'predictability at a high level of consensus' (1964:59). The nature of the judicial process will be both predictable to the participants and consensual in tone and objective, since the social relations between disputants are ongoing and clearly defined. Assuming that the bulk of tribal dispute-settlement rested on a process of arbitration, it follows that there would be a high level of consensus too in acceptance of the norms invoked by the lekhotla.

The second step in our explication is that 'The consensus is obtained by making the status aspect of the social relation salient' (Bernstein 1964:59). The composition of the traditional lekhotla reflected the status structure of the community, consisting as it did of the adult males presided over by the chief. Acceptance of the court's decision was acceptance of a body in itself representative of the community. The chief stood for the enduring values of the group and expression of consensus by him was a symbolic reaffirmation of communal values. In this sense, the chief was the law.

A disputant before the lekhotla was viewed as a total social personality, whose structural position in the ongoing status relations of the community was known to both the chief and the men of the lekhotla. This background knowledge of a disputant's place in the social order was brought to bear upon his case. Gluckman makes this point, writing on the Barotse:

In order to fulfil their task the judges constantly have to broaden the field of their enquiries, and consider the total history of relations between the litigants, not only the narrow legal issue raised by one of them. (1955b:21)

In social situations in which the restricted code obtains then, 'Individuals relate to each other essentially through the social position or status they are occupying' (Bernstein 1965:154). Thus the restricted code is status rather than person oriented, and 'the individual is transformed into a cultural agent' (Bernstein 1964:58).

To take this one step further, one might postulate that a disputant or litigant would be judged in the restricted tribal code by the norms directly relevant to his status, and that decisions of the lekhotla would reflect status relations and obligations. Detailed communal knowledge of the status positions and relations of disputants would lead to their being classified as, say, 'recalcitrant younger brother', or 'reasonable neighbour'. In Bernstein's terms, the individual's 'discrete intent' would be 'implicit' and identifiable. It follows that there would be a close congruence between role expectation and norms applied, and that 'The range of discretion of the role is confined to the area of common intent and, therefore, the role receives explicit support from the status components of the relationship' (Bernstein 1964:64).

This brings us to the third element in Bernstein's restricted code model that is of importance here, namely that 'The code symbolizes and reinforces the form of the social relation and controls the channel through which new learning is made available' (1964:59).

Gluckman is again pertinent, about one of the tasks of Lozi judges:

as they have to maintain the law, they expound in public the rights and duties of headman, villager, father, son, brothers, husband, wife, etc., and these form units which are the nuclei of the substantive law. (1955b:81)

There is a sense in which the law-code is didactic, enjoining the disputant to 'go back and behave like a good father', etc. More than this, each time the injunction is given, it defines more exactly just what a 'good father' is. There is a feedback process then between the code and the social relations that give rise to it, and this process is self reinforcing.

This is inseparable from a view of the lekhotla as a socializing agent, inculcating a knowledge of the judicial process into members of the social order. The lekhotla was not separated from the main stream of village life. Boys from an early age were drawn into an awareness of what was going on in the lekhotla, in which they were expected to perform such tasks as the fetching of firewood. A young man growing up in the confines of these closed communities, with male activity centred as it was on the lekhotla, could not but absorb, by a process of cultural osmosis, the law-ways of his community.

Change and the lekhotla

The Chieftainship now finds itself, in effect, a corps of administrative officials directly and indirectly charged with the execution of the orders of the Central Government. The decree [sic] to which chiefs subscribe to this new interpretation of their duty and the degree to which they cease to be a protective buffer between their people and the Central Government are both a measure of the decrease of public trust in the institution of Chieftainship.
(Sheddick 1954:184)

The small, closed communities that generated the form of a restricted law-code are now rare in Lesotho. ⁽⁴⁾ As Wallman notes, the closeness that once characterized community life, and that was symbolized by either regular attendance at the lekhotla or by calling at the moreneng to 'catch up with current affairs', has almost disappeared (1969:18-19). I have discussed how the changes that

effectively transformed village judicial life had their roots in a historical process affecting the lives and status relations of both chiefs and commoners, and how, by 1937, social and economic change had encroached on the ways of closed community life. The intrusion of a cash economy, the comparative insights bestowed by education, and rising political aspirations all served to drive in deeper the wedge between rulers and ruled and to unbalance the relations of reciprocity and communication that underwrote the legitimacy of the tribal political order. A good deal of dissatisfaction coalesced around how courts were run: gone was the emphasis on the unity of the group imposing the sanction, a solidarity that had been expressed in the lekhotla by the custom of feeding those present out of the fines. Instead, litigation was seemingly beset by delay, by bribery and by the chiefly abuse of power.

Reform in 1938 sought to eradicate some of the maladjustments by drawing the chieftainship, now entrenched as the executive arm of Government, under centralized control. The establishment of a National Treasury in 1946 compacted the course of alienation by setting tribal authorities up as salaried officials and extending Government control over the resources and transactions that had previously yielded their income. This administrative policy, states Weisfelder,

transformed the earlier responsive structures into a rigid hierarchy which permitted sending orders and messages down to the branches without a reciprocal flow of meaningful communication back to the apex. Chiefly authority was no longer legitimized by fulfillment of communal obligations and responsibilities, since it had become more important to have the ear and favor of one's superiors than the respect and support of one's subjects. In this more rigid authoritarian framework, past prerogatives could be successfully defended as exclusive personal rights and interests of chieftainship. Redress of grievances was possible only in the most flagrant cases as any challenges to chiefly power were regarded as tantamount to disruption of the fabric of political order and stability itself. (1969:12)

I have indicated how the reforms marked the start of increasing centralization and encapsulation; how the chief's administrative role was to be dictated in growing measure by Central Government, while his effective judicial function was to be eclipsed by the system of Local Courts. I turn now to consider once more legal processes in the village of study, this time transcribing observations in terms of the law-codes operative.

The law-code of the Chief's court

Rural life is still dependent on the Chief, but it no longer revolves around him. A man attends the khotla if he is involved in a case, normally not otherwise. While there are certainly informal gossip and discussion groups, these cannot be expected to keep people informed of and participating in community affairs in the way of a regular khotla meeting. (Wallman 1969:19)

It is evident that the Chief's court I examined resembled in no great measure a traditional lekhotla. It was presided over, as has been discussed, not by the Principal Chief himself, but by a series of representatives and functionaries in his administration. He himself seldom appeared in court, and only occasionally were messages sent to inform him of particularly troublesome cases. He was often absent from the village and, even when he was home, petitioners might be fobbed off with such euphemisms as 'The Chief is sick/busy/sleeping'. In addition to his minimal administrative and judicial participation, some informants maintained that the Chief had not been 'educated' in the right way because he lacked instruction in the laws and customs of his country. They pointed to the fact that he had been educated abroad and had lost contact with his people. The fear that he left too much in the hands of his functionaries was justified, as I have shown, by the instances of lax administration in the area. By no stretch of the imagin-

ation could it be said that the Chief was either the 'father' or the 'law' in the village, except perhaps in the most general sense of his representing and holding office as a member of the chieftainship.

Nor could the men who collectively represented him be seen as representative of the community as the banna ba lekhotla had been. There was a strong view that some were outsiders, lacking concern about local problems, who did not faithfully identify with the interests and values of the community. Certain of these men did reflect the status hierarchy of the ward in that they were chiefs or headmen; others, however, had been chosen for certain skills (literacy, familiarity with administrative procedures, and so on), and they bore a resemblance to a group of bureaucrats. We have seen how personalities and petty interests interfered at times with the judicial process, and how the weakened position of the court could hamper dispute-settlement. Because of a lack of decisive co-ordination, the administration was riven from time to time by political and personal factions, all of which contributed to confusion and dissatisfaction for the people it was there to serve.

Although far more flexible than in the Local Court, procedure in the Chief's court was quite different from the traditional community-based consensus and debate that characterized the lekhotla. The court heard only those directly concerned in a case. Men did not normally attend the court as part of their daily round of activity. There was little sense of community participation. The court representatives sometimes reached their decision only once the parties and their witnesses had been sent out of the courtroom, and they were recalled to have the decision announced to them. Notes were kept of cases and, when it was necessary to forward a case to

the Local Court, a docket was sent to that court.

It is true that the court did play an active, inquisitorial and participant role in eliciting and investigating evidence but, as was explained in the chapter on the Chief's court, the object of such probing was not always to discover common grounds for conciliation or to assist the parties. Instead there were times when questions were designed to discover whether there were grounds, according to the letter of the law, for forwarding a case to the Local Court. The fact that some disputes under investigation were likely to appear in the Local Court as criminal cases coloured the tone and content of the inquisitorial function of the Chief's court. So although it is commonly agreed that 'the traditional authorities ... conduct proceedings in the nature of arbitrament with a view to settling disputes out of court, ...' (Palmer and Poulter 1972:500) the Chief's court also functioned as a clearing house for litigation in the Local Court. This points to one of the duties that was commonly expected of the court: that it should assist litigants with the mechanics of litigation. As Hamnett sees it:

Once a case is before the court, the chief's responsibilities do not end. He should make sure that witnesses attend, and should be told the decision which the court has reached, so that he may be sure that its terms are understood and followed through. Where, as often happens, a disputant is illiterate or insufficiently literate to cope with the formal side of the case, the chief or his court serve a very important function in taking the necessary steps. (1970:144)

But Hamnett follows this with the qualification I have quoted elsewhere, that the success of mediation of this sort depends on particular chiefs and that people are forced to seek help elsewhere when their chiefs lack competence or zeal. I have discussed in more than one chapter how that was true of the area of study.

Because of the court's nodal position in the judicial

channels, I would suggest that there has been some shift in emphasis in the type of norms selected and applied by the court away from those that, based on consensus, used to define role expectations, and a corresponding tendency towards judging the individual's actions in terms of the law. This might be so partly because status relations are no longer as clearly defined as they once were, and partly because the law-code in operation is no longer defined exclusively by customary usage. To illustrate, let me refer back here to the case against Headman Boyce in the Chief's court. I described how the normative force of the court's judgment was expressed in traditional terms: the young man Molaoli was praised for not taking violent action against Boyce, but for going to 'the law' with him, while Headman Boyce was criticized for forgetting his subordinate place in the hierarchy and taking and allocating a land unlawfully. But this expressed image of the 'reasonable headman' only emerged after the court had examined the evidence in terms of legal, bureaucratic standards, once it was satisfied that Molaoli could produce the correct forms and after Headman Boyce could not show that he had allocated the land according to the correct procedures (see p. 71). One of the points Barnstein makes about role expectation in the context of an elaborated code applies here, namely that

The form of the social relation which generates an elaborated code is such that a range of discretion must inhere in the role if it is to be produced at all. ... The range of discretion which must necessarily inhere in the role involves the speaker [litigant] in a measure of social isolation.
(1964:64)

The difficulties facing the Chief's court arising out of changing status relations are illustrated by cases where norms applying to traditional role expectations were obscured by, or in conflict

with, recent legislation. I have given detailed accounts of the tension introduced by the establishment of land advisory boards, and how such strains were displayed in competition between headmen and their boards. I pointed out that boards appealing to the Chief's court often formulated their complaint in the form of a question about their own status in land allocation, and about the legality of a headman allocating lands without consulting them. The reluctance of the Chief's court to press investigations in such cases, and the rough and ineffectual arbitration they sometimes attempted in 'status conflicts' ('Headman, these are your subjects--go home and hear their complaint; people, this is your Headman--go home and respect him.') patently did not offer solutions to these dilemmas. This indecisiveness was demonstrated, for example, in how the court handled 'Making's conflict with Albert, and in that chapter I attempted to show how the court was unsuccessful in mediating across this gap between the inner and outer structures, between the traditional formula and the new bureaucratic demands on tribal authorities.

I suggest that the ineffectual nature of decisions such as these was conditioned in part by ambiguity regarding status relationships. As mentioned elsewhere, there is considerable uncertainty in Lesotho among tribal authorities about the exact function of a land board and about the degree to which it shares authority with them. The equivocal nature of changing status relations surfaced in so many of the conflicts I recorded that it warrants re-emphasis. The power struggle for Lichaba's between the Chief and his mother alone illustrates how many different forces impinge on chieftainship status and decision-making today. Not only were the Sons of Seeiso representative of both tribal and Government interests, but we also

saw how local support, party-political endorsement, factional pressure, and control over resources and information channels all had their influence on the mutual legitimacy and status of the contestants. This kind of ambivalence is reflected right down through the executive hierarchy, as was seen in 'Making's case, and the point to make is that such grey areas offer possibilities for political exploitation, as Lerata's example, described in Chapter Seven, also demonstrated. Once used for sectional or party power-grabbing, the issues become ever more complicated, and bodies like the Chief's court, themselves operating with an uncertain blueprint, are ever less able to offer a working resolution and definition.

Court decisions in cases like these, then, far from reflecting and reinforcing status relations with any clarity, served to show up and sometimes to aggravate the potential conflict inherent in the strained structural position of the disputants. This is congruent with an element of the elaborated code, namely that 'role relations receive less support from shared expectations' (Bernstein 1964:64).

This is not to suggest that the court lost sight of the aim of conciliation; indeed the bulk of its cases was concerned with this process, and in areas where the conflict of interests was not so marked, the court was often a successful arbiter. This is an area in which the restricted code retains force. Another is that the court also served to instruct in new laws, and in this sense the court did 'control channels of new learning and reinforce the form of the social relation'. Yet other facets that may be identified with a restricted law-code are that it accepted loosely formulated complaints, that the members of the court had greater discretionary leeway than did the President of the Local Court, that proceedings were sometimes char-

acterized by debate and discussion between the parties and the court, that the court could bring its personal knowledge of those disputants who were known to it to bear upon cases, and that the court participated actively in formulating, testing and eliciting the presentation of some cases.

But against these must be balanced other distinct trends. The quality and effectiveness of the court as a socializing agent are questionable. As it is no longer a community gathering place, knowledge of the law is not absorbed there informally, as it were. Nor does it constitute a debate forum in the way the lekhotla did: decisions were not discussed communally. Most importantly, the representatives of the Chief were able to adopt a bureaucratic style, an exclusive tone, that served as a front effectively to distance those before them, when it suited them to do so.

In a sense the members of the court command a code that the peasant does not fully grasp. They 'possess' the code by virtue of their access to information such as Government proclamations, and they control the code by virtue of their literacy, training, and position in the authority structure. Bernstein, when dealing with access to elaborated codes and the social positions that facilitate it, makes this point :

the use of an elaborated code or an orientation to its use will depend not on the psychological properties of a speaker but upon access to specialized social positions ... Normally, but not inevitably, such social positions will coincide with a stratum seeking or already possessing access to the major decision-making areas of the society.
(1965:158)

So although many elements of the restricted code still pertain in the Chief's court, the law as operative in that court is in a process of acquiring characteristics of a type of code that in many respects resembles the one Bernstein labels 'elaborated'. This

type of code, Bernstein states, 'will arise wherever the culture or subculture emphasizes the "I" over the "we" ' (1972:476). The code-user is therefore encouraged 'to focus upon the other person as an experience different from his own. An elaborated code is person rather than status oriented' (1964:63).

Writing about the changing nature of family law in Lesotho Poulter states:

There will, no doubt, be an increasing number of Africans who desire to regulate their family relations and succession under the common law or statute, and there is nothing to prevent their exercising this option. The extended family is, of course, a traditional institution of which many Africans are justly proud. The preservation of the solidarity of the family is likely to come under increasing pressure as individuals become wage earners and move to an urban environment. They will be less likely to wish to maintain their traditional responsibilities, nor will they in all cases be content to see their property devolve according to customary law upon death. These influences are going to strike at the very heart of the system. The greater freedom of women is also going to affect the family structure. Thus in the long run we may find an adaptation of the customary law so that it concentrates its attention increasingly on the individual and thus moves closely into line with the common law and the relevant statutes. (Palmer and Poulter 1972:172)

The operation of law in the Chief's court is moving out of the familiar orbit of the ordinary villager as it acquires more elements characteristic of an elaborated code. This trend is even more marked in the Local Court, which bears far more clearly the stamp of that code.

The law-code of the Local Court

Although judges knew more law than ordinary folk and although a certain amount of legal advice was given informally by the more sophisticated to the more naive, each litigant was assumed to be fit to argue his own case. (Fallers 1974:8; on Soga courts)

The Local Court is on the lowest level of official courts, and is staffed by Government appointees who are transferred from place to place. The court personnel I knew in no way reflected

the status relations of the village or ward, for the President and his two clerks were outsiders; their qualifications for holding office were education and training.⁽⁵⁾ Moreover, the decisions of this court were at times extremely critical of members of the traditional power structure of the ward and, although the court respected tribal dispute-settlement channels, I would endorse Hamnett's view that such courts are in a 'growing sense ... independent ... tribunals against which even the chief cannot ultimately prevail' (1975:96).⁽⁶⁾ The court itself, far from being at the hub of village life, was situated on the outskirts of the village, within a fenced enclosure that contained also the staff's living quarters. Proceedings were characterized by a far greater formality and regularity than in the Chief's court. Statements were recorded and signed and, in contrast to that court, regular hours were kept and cases were in general efficiently scheduled and handled.

The court's more formal approach and more rigid adherence to the complexities of procedure was a handicap to the inexperienced or unprepared litigant. I have mentioned that, although allowed to appear in criminal cases, no lawyer represented a client to my knowledge in the course of fieldwork. Several litigants, mostly women, were represented by relatives or other non-legal representatives, and a few of these were men with experience in litigation and a background of administrative expertise. Certain chieftainesses made use of regular representatives who were in reality troubleshooters for them; their ability in court was evident and they were well versed in the skills that success in the Local Court demanded. Thus although lawyers are not permitted for civil cases, it is possible for litigants to assure, through the system of representation, that their cases are handled by men familiar with the forms and procedures of the

Local Court law-code.

The possession of certain skills, notably literacy, gave a distinct advantage in this court. On occasion men appeared in court with a copy of the Laws of Lerotholi or with prepared notes to which they made frequent reference. The skills that give an edge in this court are those that depend on command of a code that emphasizes such areas as verbal explicitness, training or experience, and a degree of specialized knowledge. These are qualities of an elaborated code, which

will arise wherever the intent of the other person cannot be taken for granted. Inasmuch as the intent of the other person cannot be taken for granted, then speakers are forced to elaborate their meanings and make them both explicit and specific. Meanings which are discrete and local to the speaker must be cut so that they are intelligible to the listener. (Bernstein 1972:476) (7)

We have seen that, although the President took a part in questioning, his questions were less designed to assist the litigant in formulating his own case and testing that of the other party, and more to satisfy his own need for information. In general, litigants showed indifferent skill in questioning and many witnesses needed probing questions to elicit relevant evidence; as one said, 'That is all I know; questions will remind me'. A general lack of real penetration or wit in cross-examination was shown up by those few adept litigants who had experience in turning examination to their own advantage.

I have examined in terms of their 'objectivity' and complication factor such questions as having to formulate grievance in terms of a specific cause of action in this court. I have also indicated that the less flexible procedural demands might lead to fragmented litigation and inevitable delay. Several cases were dismissed because they had not been adequately prepared, because

the wrong person was charged, or because the litigant was ignorant of the exact jurisdiction of the court. Incompetent litigation was often a consequence of sheer lack of information; two litigants, for example, brought civil cases when criminal charges might have been more effective. Another tried to sue a woman for compensation for defamation of character, when the case ought to have been brought against her husband. Mthembu, who spoke little Sesotho, had not found a representative because he knew 'nothing about Lesotho laws'; he had had no assistance from the Chief's court.

Quite apart from the formality and relative complexity of court proceedings serving to hamper the ordinary litigant, he is faced with the additional problems of changes in the law as it is administered in the Local Court. Contracts are a case in point, as I have discussed earlier, and they are a predictable trouble area in a society in transition. Another area of disjunction, as I have argued, lies in the awarding of compensation. In terms of the customary restricted law-code, a litigant could expect compensation as a matter of course once the lekhotla had established the extent to which he had been wronged. With the present Chief's court unable to impose fines or award compensation, a party is forced to turn to the Local Court to seek redress. To the confusion and dissatisfaction of some, however, that court will not award compensation in terms of restricted-code expectations. Inexpert knowledge of the law was evident in too many of the cases for one to conclude that litigants were invariably 'fit to argue' their own cases.

Although all these factors contributed towards restricting a litigant's access to and use of the law-code operative, it would be misleading to suggest that the code was altogether 'elaborated' or inaccessible. Proficiency in the code is attainable through various channels such as literacy, experience, and certain acquir-

able skills. In other respects too, the code remains within a fairly 'subjective' framework, as I have argued, for customary law is still applied and the President's role is still in part determined by restricted-code expectations. While he placed no emphasis on conciliation, the President did enquire about, and accorded significance to, the progress of certain cases through the channels of lower, arbitration courts. His role sometimes converged with that of a judge in the Chief's court when he explored the social background of litigants. Although this court could not be regarded as a socializing agent in the way that the men's lekhotla was, the President often took care to explain the law to litigants, particularly when, by the presentation of their cases, they showed their unfamiliarity with more recent developments.

While it is true thus that some elements of the restricted law-code persist in the Local Court, they are in the course, it would seem, of being encapsulated by the more particular forms of an elaborated code. It was obvious that the President did not know personally most of the litigants before him, and although he asked questions to establish kinship links and relations between parties, litigants were not seen as total social personalities as in the lekhotla. Far more than in the Chief's court, they appeared as individuals before the law. In this sense then the individual could not be viewed as a 'cultural agent' in the way he appears to have been in traditional litigation.

An elaborated code, in principle, presupposes a sharp boundary or gap between self and others which is crossed through the creation of speech which specifically fits a differentiated "other." In this sense, an elaborated code is oriented toward a person rather than a social category or status. (Bernstein 1972:477)

With consensus and shared assumptions about role expectations not playing a crucial part in the court, it follows that the

form of the role relations does not necessarily receive explicit support from the code, and that there need not be a close congruence between role expectations and norms applied. Even more than in the Chief's court, then, the range of discretion inherent in the role involves the litigant in 'a measure of social isolation': 'He may be differentiated from his social group as a figure is differentiated from its ground' (Bernstein 1964:64).

A more or less point-by-point comparison of the law-codes operative in the lekhotla, the Chief's court and the Local Court has the danger of suggesting that the two types of code are mutually exclusive or dichotomous or, equally undesirable, that the one evolves out of the other. Paine chooses to see restricted and elaborated codes as 'points on a continuum of codification' (1973: 13), or, further, as encapsulated one within the other. It is the second assumption that has the greater relevance for my conclusion, since I see the two codes, as operative in the village of study, as interpenetrating each other as a result of encapsulation.

Disjunctions and the peasant

The disjunction that exists between the peasant's comprehension of law and the law-codes of the village courts is symptomatic of a more general dislocation in communication between the peasant and the centralized agencies of Government that increasingly determine his life. The Principal Chief, as I have repeatedly proposed, should serve as a primary channel of articulation between the local community and the wider society. Ideally, his administration should serve to mediate between the national structure and his people and, in turn, should facilitate communication between the encapsulated social field and Central Government.

From the point of view of the peasant, the Chief and his

administration have become ever more identified with central authority, its demands and directives. The Chief draws his salary and much of his legitimate authority from the Government, a factor which circumscribes his role and binds him extensively to the interests of the outside structure. Yet the peasant in this more complex society is still dependent for the regulation of many of his affairs upon an administration that often constitutes a complex and unsympathetic agency. Its ineffectiveness as a channel of communication between Government and people is revealed by a consideration of the pitso, which is no longer the debate and information forum it was. Attendance at lipitso has fallen off, for the Chief has few sanctions to compel his subjects to attend. Even the monthly meetings held in the village to bring the ward's headmen and chiefs up to date on latest directives and laws were ill attended, and consequently this information was not efficiently relayed. The problem was compounded by the fact that, during the emergency, lipitso were often attended by armed police. Thus there was firmly established in many minds a correlation between lipitso and Government pressure, and many refused to attend for fear. This communication problem becomes grave when one considers that, for the majority, the pitso is still one of the main media for transmitting information.

The Chief's position midway, as it were, between Government and people, lends itself to an interpretation in terms of patronage. From the viewpoint of the Government, the Chief and his administration are in a convenient position through which to disseminate and gather information, and to act as an executive arm. From the viewpoint of the peasant, on the other hand, there persists an expectation that the Chief's role be that of patron, a source of dispen-

sations, favours and protection. Neither of these conceptions of the Chief's role has precise validity, as we have seen. The fact that the Chief's administration can hardly be considered a channel of articulation through which communication proceeds with little distortion, clearly obscures the Chief's role as middleman. There are still patronage elements adhering to the Chief's role, but change has eroded their pattern. The Chief now has limited patronage resources and the latitude of his role, as I have described, has been progressively circumscribed. Yet some villagers felt that if they could but get access directly to the Chief, he would still intervene on their behalf as father-patron. It is one of the functions of the broker upon whom the section to follow is based that he can gain the ear of the Chief for a peasant.

And to return to the Local Court: what of its future? Are the trends towards objectivity, centralization and functional specificity to withdraw this court--of all the Government courts still closest to the peasant--ever further from the easy reach of the unspecialized litigant? Poulter has this to say:

The court presidents are clearly not all of even quality, their education and training needs to be improved and they are hampered by knowing so little of what is being decided in courts other than their own. ...

In the future, ... the administration of justice will best be served when there is a unified court structure, ... when decisions are much more widely reported than they are at present, when the judges in the lower courts are better trained and when qualified lawyers are entitled to appear before them. It surely cannot be long now before all this will come to pass. (1976:338-9)

THE BROKER

The broker as stranger

Litaba, the broker, has skills and contacts which serve effectively to mark him out as different from most of his fellow

villagers. It is fortuitous that Litaba arrived in this community about twenty years ago as 'the stranger who came to stay' and it is not in this sense that I refer to his 'strangeness'. By the time of his arrival he already had experience in law, politics and administration beyond the province of the ordinary Mosotho.

The broker's position can be summed up in terms of a string of 'and yet's'. He is a commoner, and yet privy to the chieftainship. He is a villager, and yet at home in circles that are closed to the village. He has no official position in village courts, and yet is an expert in their operations. His structural position can then be defined in terms of a wide repertoire of roles which his skills allow him to support:

the middleman wears not two or four masks, but must understand and manipulate dozens of colors and fibers from which he fashions subtly distinct and variously composite masks and guises. He is a political variety of the socially and culturally "marginal man." (Friedrich 1968b:203)

Paine directs attention to the usefulness of regarding the broker as a kind of stranger who has the capacity to objectify (1973: 35). It is one of the major elements of the broker's role to give 'legal advice'. Those who approach him for advice are not seeking comfort or reassurance; they have a specific problem at law of which they want an objective assessment. Litaba gives advice dispassionately, as he must to maintain this brokerage role. His reputation as a broker depends on the efficacy of the advice he dispenses. Litaba's capacity to objectify arises from extensive experience of the law-codes and their administration, as well as from his precise knowledge of the social relations themselves that give rise to trouble cases and litigation. He can pigeonhole litigation in terms of the types of cases he has seen and dealt with before, and because of his experience he can assess impartially the chances of

a client for successful litigation.

Simmel defines objectivity as the outcome simultaneously of disengagement and engagement:

objectivity does not simply involve passivity and detachment; it is a particular structure composed of distance and nearness, indifference and involvement. ...

... Objectivity is by no means non-participation (which is altogether outside both subjective and objective interaction), but a positive and specific kind of participation. (1950; paperback ed. 1964:404)

Litaba himself uses the English word 'peasant' about many of his fellow villagers. He has the ability to distance them in terms of the skills and experience they do not share with him, even while participating in village activities as farmer, neighbour, friend, and so on. Villagers by contrast find Litaba hard to classify, and this contributes to his being viewed with a measure of ambivalence. Litaba's role--generally a leadership one--in local-level politics is equally a product of active involvement on the one hand and pragmatic control of the situation on the other.

Advice and the law-codes (8)

In the earlier part of this chapter it was shown that litigants have varying degrees of familiarity with the law-codes of the village courts. It is common for litigants to seek advice in this sphere, and Litaba is one of the brokers in the village who dispense it. He is in effect bridging a gap or disjunction between the peasant and the law and, in particular, he is able to instruct in areas where the law has changed.

A young man, Tau, was killed in an inter-village faction fight about pasturage. His three assailants were brought to trial and sentenced to varying prison terms. While they were in gaol, Tau's older brother, Khotso, came to Litaba with the following problem.

'My brother has been killed,' he stated, 'but I am puzzled. His killers were sentenced by the court, it is true, but no one said anything about compensation. It has always been that ten

head of cattle are paid for a man's head. His killers have been charged now, and I know that a man cannot be charged twice for the same offence. Now what can you advise me to do? What legal steps can I take to be paid out for the head of my brother?'

'Go and accuse them in the Local Court,' was Litaba's reply.

'Should I wait until they are released from gaol?' asked Khotso.

'If you wait for them to be released,' explained Litaba, 'you will fail. They were not given the same sentences and they will come out separately. You will find it difficult and expensive to have them all summonsed to appear in court again. They might go to Jo'burg to work. Charge them now while they are safe in gaol. Then they will be brought here to the Local Court in the Government pick-up and the police will have the responsibility of bringing them here.'

Khotso did as he was advised and the three men were forced to pay ten head of cattle altogether.

Concerning the use of codes here: Litaba has instructed a man, accustomed to thinking in terms of restricted-code expectations of compensation, what his rights at law are in terms of the changed and elaborated code, and so enabled him to initiate proceedings within that code to gain the traditional compensation.

In conversation with Litaba about the difficulties facing peasants whose mode of thinking was still influenced by restricted code expectations, he drew my attention specifically to paternity suits. The customary procedure in this type of case, as Litaba outlined, was to wait until the child was born, after which it was examined by experts to determine whether certain of its features (the nape of the neck and the hands, for example) resembled those of the alleged father. He told me of a case that had appeared in the Local Court in which the mother of the girl tried to introduce three such experts as her main witnesses. The President had refused to allow their testimony, giving as his reason that such evidence was no longer admissible in Local Courts.

In a paternity suit that I recorded in the Local Court, in which Litaba was called upon for advice by the mother of the girl,

it is noteworthy that no attempt was made to lead evidence in these traditional terms. Litaba's advice to his client stressed rather documentary proof in the form of letters establishing a liaison between the boy and the girl, times of opportunity, and witnesses to assignations.

Not only can Litaba distinguish for his client between the restricted and the elaborated code, but he can also instruct in how best to handle the mechanics of the codes. I have seen Litaba engaged for hours in the business of drawing up an appeal for a litigant. Litaba would review the whole case in detail with the appellant. He drew up appeals in point form, picking out as grounds such matters as inconsistencies in evidence, procedural errors, and faults he considered the President to have made in his reasoning. This task involves both a high degree of exactitude and explicitness and a proficient appreciation of the procedure and nature of the law-code. While Litaba might be passing on to his client a grasp of the mechanics of appealing, the skills involved in the formulation of an appeal must, I would contend, remain an esoteric aptitude. It is a task which ideally calls for a lawyer's competence in a society where access to legal counsel is generally restricted to a privileged few.

Litaba is known to be highly proficient in the strategies of litigation and he is often approached for advice by litigants on how to manage their cases in court. Not unexpectedly, he concentrates on the handling of witnesses. He has informed me that he likes to rehearse a case and to coach the litigant in which questions to ask to pinpoint issues and extract relevant information. The following case, related to me by Litaba, demonstrates how he spells out the crucial points of a case for a client:

Some years ago, Lehloa had a case brought against him by a Headman, Lejaha, for not carrying out Lejaha's orders and for failing to attend a pitso he had called. Lehloa went to Litaba for advice. He explained that he was not Lejaha's subject, but fell under another headman's jurisdiction. He had come to Litaba because he did not know how to defend himself against Lejaha's charge or whom to call as witnesses to help him.

Litaba made him write down five questions to put to Lejaha in court:

1. Am I your subject?
2. Did you allocate me a site?
3. Did I pay tax in your village?
4. If I did not apply to you for a site, and if I did not pay tax in your village, why didn't you bring a case against me then?
5. If you did not allocate me a site and if you did not receive my tax, how can you call me your subject?

Litaba added that Lehloa should call the headman under whose jurisdiction he was actually living as his witness, and establish that this was the man who had allocated him a site and under whom he paid tax.

Lehloa was able to defend himself successfully against the charge.

In addition to 'knowing' the codes, Litaba has a fund of what may be termed 'court lore'. He has a degree of mastery of the codes that enables him not only to handle adequately a situation in terms of the code, but consciously to define a situation within the codes, and thereby to use them to his own advantage.

The fact that a case may start at a headman's court level, proceeding thence to a chief's court and up to a Local Court, provides a tactical situation with strategic possibilities. As Litaba explained, if one party, prior to litigation, recognized that the dispute was such as could not be resolved by the lower, unofficial courts, or wanted a definitive judgment backed by the sanctions of the Local Court, that party could reserve his defence, so to speak. It would then be unwise to reveal one's hand in either the headman's or the chief's court by calling witnesses and making a full statement. Far better to lose both cases and appeal upwards, without giving the other party any insight into the strengths or weaknesses of one's position until the case came before the Local Court.

At least theoretically, the use of law-codes is subject to learning only. In restricted codes, the code is part of the social order into which one is socialized. With elaborated codes, the code is theoretically open to those with sufficient training and skills (cf Paine 1973:16 ff.). In fact, of course, people attain competence in code usage in varying degree.

While I have focused upon restricted and elaborated codes in the operation of law they are, of course, not confined to that sphere, but should also be seen within the wider framework of communication. One recognizes then that each individual makes use of several restricted codes and has access to more than one mode of the elaborated code. Even in terms of these 'codes within codes', the broker has a wide repertoire. He is, for instance, asked on occasion to mediate in neighbouring family disputes. His function here is as much to re-establish communication within that family's restricted code, as it is to bring to bear his knowledge of a customary law-code as applied to family life.

The broker and encoding

As there are inevitable differences between the laws of different legal levels, and because an individual, whether a member of an advanced or a primitive society, is simultaneously a member of several subgroups of different inclusiveness ..., he is subject to all the different legal systems of the subgroups of which he is a member. (Pospisil 1971:107)

A disputant in Lesotho is faced with a number of alternative channels for the settlement of disputes. He can elect to remain within a familiar customary restricted code, and take his grievance before a family moot; or he can seek adjudication from his headman or chief; finally he can institute formal proceedings in the Local Court. At each of these levels, a slightly different mode of the law-code

would apply. Writing specifically on different kinds of law obtaining in different courts, Poulter says,

it may be said that the choice of court the parties make may determine the law to be applied. ... Any person may bring an action before any court in Lesotho. However, since Basotho courts are basically only empowered to administer customary law and not the common law, the effect of commencing proceedings in such a court is to elect to have the matter determined by customary law. (Palmer and Poulter 1972:128)

While Poulter is dealing exclusively with the system of official courts, his observation has pertinence also to the distinction I have drawn between restricted and elaborated law-codes in the courts of the village. The disputant must decide which court (and hence which code) suits his case best. Since the varying codes operative in the courts will clearly lend themselves to shifts in norm emphasis as well, he has the further task of formulating his case in terms of certain norms. A dispute must be encoded then in terms of the options and aims of the disputants.

In varying degree, the cases above showed the encoding process to be implicit in Litaba's role. In each case, he was formulating or encoding a case in terms of the elaborated law-code. In the case that follows, Litaba is encoding in terms of the law-code he perceives as most fitting for his client's problem; in other words, he is selecting both the court and the norms in terms of which she should design her case, as well as the role she should adopt in presenting it.

'Maserame came to Litaba for help because her husband had married a second wife who did not hoe the lands, nor cook, and her husband was stealing food from 'Maserame's cooking-pots to go and eat with his new favourite. She had considered taking matters into her own hands and giving him phehla,⁽⁹⁾ but phehla turned a man into a 'tame' fool, and she did not want a foolish husband. What should she do?

Litaba said, 'Take him before his kinsmen. Do not mention that you are jealous of his new wife. Stress rather the following: that you are their daughter-in-law and that they as a group are

responsible for your well-being; that your husband, their brother, is neglecting you, and that you do not know why; that he is not helping you plough the fields although he has a span of oxen that you helped to buy, and that he is using only to plough his second wife's field. Say that your husband has the audacity to steal food from you to share with his new wife. Tell the family that you have come before them for help as a woman who has worked hard for her husband and children and who now finds herself in a position where she can no longer tolerate life, through no fault of her own. '

In discussing with Litaba the advice he gave this woman, he outlined what her options were. If she had elected to take the case to the Local Court, she would have alienated her husband even further and would have found it difficult to get his family to give evidence against him. By keeping the case private and appealing to the family, she would have more chance of a sympathetic hearing.

The broker as 'briefcase'

Litaba is sometimes approached by clients simply because he has knowledge about past events that now concern their affairs. As an old man, he has long been at the centres of decision-making and litigation in the communities in which he has lived, and his curiosity and intellectual interest in trouble cases have given him a dossier-like range of knowledge. Litaba himself labels this role of his 'the briefcase'.

Mpho, related to Litaba, came to him for assistance. He had been helped by Litaba in a previous dispute with the chieftainship about a poplar wood that had been in Mpho's family's possession for years. He now wanted Litaba to intercede for him with the Chief in a renewed dispute about the wood, for Litaba knew its history. He knew, he said, that if Litaba took the matter directly to the Chief, he would not lose possession of the wood.

When Mpho left after the interview, Litaba explained to me his command of the details that made him invaluable to Mpho. His explanation follows in full, for it shows the minutiae of information he has at his disposal.

'The chieftainship has tried before to take that wood. Some of those trees were taken from roots and seeds from my father's wood. Those were the poplars. I know where all the trees came from, and

how and where they were planted. The older brother of Mpho's father, Tsikoane, was working at the Government tree nursery and got pines from there for the wood. When Mpho's father was instructed by the Chieftainess to go down there to be between two headmen who were in dispute over the area, he went there to live as her "eye". She said the place was good: "It will be my garden," she said, and told Mpho's father to plant vegetables there for her. "You will also have your own yard there," she told him. He did this willingly, to carry out her orders. She asked him to plant trees there too, to stop erosion of a donga. Poplars and wattles were planted in the donga.'

Litaba's involvement and interest in decision-making have given him not only a grasp of the particulars of trouble cases, but also a sound insight into the historical antecedents of many of the power relations of the ward. Consequently he numbers chiefs and other administrators among his clients.

In 1970 a young Headman, Mohlomi, came to Litaba for advice because he was under pressure from a neighbouring headman, Chief Motiki, who was claiming one of Mohlomi's villages as his own. Mohlomi had recently returned after an extended period of work outside Lesotho to take up his headmanship; he did not know intimately the history of his area and consequently he was not sure what his best defence would be against his neighbour. Although he himself did not know Litaba well, he said that his uncle, who had recently died, had told him to go to Litaba if he ever needed advice. Litaba had been one of his late father's contemporaries. Today, he said, he needed his father's friends.

Litaba advised Mohlomi to leave the initiative of taking steps about the village up to his neighbour. If Motiki did force a confrontation, Mohlomi should simply assert that the village had always been under his family's jurisdiction, and that Motiki himself knew that. He was further to say that if there had been any doubt about whose village it was, their forefathers would surely have quarrelled about it.

Litaba went on to inform Mohlomi in detail about the history of settlement in his area and how to validate beyond doubt his historical claim to the disputed village.

Litaba himself recognizes that he is in possession of specialized information that is not generally known, for it is no longer consciously transmitted. He explains that today there is no adequate socialization and training for those who hold chiefly office. If my definition of restricted codes may be widened at this point to include this type of traditional knowledge, then Litaba's role here

can be seen as that of purveyor of a code that is essentially part of an oral tradition, one that is in the process of being lost.

Privatization

At village level, the people cannot see where power lies. Clearly it is not with them. Even those who have some idea what might be done have no idea how the political structure might be wielded or by-passed. It is impossible for them to organize things through existing channels and very difficult to conceive of other channels. (Wallman 1969:37-8)

It has been suggested that, while codes are theoretically open to all, there are degrees of code mastery. Taking this notion one step further, there is the possibility that access to or use of a code may be purposively obstructed or obscured. To describe this process, Paine selects the term 'privatization of meaning' (1973:16 ff.) and sees in it a potential strategy for both the striving for and maintaining of power:

a definition of power should refer to the capability of a person to control (increase or decrease) the degree of ambiguity in his message to others: intentional ambiguity, that is. (1973:19)

The suggestion of strategic withholding of access to a code has particular relevance for my earlier discussion of the Chief's court. An area in which this was most marked was one directly related to the continuing power of traditional authorities, as for example, cases in which elected land advisory boards complained that their headmen were not cooperating with them. (I also refer the reader back here to the case against Headman Teko for failing to attend a vigil. A member of the faction trying to have the Headman charged in a court of law was also on that village's land advisory board, and he alleged to me that Leboea, the Chief's court representative, was trying to put off their taking further action with flimsy excuses. He had to refer, he said, to the Chieftainship Act, and

then he said that document could not be found. This must be seen as a refusal to decode.) The retreat of the Chief's court into a kind of privatization when dealing with land board cases may have been in part the outcome of two factors: the first, their unwillingness to sanction a fellow administrator at loggerheads with the recent phenomenon of an elected land board (indicative of centralization) and the second, that there had not yet evolved a firm comprehension of just what degree of authority and power such a board should hold in the administration.

There is evidence for the assertion that the Chief's court, for reasons compounded by the need to assert their claim to authority, strove to maintain the fiction that they alone constituted 'the proper channels' to the encapsulating structure, and that they used their nodal position to reinforce and perpetuate the illusion of their own indispensability. The congestion of 'the proper channels' could be cut through by the broker on behalf of a client.

The concept of privatization applies equally to the operation of law-codes in the Local Court, but here the process is not so much purposive as inadvertent, similar to the type of privatization that Paine defines as 'an unavoidable consequence of status-determined sociolinguistic barriers' (1973:26).⁽¹⁰⁾ This point has been sufficiently dealt with in previous sections. Suffice it to add that the broker is not subject to these restrictions on meaning.

Privatization cloaks many facets of the broker's role. For example, Litaba's explanation validating Mpho's ownership of the wood was given to me, and not to Mpho. Nor did Litaba set down in writing his evidence on the wood for Mpho to use in future disputes. (One is reminded here of Tinker's felicitous phrase, 'Keepers of the Gap' (1968:218) to describe those who emerged in India as middlemen.)

The immediate effect of this is that Litaba retains Mpho as a potential client. But a more subtle kind of privatization is also at work here. In a case like this, the utility of the message depends as much on the credibility of the mediator as on the content of the message. What Mpho needed was not only Litaba's specialist knowledge of his affairs, but also the weight that attends a man who has conducted this type of transaction successfully in the past and whose intercession consequently has validity. Privatization here is the outcome both of esoteric knowledge and that the knowledge is purveyed and enclosed within a specific 'bearer' role.

The broker and the courts

the availability and efficacy of a code for a particular person depends, after all, as much upon his acceptance by others who already enjoy the code, as upon his ability to learn it: this holds for the E [laborated] codes as well as R [estricted] codes. (Paine 1973:18-19)

In the political mythology of the ward of study, the courts were seen as firmly embedded in and reflecting the power relations and political tensions of the ward. For example, people were quick to accuse certain functionaries of the Chief as having political bias, or to maintain that a whole court, at a given time, was 'loaded' politically. There was a distinct belief that the code of law operative in certain courts or controlled by certain functionaries was distorted by political allegiances. The acute awareness that a court could be used by those controlling it to dispense political favour, was spurred by the tensions preceding and following the abortive 1970 general election.

It has been a theme of this chapter that Litaba maintained easy access to the law-codes. This was particularly so of the Chief's court in which he enjoyed a privileged position. He often took part

in the discussion preceding the giving of a decision, and was sometimes co-opted into holding a court himself. In Paine's terms, his brokerage role was greatly facilitated by his acceptance on the part of those who controlled the code. It is noteworthy that Litaba's free access to the court did not in any way make him less critical of its actions. Such criticism demonstrated, by implication, that Litaba's control of law-codes was of a high order, and it was consequently part and parcel of his broker image. But his criticism turned from this professional near-carping into something far more pointed when his access to or stature in the court was threatened. One court representative, Leboea, put Litaba's acceptance on the part of the court into question. Initially friction developed over so mundane a thing as Litaba's special right to be provided with a chair by the court. Litaba won this round by borrowing a chair on the way to court and carrying it ostentatiously to his usual place. Much of his antagonism can be subsumed under the fact that the Chief's administration was becoming notorious for laxness and tardiness, and Litaba felt that this representative was contributing greatly to the situation. Litaba remained one of his chief critics and, when he was eventually replaced, his departure signalled a re-establishment of Litaba's influence in the 'politics of the court'. Later, as we have seen, Litaba was instrumental, through petitions to the Chief, in successfully objecting to the appointment of yet another court representative.

Pervading this entire study was the bitter dispute between the Chief and his mother about control of the administration of Lichaba's and the court that served it. Litaba supported the Chief, his main line being that, although the Chieftainess had served as regent for many years and had proved her ability, it was unprecedented that the power in the ward should be split between two rulers. The sit-

uation was aggravated by the fact that, prior to the 1970 general election, this division of power was identified by some with the major schism in national politics.

Litaba became involved as leader of a faction aimed at dislodging the Chieftainess and closing her court. Part of the validating framework for this factional activity was couched in terms of alleged injustices on the part of that court. It was held, for example, that the court was staffed exclusively with supporters of the Chieftainess, and that it was biased against those who supported the Chief and against members of the Opposition. Litaba did not enjoy the full acceptance of this court, and was extremely critical of it. As a groundswell of opinion developed against the Chieftainess and her functionaries, the every action of her court was minutely scrutinized. Eventually factional activity directed against the Chieftainess and her administration became a popular cause and she was removed from office and her court closed. Control of the court was seen as giving the Chieftainess a platform for power by control of the code. This control of the code was thus cut in a movement to pare her power.

Motivation behind the antagonism to the Chieftainess's continued authority was complex, but I suggest that Litaba's role in it was partly dictated by the limited influence he had in her court. His involvement in the faction which worked against the court can be interpreted at one level as directing an attempt to manage control of the administration and selective application of law-codes in the village.

The courts were viewed in this village then as symbolic of power relations and, in the contest for power, courts were used as one of the counters. Control of a court in turn assured control of

the code administered in that court, and the code operative could consequently be used as a vehicle for the dispensing of political patronage. The broker cannot afford to be excluded from the contest whose outcome determines his access to the codes which are part of his stock in trade.

The broker and transactions

A reputation for success is a broker's chief stock in trade. Every time he gives advice Litaba is, in effect, laying his reputation on the line. He therefore takes precautions to minimize his risk. Before taking on a case, Litaba gathers as much information as he can to establish whether or not his prospective client has a chance of success. This preliminary investigation may be likened to a bargaining process: he must be convinced that it is worth his while to take on the case. Brokerage suffers by association with failure. If, in his opinion, the petitioner's case has little chance of success, Litaba does not hesitate to tell him so. Even this, of course, is a form of advice. Litaba hedges round his role with other safeguards. He does not draw obvious attention to his services. Notably, he does not associate himself publicly with his client by, for instance, representing him in court himself.

Litaba does not charge money for his services. ⁽¹¹⁾ Thus a number of options remain open to him. Firstly, it gives him wide discretion in selecting his clientele; he is not obliged to accept a client simply because he has the required fee. Secondly, a cash payment would transform the broker's skills into an easily negotiable commodity. The broker's talents are not for sale, but are dispensed on his own terms. An immediate cash payment would serve to conclude the transaction, rather than create an obligation. Thirdly, he does not become the creature of his client: there can

be little direct come-back if his advice does not accomplish its object. All this serves to give him an edge in retaining control of the transaction.

Paine makes a point pertinent here about a broker's selection of clientele:

Among the necessary attributes of power (at least that broad category of it which is clientele-based) are possession of a repertoire of codes and command over the instructions on how to decode; thereby one may be able to include or exclude persons at will from one's clientele. (1973:18)

A brief look once more at the case of Mpho and his wood provides an illustration of how Litaba manages the selection of his clientele. It also raises the seminal question of reciprocity in brokerage by indicating in some measure the value Litaba places on a client's counter-prestations.

Litaba refused to intercede for Mpho with the Chief. These were the reasons he gave for 'closing the door to the Chief' to him:

After he had helped Mpho in the first case about the wood, Mpho had not shown himself sufficiently grateful. He had contradicted Litaba in public on an important issue and had been rude to Litaba's wife in front of a group of women. Litaba felt he had not been sufficiently respectful, so his reply to Mpho was, 'I helped you before and you were ungrateful. When it suits you, you claim that we are related. But after I have helped you, you disclaim all ties with me. I will do nothing for you.'

Litaba does, therefore, expect a calling in of accounts in a way similar, I would suggest, to the process Paine refers to as 'directed (generalized) reciprocity' (1971b:17). Litaba seems to have expected respect and a kind of followership from Mpho. His expectations are not always as overtly signalled:

When he was giving Mohlomi advice on how to protect a village under his jurisdiction from his neighbour, the course of conversation turned naturally to affairs concerning tribal politics. An important issue at that time was the nomination of a senior adviser to the Chief's wife, who was acting on behalf of her husband while he was on extended leave. Litaba considered the proposed nominee to be unsuitable. He and Mohlomi found that they were in agreement about the candidate's shortcomings, but Mohlomi told Litaba that, as an inexperienced newcomer to the administration, he had thus far hesitated to make public his views on the matter. By the time the two men

parted, Litaba was assured that Mohlomi would support his faction's move against the appointment.

I can only speculate about how Litaba directs counter-prestations from obligated clients. I do not have detailed information, specifically case by case, on how this process works, nor can I state that Litaba exacted an accounting from every client. The values placed on prestations in a transaction are, of course, determined by a consideration of each particular instance. In the absence of such detailed situational data, I can offer no more than broad generalizations. Litaba was committed as a politician at local level. The holding of leadership roles, I would contend, was facilitated for Litaba by the fact that he had created a pool of followership that could be activated as support. I would further suggest that support on, say, a political issue would serve to reinforce rather than cancel Litaba's hold over a client as support called upon would in effect be reaffirming Litaba's ranking in the political pecking order. A client's support on a political issue would not be unique: he would remain one of a pool or floating bloc. In contrast, Litaba's advice to any particular client would probably be serving an immediate and urgent need with a consequent enhancement of its value in the transaction. Thus support would not necessarily wipe out dependence upon and obligation to the broker, but might well serve to perpetuate it. Confirming the broker in leadership positions would contribute to his accumulation and maintenance of power, thus assuring his bargaining position in future transactions. Brokerage is a cumulative process.

Patronage: the chief and the broker

Giving advice to chiefs puts Litaba in a position to tap the prime sources of patronage in the ward. In gaining a chief as

a client, he is also gaining a patron, in that a chief is a client with tangible favours to dispense. Apart from being in a stronger position to intercede for clients with the chief, there are other pay-offs in terms of prestige in numbering chiefs in one's clientele.

Although the chief's capacity for dispensing patronage has been severely curtailed, he is still indispensable to the peasant in that so many of the peasant's demands must be articulated through his administration.

If I refuse the Chief's work, next time when I need a permit to sell stock or a letter to go to the hospital, he will be too busy. When someone 'eats' my land, he will forget to send a man to inspect the case. If I refuse the Chief he can send another or another-- always there is someone who will do his work because we are not together. It is true that if we, sechaba, did come together and spoke with one voice the Chief would hear, but anyway it is not allowed. If you are eight men you look like enemies because you are together. And if you go together to complain in Matsieng or Maseru, when you arrive they will say 'You are not to speak. You must have a permit from the Chief.' And if the Chiefs don't want it, what can we do? (Wallman 1969:34)

A chief's administration can then convert requests such as Wallman lists into favours, instead of rights, for the peasant. In the village of study, some peasants believed that if they could cut through the bureaucracy of the Chief's administration and gain a sympathetic hearing from the Chief himself, they might elicit from him a reassertion of his role as patron. Litaba, as 'door to the Chief', can bring someone in line for direct patronage. In one case that I recorded from Litaba, a man who had been refused a site by his Headman prevailed upon Litaba to intercede directly on his behalf with the Principal Chief and, after pressure from the Chief, the Headman was compelled to allocate the site. When the man asked Litaba what his position would be under a Headman whose hand he had forced, Litaba told him, 'From now on, your door will face directly to the Chief'.

Litaba also serves the subsidiary role of making the estranged

chieftainship, cut off from grass-roots opinion, aware of undercurrents among the people. In this role the broker serves as an articulatory channel of communication. His role here is not limited to that of spokesman, however, for it is often he who seizes upon an issue, canvasses and synthesizes opinion and then makes direct representation to the Chief in the name of the people. At times, Litaba appeared to be acting as a gadfly, prompting the Chief to take action. This prompting was necessitated by the Chief's tardiness in taking steps in certain imperative matters that required his endorsement. This was evident when, for example, the Local Court was transferred to a nearby administrative centre.

Litaba first heard about the proposed move from the Local Court President. He went at once to see the Chief who told him that he had already received notification of it. The removal of the court from the village was seen by many as a reflection on the status of the Chief himself and this feeling was exacerbated by rumours that a similar removal had successfully been petitioned against in a neighbouring ward. The matter was taken up as an issue at a pitso of the administrators of the ward, but Litaba felt that they lacked a necessary concern and he himself drew up a petition pinpointing reasons protesting against the removal of the court.

We see Litaba here in the maintenance of his brokerage relation with the Chief: not only is he providing a service for the Chief, but he is also creating a demand for that service by noting an issue and bringing it to the Chief's notice. He is engaged in the business of making himself indispensable.

It would be misleading to classify a chief as a patron simply by virtue of his position or status. As Paine rightly points out (1971 b:10), a patron-client relationship 'must be investigated as one of management of roles'. The chief as patron in Lesotho is a situationally defined role. The granting of patronage is an obvious political resource as is, to refer to Wallman's statement, the withholding of it, and in this type of transaction, it is generally the patron who determines the values to be placed on the prestations.

The type of patronage that comes into being as a result of a transaction between the Chief and the broker is of a somewhat different order. In this case the role of patron is specifically activated or elicited by Litaba as a broker. Rather than the chieftainship simply bestowing patronage on Litaba as a favour, Litaba sometimes seems to have manoeuvred in such a way as to assure himself of patronage. A mutual dependency thus at times appears to invert the patron-client roles between Litaba and the chieftainship. This assumption is defined in terms of a particular situation only; the Chief and Litaba are, of course, engaged in an ongoing series of transactions in which ultimately, because of his status and control of resources, the Chief has more to bestow.

CONCLUSION

The broker's code repertoire has direct bearing on his facility in assuming various brokerage roles. As Bernstein suggests, 'the ability to switch codes controls the ability to switch roles' (1965: 157) and the broker's career should be viewed primarily in terms of his accumulation of skills that allow him to support a number of key roles.

Political middlemanship necessarily entails and multiplies the playing of discrete roles. Even within his own local community he tends to become the node of several political, legal, governmental, and religious subsystems; as when he leads a local faction, arbitrates personal disputes, works as a government tax collector, and also holds a post in the religious hierarchy. (Friedrich 1968b:203)

The continued utility of such roles is not automatically conferred by the assumption of some kind of brokerage status, but is dependent upon successful maintenance by the broker. In this process, Litaba engages in creating a demand for his services by recognizing and seizing upon issues and by preserving a measure of covertness about

the 'how' of what he achieves for a client. Because brokerage is a creative process, there is a sense in which the broker must keep running in order to stand still. Litaba is consciously engaged in the collecting of information, gossip and rumour; he is always seeking to make connexions closed to the other man. Brokerage demands a consciously directed engagement in affairs, along with a detached computation of the odds.

I have concentrated on showing how Litaba's adroitness in the law-codes of the village enables him to support the role of legal broker. Even in this role, we see Litaba in a number of guises: for example, his encoding or decoding for a client is a very different process from that of opening the door to a chief for a petitioner. His role as legal broker is buttressed by his closeness to the Chief and involvement in local-level politics. These in turn facilitate his transactions at law, as he can make connexions with those at the centres of decision-making who administer the codes.

Inseparable from a consideration of Litaba's brokerage roles is the notion of the accumulation of power. Litaba could not be a broker if he had not built up a reputation founded on a progressive series of successful transactions. A transactional element is involved in his purveying of legal expertise. Just as important, however, is the fact that Litaba holds leadership positions in local-level politics and is actively engaged in the dispensing of advice and the influencing of policy-making at tribal level. Each of these kinds of activity has implications for the others, and their interaction reinforces Litaba's position as a broker.

CHAPTER ONE

- 1 At the time of writing, Transkei was not yet 'independent'. Its 'independence' in 1976 does not, however, change the basic implications of this statement.
- 2 The reforms of 1938 and 1946 were contained in three major pieces of legislation, the Native Administration Proclamation, No. 61 of 1938, the Native Courts Proclamation, No. 62 of 1938, and the National Treasury Proclamation, No. 11 of 1946. Reform was based on Sir Alan Pim's critical report of 1935 on the financial and economic position of the Territory. For detailed analysis of the background to, provisions, implementation and implications of the reforms, see, for example, Hailey (1953:64-112) and Jones (1951:40-56). The reforms have been so exhaustively analysed in the literature that I do not consider it necessary to go over the same ground.
- 3 The ward had 21 000 taxpayers in 1969/70, according to information supplied by the Department of the Interior, Maseru.
- 4 The statement that the community lacks integration is, of course, a relative one. There is still considerable awareness of one's neighbours' affairs, concern with tribal matters, knowledge of the chieftainship, in short, a definite local identity. However, this is commonplace of many rural communities. The point is that the village, in many instances, shows signs of a lessening of bonds, a change in expected norms of neighbourly conduct and, as will be shown in the body of the thesis, the attenuation of tribal cohesiveness.
- 5 There were men who, for example, were involved in building and who were skilled stone-masons; some could undertake thatching jobs. One man worked as an assistant to an American Peace Corps volunteer. To be accentuated here is that such work was generally undertaken only after a spell as a migrant. A boy about to start earning was more or less compelled to look to migrancy for an income, and would have been hard put to find himself such an economic niche at home. It was my impression that there was stigma against remaining at home within the indigenous economic system and becoming, for example, a full-time herdsman beyond a certain age, as 'going to Gauteng' has become part of the business of becoming a man, finding bohali to marry, and so on. High educational qualifications might, of course, break this cycle.
- 6 Of necessity too brief to encompass the complexities of party history in Lesotho, this chapter may be augmented by consulting Breytenbach (1975), Halpern (1965), Khaketla (1971; a Lesotho Opposition and royalist view), Macartney (1973), Proctor (1969; a somewhat pro-BNP view), Spence (1968), Stevens (1967), Van Wyk (1967; a South African right-wing view) and Weisfelder (1969, 1972b).
- 7 There is some variance in the figures given by commentators on the exact results of this election. I am taking these and the ones to follow from Breytenbach (1975:85).
- 8 Only one seat on the Legislative Council had gone to the BNP in the

previous, 1960, election, in which the BCP dominated the polls by obtaining 30 seats (Proctor 1969:66).

- 9 ' It is notable how easily the radical Congress Party were able to reverse their previously hostile stance to the Paramount Chief after the National Party's victory in the General Election of 1965. Whatever the real feelings of the intelligentsia, the rank and file were relieved to find that their support of Congress was no longer in conflict with their allegiance to the King. ' (Hamnett 1975:151-2)

- 10 Weisfelder (1972b) discusses the conflicting results that have been published of this abortive general election and quotes Nketu Oa Mara (Maseru; vol. 6, no. 9; February 27, 1970; pp. 11-16) for these figures in 46 constituencies:

BNP	104 537 votes	(43,8 per cent)
BCP	119 998 votes	(50,3 per cent)
MFP	12 666 votes	(5,3 per cent)
UDP	345 votes	(,2 per cent)
(Weisfelder 1972b:360)		

He reports Mokhehle as claiming 'victory for the BCP in at least thirty-three National Assembly seats' (1972b:126), while Khaketla gives the results for 59 constituencies as: BCP 35, BNP 23, MFP 1 (1971:211). Officially released figures, before a black-out on further announcements was imposed, showed that the BNP and BCP each had 23 out of the announced 46 seats (Weisfelder 1972b:126). Macartney's figures (1973:485), given for 60 constituencies, corroborate Khaketla's.

- 11 Literally 'the knobkierie cries', this BCP rallying cry has been explained to me in terms of the whistling noise a knobkierie makes as it is swept through the air, but also more idiomatically, as a saying used to mark a telling action or statement. For example, if a BCP man scored a noteworthy point at a pitso or gathering his supporters might vent their approval with a shout of 'Ealla koto!' The idiom is also used in everyday life to exclaim, for example, on the blow of a heavy sentence in a court case, or to describe a fight where one party is getting the worst of it.
- 12 Although I made a final field trip as late as April 1977, I take as my cut-off point the end of 1971 and thus write in terms of the conditions prevailing in the period 1969-1971, during which most of the effective fieldwork was done.
- 13 For a detailed description of the judicial structure, see Poulter (1970a), Palmer and Poulter (1972:443-506 and 537) and Poulter (1976:37-51), and for a diagram of the judicial and administrative structures, see Hamnett (1975:92).
- 14 Nor did I attempt to record, or reflect in the thesis, anything like the full range of contact with the outside structure; for example, local incidents prosecuted in the Magistrate's Court or cases appealed to other higher courts, contacts with, for instance, labour recruitment agencies, and so on.

CHAPTER TWO

- 1 District Assistant Secretary. This was the designation accorded, after independence, to the former office of District Commissioner. The title changed in the early 1970's to District Administrator. The office is that of co-ordinator over the various District Officers who represent their Ministries at district level. (Information from the present DA of the District of study.)
- 2 This Principal Chief's court is not necessarily representative of other such institutions in Lesotho, nor does it necessarily conform closely any longer to the outlines of the traditional lekhotla as described in the literature (see, for example, Chapter Nine). Tribal courts at a lower level might well correspond more to traditional makhotla. The court is probably more bureaucratic, for example, simply because it is more closely tied to Government, has a wider jurisdiction and a more complex range of problems than do lower courts.
- 3 Ashton records that only junior authorities presided in person over their courts. The higher chiefs, 'either from sheer laziness or because they had other interests and activities, usually left their courts to a deputy or chairman' (1952:222-3). Senatorial duties would, for example, take principal chiefs from their wards. But it should be remembered that a principal chief is paid a salary for the efficient running of his ward, and I have often heard Chief Paul Seeiso criticized for his laxness in leaving things to others.
- 4 It was common for chiefs and sometimes headmen to have a representative deputizing for them in court. He would be addressed as if he were the chief or headman himself and would, of course, have detailed and extensive knowledge of the dispute before the court.
- 5 By 'objective' I do not mean unbiased, but refer rather to that sort of judicial process in which the judge is set apart, trained, and decides a case on the facts and the law that bear thereon, without reference to whatever private knowledge of the disputants he might have (see Hamnett 1970:302-3). The importance of this in a court in transition is that the judge may seek refuge in an 'objective' style when it suits him, or that certain cases, because they are to be passed on to the Local Court, must be assessed 'objectively'.

In the 'subjective' judicial process, 'the judge is personally acquainted with the facts of the case and with the parties to the dispute; ... brings all his knowledge to bear upon the case, and is not expected to exclude the play of his own preferences and ideas in deciding it; he is fully integrated with his society ...' (Hamnett 1970:303).

- 6 These are committees elected to advise chiefs and headmen in the apportionment of land. See also Chapter Four.
- 7 The Chieftainship Act, No. 22 of 1968, repealed the Chieftainship (Powers) Proclamation, which was a restyling of the Native Administration Proclamation, No. 61 of 1938 (Poulter 1976:76). With subsequent amendments, it covers the office, functions, powers, succession, tenure, lists of office-holders, remuneration and discipline of traditional authorities.

8 The room where Chieftainess 'Mampho conducted her administrative and judicial business was commonly referred to as Lichaba's office.

9 Duncan says of the provocation of bloodshed:

'Provocation is a term that applies to behaviour so negligent or malicious as to provoke in a reasonable man the desire to fight. It is punishable criminally and civilly. The following are examples of provocation:

'(a) To pull a sledge through the growing crops of another ...

'(b) To plough someone else's land, or to interfere with someone who is ploughing his own land ...

'(c) To swear in certain circumstances can be provocation ...

'(d) To stop animals being driven to the pound is provocation ...'
(1960:106)

10 The most recent published listing to which I had access was that of Gazette No. 3412 of 1964, covering Government Notices Nos 17-27. I also obtained a (slightly different) list of the Seeiso gazetted office-holders which, I was told by the Department of the Interior, was more recent. Throughout my fieldwork, a revised Gazette listing was constantly expected; it did not appear before I left the field.

11 Mokhibo is a graceful dance performed by girls or women on their knees.

12 There was a committee to assist the Headman of 'Mampho's. See also Chapter Seven.

13 I hesitated to use the term 'arbitration' for this process, so much has it come to be associated with a judicial performance in which the arbitrator's guidance is braced by enforceable sanctions. See, for example, Bailey (1969, 2nd and paperback ed. 1970:32, 63-4). Nor is the term 'mediation' altogether apt, for the mediator's role has also taken on connotations of negotiation and intercession in the economic market. The processes that concern us here are ones of intercession and intercalary translation (mediation), and the arbitral process is one of rapprochement, aiming at a reconciliation after which the parties can resume their relationship.

I have settled on the term arbitration because the court's available sanctions, however slim, do take on force when people appealing to it want to find a solution, and thus the court's decision becomes more than a suggested or proffered compromise; it is enforceable simply because the parties voluntarily choose to accept it. I also use the term because in the literature such courts are called courts of arbitration.

Meyer distinguishes the two processes thus:

'Mediation and arbitration have conceptually nothing in common. The one involves helping people to decide for themselves; the other involves helping people by deciding for them. However the two processes have a way of shading into each other.' (1960:164)

To illustrate the difference from my case material: in the case between

the two cousins, Likoebe and Moseme, the court's function was more mediational than arbitral. They offered a compromise and showed 'the way to take'. In the case against 'Mapuso, however, it will be seen that the court deployed the full range of its sanctions, both the tangible threat of prosecution in an official court, and the less tangible normative, chastening reprimands. This shows the arbitral aspect of the court's function.

- 14 The various characteristic aspects I have mentioned, one must add in qualification, do not necessarily, of themselves, point to court procedure being aimed at rapprochement or conciliation. One finds, for example, that in the Local Court there is emphasis on endorsing lower channels too, and that cross-examination by the court need not differ much from that of the Chief's court in leading people along, step by step, into making admissions that render their original position untenable. Yet I could discover no real attempt at conciliation in that court, on the basis of the cases I recorded there. However, these points do take on significance, in terms of arbitral processes, when seen in the light of a more consistent trend in the Chief's court towards creating a settlement of dispute rather than simply giving a legal ruling, and while they might not, out of context and taken singly, characterize the judicial process as an arbitral one, together they serve to reinforce a strong impression of this court's concern for ongoing relationships, of its role as a lekhotla la tlhopho.
- 15 The Basutoland Progressive Association, formed in 1907, sought participation in the Basutoland Council, and was 'the only secular political association offered any representation (of one member) in the new composition of the Basutoland Council (1948-1959)' (Breytenbach 1975:61). It criticized the British Administration and the chieftainship, particularly the latter's dominant position in the Basutoland Council. (See Breytenbach 1975:60-1.)

The Lekhotla la Bafo or Commoners' League was founded in 1918, its aims similar to those of the Progressive Association. When it was not offered representation in the Basutoland Council in 1948, it turned to the chieftainship for support, criticizing the colonial regime for undermining the position of chiefs.

'The membership of this movement was not as "middle-class" and commoner-oriented as that of the Progressive Association. Instead it depended on diverse but wideranging support from the chieftainship, militant anti-colonialists, anti-Europeans and also traditionalists who were aware of the destructive influence of Westernization.' (Breytenbach 1975:61)

Both these organizations served early to stir awareness and to provide impetus for the later creation of political parties. Ntsu Mokhehle, for example, had been a member of the Lekhotla la Bafo.

- 16 Cf here Pospisil's placing the concept of obligatio as one of the central attributes of law (1971:81 ff.). He says, 'recognition of the defendant's liability reminds us of the fact that we are not confronted here with a verdict of not guilty' (1971:82). Obligatio refers to the legal tie between parties; it represents the one's rights and the other's duties. The 'absence of the attribute of obligatio results in an inconclusive settlement of a dispute and prevents the decision from becoming legal' (1971:82).

CHAPTER THREE

- 1 Bailey draws heavily on the work of Easton, a debt he acknowledges. The corpus of Easton's work has influenced my thinking in formulating this theoretical outline.
- 2 They also receive an income from the Government, a gratuity based on the amount of tax collected in their areas.
- 3 Liretlo refers to the ritual or medicine murders that plagued Lesotho, especially in the 1930's and 1940's. Jones says this:

' It is these lesser chiefs and headmen whose position is most insecure, who have most to gain or to lose from the placing system: they can increase their territory by favour of the chief or through litigation with a neighbouring headman, and they can have it diminished through the same causes; they can be placed over a community that does not like them and which intrigues against them, or they can have an unwanted person placed over them. These are all situations in which the tension is frequently, if not usually, relieved by doctoring with protective medicine. ' (1951:39; see also p. 40)

- 4 Vengroff records that illiteracy is a problem among headmen in Botswana (possibly more so than in Lesotho); the point he makes has bearing on the Lesotho situation too:

'The ability of headmen to understand and interpret government policies for the people is doubtful. ... Explanations of government programmes given to the people by ward headmen are unlikely to be adequate from the point of view of the administrator.' (1975:53)

- 5 Devitt (1969:103 ff.) points out that

' the extent to which a headman can secure compliance depends both on the degree to which his orders will be supported by the Local Court and the degree to which local public opinion will accept his demands as reasonable; the two are to a certain extent interdependent. '

He goes on to say:

' The definition of reasonableness as it relates to an order depends largely on the local reputation of the headman. One who enjoys much respect on account of his fairness in land allocation, his ability to mediate to the satisfaction of the parties at disputes, his knowledge of the law, etc., can place much heavier demands on his subjects, and still have them accepted as reasonable, than a headman who lacks respect. '

Devitt's analysis of headmanship in Lesotho bears out the substance of the conclusions I reached about the nature of headmanship. See, for example, his pages 84, 88, 100, 103, 105, 106, 107, 116-17, 121, 167, 168, 169.

- 6 This record is based on cases recorded in the Chief's court and Local

Court and on investigation conducted by my field assistant in Koma's village. Albert, a friend of my assistant, was interviewed at length. In the nature of things, it was not possible to obtain 'Making's personal account of the troubles in her village.

- 7 Money was raised to pay her fine, she was released from gaol and, to my knowledge, is still ruling in Koma's.
- 8 Figures supplied by the Department of the Interior, Maseru.
- 9 Vengroff (1975:51-4) deals with the ability of traditional authorities in Botswana to 'sit on' Government innovations, directives, etc. His article has relevance for this chapter.
- 10 As we shall see, there are situations in which the Local Court is 'tamed' or 'domesticated' by the local order; for example, by being used as a forum in the tribal political arena. Nonetheless, it remains essentially the creation of Central Government.
- 11 Figures supplied by the Department of the Interior, Maseru.

CHAPTER FOUR

- 1 ' During the years 1930-56 not only did the movement of Basotho workers to and from South Africa increase but large numbers of Basotho made their permanent homes in South Africa, concealing their origins to escape being deported. The 1946 census revealed that the de facto population of Lesotho (i.e. excluding those absent in South Africa) showed virtually no increase over what it had been ten years earlier. By 1955 the Tomlinson Report [Summary of the Report of the Commission for the Socio-economic Development of the Bantu Areas within the Union of South Africa (Pretoria, 1955), p. 40] estimated that there were some 220,000 Basotho who had been completely absorbed within South African society and who were permanent residents there. ' (Poulter 1976:22)
- 2 ' These rights are not entirely unencumbered. Should a family fail to make use of its fields over a number of years, should they desert their dwelling place, should they fail to pay their taxes unless exempt, then they forfeit their titles. The perpetuation of the title within the family is further conditional upon the observance of the necessary degree of loyalty to the Chieftainship. ' (Sheddick 1954:11)
- 3 The Laws of Lerotholi are a compilation of the main principles of Sesotho customary law. They were drawn up first by the National Council and confirmed by Paramount Chief Lerotholi in 1903, and have subsequently appeared in a number of amended editions: 1905, 1922, 1946 and 1959. ' They do not have the force of a statute, however, since at none of the relevant times did the Basutoland Council (or National Council) or the Paramount Chief have legislative authority ' (Palmer and Poulter 1972: 106). Nor are they anything like a complete codification. (See primarily Poulter 1972; also Ashton 1952, Brøytenbach 1975:50, Cowen 1967: 62, Duncan 1960:viii, which book contains the Laws of Lerotholi as an appendix, Hamnett 1975, Palmer and Poulter 1972:34, 106-7, 121-2, 175-6, 183, 199, 494, and Poulter 1976:4-6, 337.)

- 4 ' By 1946, however, the relevant clause had been redrafted to read: "Every Chief and Headman has the power to allocate land in his area for cultivation." Land shortage had placed the stress on the Chief's powers to allocate rather than the people's right to receive.' (Cowen 1967:63)
- 5 At times it seemed as if there was a persistent land 'mythology' in which the land was seen as an enemy: 'The land is drying up; there is no water as there used to be, and the dongas are carrying our soil away into South Africa'. Some speculated on whether the investment in seed and labour was worthwhile: if no rain fell, you lost everything--surely a Post Office savings book might be better.
- 6 These were often called 'land allocation committees' in local parlance.
- 7 Cowen was one of the members of the research team.
- 8 This sentiment was common in Lesotho. Devitt records the cry, 'Politics is killing us'.
- 9 It was necessary to reconstruct these events from the memories of informants, and from notes Litaba, my assistant, kept. I could find no official account describing village elections. Voting figures that follow were recorded at the time by Litaba.
- 10 The Constitution lays down that headmen and chiefs have elected boards consisting of five members (sections 95 (2) and 96 (3)), while principal chiefs have boards consisting of seven elected persons (section 97 (3) (a)), two persons designated by the principal chief (section 97 (3) (b)), and two persons designated by the competent Minister (section 97 (3) (c)).
- 11 The reader is reminded that accounts of this tragedy, according to the viewpoint of the writer, vary markedly. I rely on Khaketla. Proctor (1969:76-7) gives a pro-Government description.
- 12 Proctor gives the figures as nine killed, several injured and approximately 170 arrested (1969:77).
- 13 The figures given are not official, and official figures remained unavailable because of subsequent events at this pitso. These were recorded by Litaba. It should also be noted that I was not present at the pitso, and that events had to be reconstructed from notes taken by Litaba.
- 14 See Wallman (1969, 1974) and Devitt (1969).
- 15 District Councils were established in 1944 to 'increase the representative character of the Basutoland Council and prepare motions for discussion by the latter ...' (Breytenbach 1975:54). They were abolished in 1968.
- 16 Defiance of the Chief's authority was also indicated by the failure of certain of the headmen to appear when summoned (see Chapter Two, page 91).

CHAPTER FIVE

- 1 Litaba was my main source of information on this power struggle. As an adviser to Chief Paul, he had been involved in it from the beginning, and was able to reconstruct for me the events prior to its crisis which occurred during the period I was in the field. Although he was the leader of a faction aiming to dislodge Chieftainess 'Mampho from her position, I feel that his account is reasonably objective, as he retained great admiration for the Chieftainess throughout. Litaba was allowed to attend all but one of the Sons of Seeiso meetings in his capacity as friend and adviser to the chieftainship, and he took notes of the proceedings for me. He obtained a detailed account of the one meeting from which he had been excluded.
- 2 Section 41 of the 1966 Constitution provides that Senate 'shall consist of the twenty-two Principal and Ward Chiefs and eleven other Senators nominated in that behalf by the King'.

Prime Minister Jonathan quoted the text of the telexed message in Senate when tabling his Request for Independence Motion there on 19 April 1966 (Senate, Official Report of the Debates, 19 April 1966, cols 1061-3).

- 3 In fact, Chieftainess 'Mampho was the Senator who seconded the Prime Minister's Request for Independence Motion. The Motion had a stormy passage through Senate, as described, for example, in Proctor (1969: 71-3) and Khaketla (1971:67-70), but was eventually passed on 27 May 1966 with only the amendment that the chieftainship be entrenched in the Constitution, by a margin of 22 to 8 (1 abstention). Other proposed amendments concerning the power and position of the King were defeated.

In the English Hansard text, I can find no instance of Chieftainess 'Mampho speaking in the name of the Lintsu (see Note 4), using specifically that phrase. However, she does, speaking in support of the Motion, make such statements as:

' I repeat that I support this motion in full and I say that all of us must support it. They say that the voice of the Nation is the voice of God and this is the voice of the Nation. ' (Senate, Official Report of the Debates, 19 April 1966, col. 1068)

On the question of ascertaining the people's views, Senator G.M. Kolisang said of Chieftainess 'Mampho:

' It is true that in 1963 she did well and worked in the manner I know her to be, but in 1966 she did not do likewise. I say so because, of the people who made a petition to the Secretary of State, her subjects were more than the subjects of other chiefs, although her subjects complain that she did not inform them what the state of affairs was. ' (Senate, Official Report of the Debates, 25 May 1966, col. 1730)

Yet Chieftainess 'Mampho persisted:

' From 1963 to 1965 I have been touring all around my ward and I have witnesses behind me and in front of me. ... Until I came to the present

Parliament I have never found changes that they want to be effected in the present Constitution towards complete independence. I affirm and swear. ' (Senate, Official Report of the Debates, 25 May 1966, cols 1730-1)

To which Senator Kolisang replied:

' You affirm and swear, my Hon. Chieftainess, but I also affirm and swear that although you met your subjects to obtain their views you did not obtain their views in 1966 and consequently you do not know them, since 1965. My Chieftainess, in your own words you stated that the last time you met your people was in 1965 and that B.N.P. members are your witnesses while members of the B.C.P. and M.F.P. are not. ' (Senate, Official Report of the Debates, 25 May 1966, col. 1731)

Senator E.M. Molapo, speaking against the Motion, referred to a statement made by Chieftainess 'Mampho on 27 September 1962 before the Constitutional Commission, and quoted her as saying then, ' The Paramount Chief should be the Head of the Basotho Nation, Head of the Government, Head of the administration and Head of the country'. Senator Molapo goes on to say of Chieftainess 'Mampho's change of heart, ' she will speak out when she wearies of intimidations and briberies ' (Senate, Official Report of the Debates, 20 April 1966, cols 1106 and 1107). In more general terms, she repeated this type of allegation, for example:

' Beware that he who will say something new today is not speaking his personal opinion but was bribed, forced, made to forget the nation that he rules, and that which delegated him and was made to forget the heirs of Lesotho, and was being divorced from the nation ...' (Senate, Official Report of the Debates, 21 April 1966, col. 1132)

The leitmotif recurred in other speeches opposing the Motion. Senator E. Moliboea, for instance, said, ' The children of Moshoeshoe shall not accept an elected ruler except those who want to do away with chieftainship because they have been promised certain things. ' (Senate, Official Report of the Debates, 21 April 1966, col. 1148)

There is no doubt that the Government victory in Senate needs explanation, for ' three-fourths of its members had supported the MFP in the 1965 elections ' (Proctor 1969:71). Khaketla attributes the vote thus:

' Where Chief Leabua had started with more than twenty-two Senators out of thirty-three opposed to him, he managed, by means of cajolery, bribes and outright hectoring, to sway a sufficient number of them to ensure the passage of his motion. ' (1971:68)

Proctor's assessment is more bland:

' The Government's victory was due partly to the persuasiveness of its arguments. It resulted also from some apprehension among the Senators over how the Paramount Chief would actually use his power and a reluctance to be cast in the role of obstructing the wishes of the elected chamber. Certain chiefs voted as they did because they were intimidated by rumors that the Government would withhold their allowances if they antagonized it. Motlotlehi believed that some of them denied him support because they resented the fact that his moter [*sic*] was a member

of the Batlokoa clan rather than of the House of Moshoeshoe. Still another explanation offered by his friends was that certain Senators had been bribed. ' (1969:73)

- 4 The people of Seeiso's ward are sometimes known as the Lintsu. This is derived from the praise-name of Chief Seeiso I, son of Moshoeshoe, and was a name by which his regiment was known. I have changed this name, in accordance with my policy. The word I have substituted refers to certain birds of prey.
- 5 It is interesting to compare these sentiments with the direction of argument in the telexed message quoted on page 212, especially point 5.
- 6 Evidently the large crowd expressed its approval of speakers' statements at the pitso with exclamations of 'Let her cut moroho [wild vegetables] !' That is, that Chieftainess 'Mampho should no longer receive a Government income, but go to the veld, like other women, for food. This clamour, said an informant, was augmented by a song:

We resist! We resist! Lintsu!
We cannot vote for Leabua.
'Mampho has deceived Leabua:
She said she'd give him all the Lintsu.

- 7 The composition of this body is not confined to members by blood or marriage of the Seeiso chieftainship. It might include anyone who is invited to participate in its deliberations, and consists usually of those who 'have a word' in Seeiso's affairs, who are of the administration, who advise the chieftainship, as well as members of the chieftainship.

The tradition derives from the 'Sons of Moshoeshoe', which Ashton describes as a council consisting of 'the leading scions of the Moshesh lineage, and their leading councillors, ... together with the few tribal chiefs who remain, such as the chiefs of the Makhoakhwa and Bataung' (1952:196). Such a council deals, for example, with questions concerning chiefly succession, as Ashton goes on to illustrate. The 'Sons' of a chief are thus a 'council of the important members of the chief's family, together with the heads of the leading sections of the tribe' (Ashton 1952:196)

Consider this statement from the 1958 Report on Constitutional Reform and Chieftainship Affairs:

' In describing the elements of regular and democratic government to which reference has been made, we would point in the first place to Moshoeshoe's frequent statement that he could do nothing without consulting and gaining the consent of his sons and other chiefs. ... Moshoeshoe had no formally constituted body of councillors, but it is clear that he kept in close touch with the important members of his own family and with the principal chiefs of the day. ... ' (1958:23-4)

- 8 Those who backed the Chieftainess were mainly of the BNP or were pro-Government, while the Chief's supporters came mostly from the Opposition, notably BCP, ranks. This split was to remain a broad constant, throughout the contest.

- 9 It is difficult to say whether Chieftainess 'Mampho's name was not deleted as acting Chief of 'Mampho's due to an administrative oversight, or whether she (as it was rumoured in the village) had prevailed upon her son to keep her in office. The fact is that the Gazette notice of his assumption of office did not specifically name him as Chief of 'Mampho's, nor delete his mother's name from that position; the Gazette in which this change was scheduled did not appear until nearly three-and-a-half years after his installation.
- 10 Chief Paul was reputed to be a very heavy drinker; this, it was said, was one of the contributory causes of his 'illness' and his ineptness in ruling.
- 11 The document that was to be so important was referred to as a passport. It may well have been another citizenship document of some sort.
- 12 The Chieftainship Act of 1968 (section 13 (1)) states that during his minority or incapacity to exercise his functions, a chief would be represented by 'the senior surviving wife or only wife of the previous holder' of the office until he turned twenty-one or married, whichever occurred first; failing her, 'the oldest of the surviving legitimate brothers, or the only surviving legitimate brother, of the previous holder of the office'.

However, this sub-section was deleted by the Chieftainship (Amendment) Act (No. 7 of 1974) and for it was substituted another which laid down that 'the senior surviving wife or only wife of the person who, but for his death or incapacity, would have succeeded to an office of Chief ... exercises the powers and performs the duties of that office ... ' Failing her, the next in line would be the mother, as outlined above. The Act then lays down (sub-section (2)) that the next in line after that is the would-be office-holder's oldest surviving legitimate brother and, only after him, his senior uncle, as outlined above (sub-section (3)).

It can be seen then that the order of succession was governed by rules themselves in a state of transition. The legitimacy of these various possible claims will be discussed later in respect of who was to act for Chief Paul, but it might be borne in mind that their respective claims might all be backed by precedent, for, as Duncan puts it, 'in traditional law the succession of chiefs was governed by heredity modified by expediency' (1960:54). The recent legislation simply ratified a trend already there, away from giving prior claim to an uncle for the obvious danger of usurpation; similarly, mothers often tended to cling to power as long as possible. Increasingly, it was wives who were being selected to act for their husbands, on the reasoning that they could most be relied upon to act in their husbands' best interests and to protect the rights of their sons until the office fell to them. As Litaba explained to me: 'According to Basotho law, Chieftainess 'Mamosala was the only correct one, as she is the wife of the Principal Chief. She cannot take things away from him. If she tries to hide money, she would be killing herself or her children if she had any. The uncle is the worst one.' And he recounted a well known precedent to illustrate how vulnerable the heir is to his uncle when his uncle acts for him in his minority.

- 13 I have been informed, since leaving the field, that Chief Paul has been reinstated and that one of his brothers is now administering Lichaba's on his behalf.
- 14 I have heard allegations that certain of the Principal Chief's advisers also felt that there was not sufficient control of things belonging to the chieftainship. I was told of the disappearance of ancestral muskets and guns and other heirlooms, and of the misuse of stock. These stories may well have been rationalizations and expressions of a conviction that it was time the male line of the dynasty reasserted itself and took over power once more.
- 15 My interpretation of this process is one obviously influenced by the work of Goffman.
- 16 The Chieftainship (Amendment) Act of 1974 was not in force at that time. See also Note 12 above.
- 17 Legality was an important source of legitimacy in this field. As the ultimate test of legitimacy lies in values, so legality is defined in terms of rules. Such rules may be anything from the less formal recommendations of custom and norm to, gaining progressively in firmness and specificity, the dictates of legislation.

Of the first type, an example would be the principle of primogeniture by which Chief Paul became the legal heir to the principal chieftainship; the fact that he is the legally constituted heir endorses his legitimate claim. When he called upon the Sons of Seeiso to meet with him on 28.5.1966 to discuss his accession, Chief Lehloa challenged his legal right to call such a meeting in his own right. In backing him, Chieftainess 'Mampho stated that it was the law and custom of the Basotho, especially of the chieftainship, that it was the chief of an area (in this case herself) to whom fell the privilege of summoning meetings and lipitso. Later, she was to question once more Chief Paul's right to call a pitso of Lichaba's sub-ward without going through the channels of consulting her. Now these would seem to be trifling quibbles, and perhaps an undue insistence on adherence to the 'rules of the game'. In fact, by denying the Chieftainess her legal right to call these meetings, Chief Paul was depreciating her legitimacy as well. There is considerable advantage to be won in succeeding in having a rule modification or a 'pragmatic rule' of one's own recognized by the field. Simply by meeting at his 'out-of-order' request, the Sons of Seeiso endorsed Chief Paul's position at the expense of his mother's.

- 18 The faction seemed unaware that her name had not been deleted from the Gazette as acting Chief of 'Mampho's.
- 19 See Note 18 above.
- 20 See Hamnett 1975:88-9.

CHAPTER SIX

- 1 For this introduction, I have drawn on Ashton (1952), Hailey (1953),

Hamnett (1975), Jones (1951) and Sheddick (1954) for general background, but I relied particularly on Poulter's explication (1970a) of the development of Local and Central Courts.

- 2 Poulter's article was published during the period in which I recorded cases in the Local Court and I am thus taking the facts of his article as corresponding to the situation as I found it. I have not kept up with changes in the judicial structure since the closing of my field-work. Poulter comments in a footnote:

' The Ministry of Justice has recently announced plans to reduce the number of central and local courts to 32. The new Central Courts would be sited near subordinate courts so that Central Court presidents and magistrates could eventually become interchangeable with a knowledge of both customary law and common law. If these proposals were implemented the dual structure of the inferior courts would disappear. ' (1970a:313)

He states in 1976 that there are 48 Local and Central Courts (1976:38) and, in a personal communication of November that year, gives the numbers as at 1.9.1976 as 11 Central Courts and 56 Local Courts. The numbers of these courts, he remarks, 'are changing almost daily'.

- 3 This chapter is based on full records of 87 cases. Earlier drafts included far more detailed and extensive case material, as well as sections on norm-invocation and the reasonable man. It was necessary to condense radically because of the length of the thesis.
- 4 The commonest reason litigants gave (especially those accused in criminal cases of insult, for example) for failing to bring witnesses was that no one was prepared to help them because they were hated. The President pointed out to a woman, accused of using abusive language, that her statement that she was 'hated by child and mother', far from arousing sympathy for her, seemed rather to confirm that she was a woman who went about insulting people. There were numerous instances of the court's having to spell out for litigants who could not produce substantiating evidence, that without witnesses, a case could hardly be judged. To give a few examples: to one of the accused in a fowl-theft case: 'Do you know that no case can be heard by the court which has no witnesses? ... Tell this court who will know whether you are telling the truth or not?'. To a defendant in a land case: 'You did not bring Nkareng. You did not bring witnesses. How can the case operate like this?' To Ntholi, who had no witness to verify an important point: 'Why? The case is yours. Why didn't you bring evidence to support your case?'
- 5 As I worked through my case material, it struck me how South Africa intruded into the confines of the courts I was studying, for my records show in a multitude of ways how the economic, political and social grasp of South Africa has forced a distortion into the lives of the Basotho. Many of the cases reflected the effects of this perverting influence.

For it is not right that a man should be forced to leave his wife and family behind while he goes to seek work to provide for them. Nor is it right that a country like Lesotho, with a growing scarcity of land, should be forced back on itself, as it were, because South Africa neither allows a decent settled life for Basotho urban workers, nor provides outlets for them to accumulate skills and aspire to play a meaningful part in the

life of the country to which their labour contributes. In a sense, I am talking almost in ecological terms, for the ideological barriers that exist between Lesotho and South Africa stunt, in both human and economic terms, the logical growth of Lesotho.

The following factors, in varying degree, affected the judicial process:

Migrant labour and the absence of both men and women from Lesotho for long periods of time, had a direct bearing on a number of cases, quite often the cause of dispute stemming directly from the social strains imposed by migrancy. For example, confusion about land holdings was often occasioned by the prolonged absence of migrants.

Indirectly, the intensity of land litigation, which is surely a function of a growing population, is related to the fact that South Africa will not allow permanent rights in her towns to Basotho urban migrants who might, logically, be absorbed into the life of the city; instead, they are used while at peak productivity and then returned, unqualified, to fall back on peasant farming.

- 6 To substantiate the point that the courts themselves encourage this belief, Hamnett quotes from the judgment of the Matsieng Appeal Court in Moghetsola v. Mphunyetsane J.C. 19/50:

' The plaintiff ... did not pass before his ward chief ... as it is right and lawful to pass before him all matters pertaining to his ward, so that he can investigate them and bring them on to the appeal court ... if necessary, as is done by all the chiefs in this country.... Therefore the case is dismissed.... If there is any complaint it must first be lodged with the chief to consider it thoroughly or pass it on. ' (1970:357)

Hailey comments as follows:

' a number of the Chiefs, unwilling to resign the powers they had formerly exercised as Presidents of their Courts, had continued to use their administrative powers in order to decide a variety of matters which should normally have been the subject of judicial decisions. It was, in fact, common to meet references to what were termed the Administrative Courts of the Chiefs. It is said that in some Chiefdoms the Presidents of the reformed Courts, which became known by the expressive if inaccurate title of the National Treasury Courts, would not hear a plaint unless the plaintiff brought a letter from the Chief authorizing them to admit the case to their cause list. Evidence of the existence of this practice is admittedly very contradictory, but that it prevailed in some Chiefdoms is shown by the fact that the Advisers of the Paramount Chief prevailed on her in 1950 to issue a Circular ordering its discontinuance. ' (1953:108-9)

Poulter states the position thus:

' some chiefs and headmen have sought to undermine the reforms by fostering the erroneous belief among their subjects that no suit or action can be brought in a Local Court unless it has first been before their own "courts". This is entirely false and any litigant is entitled to take his claim directly to the official courts. ... In certain circumstances a litigant may, of course, prefer to go in the first instance to the unofficial 'courts' if he has confidence in them, and in appropriate cases

this is to be encouraged as a way of reducing the load of the official courts, but it is certainly not obligatory. ' (1976:39)

The President of the 'Mampho's Local Court observed in a judgment:

' It is the custom of this country that cases begin at the village ma-khotla and go from there to the courts of the chiefs and then to the Principal Chief's court before coming to the Local Court. '

- 7 There is another category of special witnesses whose competence does not arise so much from their connexion with administrative capacities and offices, but rather from a traditional and customary role as observers of things of importance. Such a one would be, for example, the witness called to attest to a bohali agreement or payment. Thus in one case about disputed bohali, the defendant called as a witness his brother who had attended the transactions, and he said:

' Towards the end of 1968, in November, I was called by my elder brother, Jacob Nketso, to accompany him when he was going to Moeko's family to the house of 'Mamoitheri [the plaintiff] to go and discuss the matter of bohali. We finally came to an agreement of R250. If that were cattle it would come to 16 head. I know that much. '

In a similar fashion, a contract payment is sometimes witnessed by men of the village, although today this is not generally desirable, written agreements being easier to prove binding in a court of law. These witnesses attest to a persistence of customary procedures, but their evidence was not necessarily accorded the same prominence as that of officials. I noted also in land cases that the President gave more weight to bureaucratic and official evidence than to what one could call 'traditional' forms of witnessing. This was highlighted in a case where the history of a land was a long and complicated one. The word of members of a chiefly family testifying to a verbal and private agreement had to be balanced against evidence of an official and public allocation. In this case the President seemed to find more convincing the testimony of the more modern procedures.

- 8 Hamnett comments:

' There is ... evidence of a growing sense that the judicial courts offer an independent set of tribunals against which even the chief cannot ultimately prevail. ' (1975:96)

CHAPTER SEVEN

- 1 While I was attending this case, my wife was with a group of women spinning mohair near the road taken by Lerata's inhabitants on their way to and from court. When this group passed on their way to court, Ntholi's wife was ululating and crowing that this case would establish her husband's rights to the headmanship. On their return, however, they were followed by cries of 'Maliepetsana!' to the entertainment of the spinning group. When she asked them what they found so amusing, they told my wife the story of the cannibal who ate his mother:

' In the days of the cannibals, a certain cannibal captured a woman by the

name of 'Maliepetsana. He put her in his bag, having first tied her up, and carried her on his back and took her home to eat her. On his way he passed through a village and the people there began to suspect that he was a cannibal when they saw a human finger protruding from his bag. They asked the finger, "O motho?" (Are you a person?), and 'Maliepetsana replied, "Yes, I am", very quietly. Then the cannibal took 'Maliepetsana to his house and gave the bag to his mother who was very old and said, 'Cook my meat'.

' 'Maliepetsana managed to escape from the bag because, when the cannibal had stopped at the village, the people had loosened her bonds. When 'Maliepetsana escaped, she attacked the cannibal's mother with a stick and killed her and cooked her. The light in the hut was dim. She then donned the mother's clothes and sat in the place where the mother always used to sit.

' When the cannibal came home, he ate his fill and said, "You have cooked well, my mother". He had eaten his mother, thinking it was 'Maliepetsana.'

People explained that Motsumi had supported Ntholi against Labone, thinking he might benefit. 'He thought he would eat Labone,' someone said, 'but he did not know that Ntholi was after eating him too!'

- 2 Rangoane did not figure as prominently in the activities of the faction as did Khemi.
- 3 It is interesting to observe that in this instance, Lejapoli was acting from commitment to the BNP. He only started his factional activity in earnest, according to my records, in October, the month this pitso occurred. It was the position of Lejapoli in matters such as this that led to his being viewed with a measure of mistrust by, for example, Banda and Khemi.
- 4 In Lesotho the Roman Catholic Church was commonly associated with support of the BNP. The Church referred to here was the Roman Catholic Church, and Sam's wife was a member of the committee which 'Madiana mentioned.

CHAPTER EIGHT

- 1 The 1974 ASA conference on Social Anthropology and Law included a summary, read out by Dr Ian Hamnett, from Robert Paine of a paper on which he was working on reindeer theft.
- 2 I obtained an oral history of the dispute from a villager of 'Mampho's which, although it is reasonably fair to Chieftainess 'Matoka, cannot reflect fully her point of view in the quarrel. The account given here in no way encompasses the full complexities of the question. All I have tried to do is to abstract analytic constants.
- 3 I was informed that when Chief Jani Seeiso was 'placed', a portion of Chieftainess 'Matoka's area was included in his placement. This would go some way towards filling out the reasons for his land being selected for challenge.
- 4 Paul Seeiso's father's 'brother': having the same father, but born of a junior wife.

- 5 I left the field soon after having recorded this case. I have been informed, however, that Chieftainess 'Matoka lost this case, and has not been allocating lands in the disputed area since.
- 6 I did not establish whether the Chieftainess did actually go through the motions of reallocating these lands, or whether the statements in court in corroboration of the reallocations were so much fabrication.

The lie in court is an interesting phenomenon for, although checks exist to limit its use, there is nonetheless a certain margin of expectation and acceptance of the fact that litigants will represent the 'facts' in a light as favourable to themselves as possible. Indeed there are situations when it is implicitly assumed that extensive use will be made of it as, for example, in a murder trial, when the accused, even if guilty, may exploit the advantage of pleading not guilty (building up a lie) in his own defence. Although sanctions against perjury exist and are available to the President of the Local Court, he did not make use of them to my knowledge, except to threaten the particularly devious litigant. I do not propose to discuss the lie in litigation in these general terms, however. I should like rather to redirect attention to the transactional implications of the use made of 'lying' by Chieftainess 'Matoka, and of the particular form it takes in this type of land case.

- 7 Sometimes the grabbing of another's land is even more blatant, and in certain instances the Local Court cannot help. Consider the following, for example:

An old widow's land was ploughed at night by a land aggressor, who sowed part of it. His identity was unknown. She went first to her Headman, who said they should go before the Principal Chief to have the matter sorted out. There, the only assistance she obtained was the assurance that her land had not been allocated to anyone else; she should try to find out herself who the intruder was. The widow was angry, as the story was told to me: 'Now what can I do?' she asked. 'How am I to find the man who has ploughed my land? I am only a woman without a husband. The Chief has lost me ...' Informants said she could not go to the Local Court because she did not know who to charge.

The boys under her Headman decided to take matters into their own hands, and they arranged to collect their cattle on Christmas day to graze the peas that were coming up on the planted area. They were armed with sticks and spears.

A man called Ketane appeared with his herdboys and asked why they were letting their cattle graze the land. 'The owner of this land has ordered us to come and graze it. If you want to fight, you can!' they replied. Ketane went to see the Principal Chief, and 'men and women were pleased, and there was ululating, for we knew who had ploughed the land. We would now see what the Principal Chief would do.'

It was alleged that the administration was reluctant to help the widow because there was bribery involved, and that there had been connivance at a high level behind Ketane's ploughing the land.

I have related this story to indicate that the shortage of land in Lesotho compels people, when faced with intrusion on their rights, to take decisive action or possibly lose the land. Similarly, because it is invested

with so much meaning, it provides an unambiguous means through which to test relative status and strength.

CHAPTER NINE

- 1 For the theoretical underpinning of this chapter I am indebted to Paine, whose ideas enabled me to rework my early published material on the broker, and who gave me permission to quote from an (as then) unpublished paper (1973). In modified form, his paper appears in B. Kapferer (ed.) (1976) under the title, 'Two modes of exchange and mediators'.
- 2 I am not embarking on an exhaustive survey of the concept 'broker'; the extensive literature is included in my Bibliography. Nor do I attempt to split hairs on the labels 'broker', 'middleman', 'intermediary', 'mediator', 'negotiator', etc. Some of Litaba's activities or role clusters could be placed conveniently and accurately under each of the tags used to identify 'gap-straddlers'.
- 3 Again, the term is a blanket one used to cover such diverse activities and roles as 'translator, arbiter, "fixer," ...intermediary, interpreter, mediator, or broker.' (Friedrich 1968b:203)
- 4 Some informants maintained that 'behind the mountains' there can be found villages where integrated community life still exists, and where a more traditional lekhotla can still be found. I was unable to check the veracity of such statements; they may well have been a wishful assertion on the part of lowlanders that the mountains provide a repository for traditional forms of Sesotho culture.
- 5 These qualifications are relative, of course. I am speaking in a comparative sense. They are trained, by village standards, although not necessarily by western jurisprudential standards.
- 6 There were, however, persistent rumours about pressure being brought to bear upon Local Court Presidents in Lesotho. Rumours of bias were, for example, especially prevalent among Opposition people after the emergency was declared in 1970. The Local Court was not, as I have pointed out before, entirely detached from local interests either in that it might, for instance, be used as a platform for local power plays. When the Local Court was removed from 'Mampho's, its removal was fought perhaps, also, to regain a forum that was, to some extent, 'domesticated'.
- 7 Paine points out that, even among users of an elaborated code, intent must be known to some extent, and metacommunication must exist in some measure, or it could not be considered a code (1973:13). The different emphasis I am after here is that, in the Local Court, the onus is on a litigant to spell out explicitly his intent.
- 8 I was often in Litaba's company when he was approached for advice and when he and his client discussed the issue at hand. I was consequently able to write up interviews with Litaba's assistance. Other cases were related to me by Litaba.
- 9 Phehla is 'medicine' given secretly to husbands by their wives in the belief that it will render them more manageable or 'tame'.

- 10 The taking of bribes to influence decisions would also constitute a blocking of access, and a local-level court is often subject to allegations of interest. It is extremely difficult to discriminate between rumour and fact in these instances.
- 11 When asked why he does not charge for advice, Litaba replies that it is his duty to help his fellows who do not have his knowledge and who are poor. He also maintains that he does not help those who are 'in the wrong' in a case because he will not support those who break the law. Without placing his explanation in question, it is possible to suggest that, by viewing his activities in the context of transactions, one can assess more nearly the more subtle accounting of brokerage. The fact that Litaba has on occasion sold 'medicine' for court cases adds a significant dimension to this question.

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