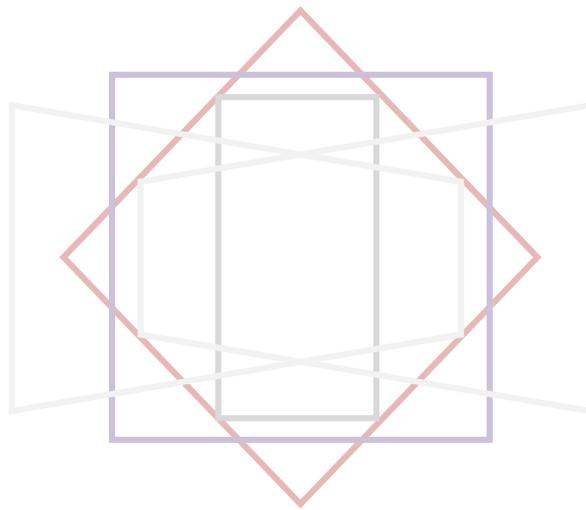


Witchcraft Management in the Early Twentieth Century Transvaal



By

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ABSTRACT:

Towards the end of the nineteenth century, colonial governments across Africa, including South Africa, promulgated laws which aimed to prohibit the accusation of witchcraft, methods for the detection of witches and witch trials. However, while administrators saw merely superstition in witchcraft beliefs, “repugnant to the standards of civilisation”, many Africans saw an integral element of the social and spiritual order. The policing of witchcraft beliefs became a thorn in the side of colonial rule. This article brings to light some of the deeper historical complexities in policing witchcraft by looking at the application of witchcraft law in the early twentieth century - a neglected period in witchcraft scholarship. Firstly, it examines some prominent discursive constructions of the concepts of “witchcraft” and the “witch doctor” during the early twentieth century, two terms which feature centrally in colonial witchcraft legislation. It argues that these terms were shrouded in a great deal of misconception and, at times, fear. Secondly, it examines instances in which the Transvaal Witchcraft Ordinance No. 26 of 1904 was applied at the Supreme Court level, demonstrating that it was employed in a wide variety of instances which often shared only a tenuous link to poorly defined notions of “the supernatural”. Nevertheless, diviners seem to have been especially prejudiced in the implementation of the law. Finally, archival correspondence derived from Native Affairs Department files dealing with witchcraft are examined to reveal that the job of policing witchcraft was rather more uncertain and *ad hoc* at the grassroots level than official “civilising” rhetoric may have suggested. While in principle there was no compromising with beliefs in witchcraft, in practice, such beliefs had to be carefully managed by local officials, who were given (often uncomfortably) wide powers of discretion in deciding when and how to employ the force of the law.

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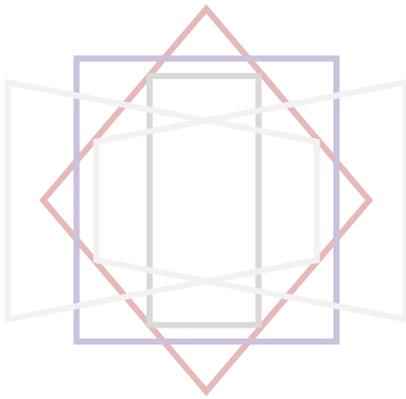
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Introduction: Witchcraft and the Law

“What is to be done about the problem of witchcraft in the new South Africa?”¹ This is a question which has troubled state administrators, legal experts, historians, anthropologists and rights groups in the post-apartheid context. The persecution or killing of alleged witches – those believed to manipulate supernatural powers to cause harm to others – remains a problem that resurfaces periodically in the country today. In October 2013, the *Times* reported that three men were jailed for killing a woman and her daughter accused of “practising witchcraft”.² In 2014, a 73 year old man from Lamontville told the *Independent Online* that elderly people frequently find themselves accused of witchcraft.³ Many also speak with memories of the wave of witchcraft violence that spread across the Northern Province of South Africa from the late 1970s and peaked during the transition. The 1995 *Ralushai Commission of Inquiry into Witchcraft Murders and Ritual Killings* estimated that between 1985 and 1995, 389 witchcraft-related killings took place in South Africa’s former Northern Province.⁴ On one day in April 1986, 43 alleged witches were “necklaced” by members of the Sekhukhuneland Youth Organisation while they sang “liberation songs”.⁵

¹ Isak Niehaus, “Witchcraft in the New South Africa: From Colonial Superstition to Postcolonial Reality?,” in *Magical Interpretations, Material Realities: Modernity, Witchcraft and the Occult in Postcolonial Africa* (London & New York: Routledge, 2001), 184–205.

² SAPA, “KwaZulu Natal ‘Witch’ Killers Get 20 Years,” *Times LIVE*, October 17, 2013, <http://www.timeslive.co.za/local/2013/10/17/kwazulu-natal-witch-killers-get-20-years>.

³ Siyabulela Dzanibe, “Elderly Fear Witchcraft Accusations,” *Independent Online*, April 30, 2014, http://www.iol.co.za/news/politics/elderly-fear-witchcraft-accusations-1.1682194#.VOMV6_mUfxo.

⁴ N.V. Ralushai and et al., *Report of the Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province of the Republic of South Africa* (Pretoria: HSRC, 1996), p.191–239.; Cited also in Niehaus, “Witchcraft in the New South Africa: From Colonial Superstition to Postcolonial Reality?,” p.184.

⁵ Niehaus, “Witchcraft in the New South Africa: From Colonial Superstition to Postcolonial Reality?,” p.184.

From the perspective of many who regard witchcraft as a reality, the government is seen as having done too little to ensure protection against sources of supernatural insecurity. Adam Ashforth argues that “the long-term prospects for democracy... will depend in large part upon the ability of the new regime to instil in the population a widespread conviction that government really exists to serve the people: to meet the demands for physical security and economic wellbeing and to serve the ends of justice”.⁶ For those who insist that invisible forces can be deployed to wreak enormous harm, full security entails protection against witchcraft, and justice means bringing all who wield these forces to account. But should legal mechanisms be introduced to punish those practising witchcraft? How could the liberal democratic state possibly accept that purveyors of invisible crimes should be punished by a legal order which demands physical proof? Witchcraft, I have come to learn, is a thorny issue which will not soon be resolved, and officials have been left in a deep quandary as to how to police witchcraft beliefs.

The subject has attracted a great deal of contemporary scholarship. Niehaus notes that debate in South Africa’s public sphere “has focused almost exclusively on witchcraft and the law”.⁷ A significant body of literature has developed that interrogates how existing legislation deals with witchcraft violence and whether changes should be introduced.⁸ Specifically, many call for the Suppression of Witchcraft Act No.3 of 1957 to be reformed. The Act bans the traditional adjudication of witchcraft matters. Its fundamental premise is that witchcraft is an irrational fantasy, its practice nothing more than pretence – it employs the term “pretends” throughout. It criminalizes the accusation that another is a “witch or wizard”⁹ and the “pretended” use of “supernatural power, witchcraft, sorcery, enchantment or conjuration”. It also bans divination, making it a crime for a “witch doctor” to “smell out” witches.¹⁰

⁶ Adam Ashforth, *Witchcraft, Violence, and Democracy in South Africa* (Chicago: The University of Chicago Press, 2005), p.18.

⁷ Isak Niehaus, “Witchcraft as Subtext: Deep Knowledge and the South African Public Sphere,” *Social Dynamics* 36, no. 1 (2010): p.66.

⁸ See, for instance: John Hund, “Witchcraft and Accusations of Witchcraft in South Africa: Ontological Denial and the Suppression of African Justice,” *The Comparative and International Law Journal of Southern Africa* 33, no. 3 (November 2000): 366–89; John Hund, *Witchcraft Violence and the Law in South Africa* (Pretoria: Protea Book House, 2003); John Hund, “African Witchcraft and Western Law: Psychological and Cultural Issues,” *Journal of Contemporary Religion* 19, no. 1 (2004): 67–84; J. Harnischfeger, “Witchcraft and the State in South Africa,” in *Witchcraft Violence and the Law in South Africa* (Hatfield: Protea Book House, 2003); Seth A. Nthai, “Witchcraft Violence and the Need for New Legislation,” in *Witchcraft Violence and the Law in South Africa* (Pretoria: Protea Book House, 2003); Anthony Minnaar, “Legislative and Legal Challenges to Combating Witch Purging and Muti Murder in South Africa,” in *Witchcraft Violence and the Law in South Africa* (Hatfield: Protea Book House, 2003); H Ludsin, “Cultural Denial: What South Africa’s Treatment of Witchcraft Says for the Future of Its Customary Law,” *Berkeley Journal of International Law* 21, no. 1 (2003): 62–110; Nelson Tebbe, “Witchcraft and Statecraft: Liberal Democracy in Africa,” *Georgetown Law Journal* 96, no. 1 (2007): 183–236.

⁹ In contemporary scholarship about witchcraft, the term “witch” is applied as a gender-neutral term, just as the terms *umthakathi* (isiZulu), *moloji* (seSotho), *noi* (xiTshonga) are employed in cases of both men and women accused of witchcraft. The term “wizard” is no longer employed in scholarship.

¹⁰ *Witchcraft Suppression Act No. 3 of 1957*, n.d., <http://www.justice.gov.za/legislation/acts/1957-003.pdf>.



The *Ralushai Commission* labelled the Witchcraft Suppression Act a vestige of “Eurocentric legal machinery” and called for new legislation that acknowledges that supernatural crimes are real for many Africans.¹¹ A number of other authors have since echoed this call. Nelson Tebbe argues that many feel alienated from the criminal justice system because of the law’s insensitivity to the fact that “fear of enchantment is a primary source of personal insecurity for many Africans”.¹² Hailey Ludsin argues that by keeping the Witchcraft Suppression Act, the state implicitly affirms its acceptance of the “Western premise” that witchcraft is mere “superstitious African nonsense” – this in spite of the frustrations of “the majority of South Africans” who believe that the Act allows “witches to run free”.¹³ John Hund similarly characterises the prevailing Act as constituting a negation of the “ontology” of “most African people”.¹⁴ Hund insists that before the 1957 Act, “tribal mediation was the norm” and that “by criminalising these judicial remedies on the ground that they were repugnant to the ‘civilising mission’ of the white, eurocentric *apartheid* government the seeds of chaos were sown”.¹⁵

It is undeniable that the Witchcraft Suppression Act is unsuited to solving the problem of witchcraft violence in South Africa. But the emphatic assertion that the law is the primary causal factor in fostering such violence is questionable for at least two reasons. Firstly, many of those who blame the law for witchcraft violence fail to interrogate how the Act has actually been applied in the past, apparently assuming that its prescriptions were imposed uniformly and comprehensively. Yet, for instance, the anthropologists and historians who reported on the spikes of violence from the 1970s point to a multitude of other causes as having provided the kindling for the wave of witchcraft accusations that gripped the Northern Province – sharpening material inequality, collapsing social cohesion, deepening impoverishment, and the delegitimisation of chiefly authority.¹⁶ In these accounts, the law is given very little causal weight. Niehaus argues that the National Party government actually “did little to suppress witchcraft in popular domains” and instead made “uneasy practical compromises with witchcraft”.¹⁷ Similarly, Delius argues that, although chiefs had to consider potential punishment from apartheid officials in deciding whether to try witches, “native commissioners were usually prepared to turn a blind

¹¹ Ralushai and et al., *Report of the Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province of the Republic of South Africa*, p.1; p.56.

¹² Tebbe, “Witchcraft and Statecraft,” p.219.

¹³ Ludsin, “Cultural Denial,” p.108.

¹⁴ Hund, “Witchcraft and Accusations of Witchcraft.”

¹⁵ *Ibid.*, p.367. Minnaar, “Legislative and Legal Challenges,” p.73.

¹⁶ See: Edwin Ritchken, *Comrades, Witches and the State: The Case of the Brooklyn Youth Organisation*, 1987; Peter Delius, *A Lion Amongst the Cattle: Reconstruction and Resistance in the Northern Transvaal* (Johannesburg: Ravan Press, 1996); J. Stadler, “Witches and Witch-Hunters,” *African Studies* 55 (1996): 87–110; Isak Niehaus, “Witchcraft, Power & Politics” (PhD, University of the Witwatersrand, 1997).

¹⁷ Niehaus, “Witchcraft as Subtext,” p.67.

eye if the process remained low key”.¹⁸ The apartheid government did not, therefore, follow the law to the letter. Nor are there any accounts which suggest that the law is seriously applied by South African courts today.

Secondly, the suggestion that the 1957 Act initiated fundamental changes in the adjudication of witchcraft is problematised by the fact that the Act has a history which long preceded the apartheid era – something largely neglected from scholarly accounts which posit the apartheid government as having “sown the seeds of chaos”. The Witchcraft Suppression Act has its roots in colonial legislation promulgated in the Cape Colony in 1886 and 1895, and the Transvaal in 1904, employing exactly the same phrases as were contained in these colonial-era laws.¹⁹ Well before the apartheid government, African beliefs in witchcraft were regarded as a challenge for state administrators, targeted for stamping out early on by the British colonial enterprise in the name of its “civilising mission”. Niehaus asserts that this rhetorical humanitarian mission “demanded no compromise with any belief or practice pertaining to witchcraft. These were perceived as repugnant, baseless, and even as diabolic pagan superstitions, which are deeply ingrained in the lives of ‘primitive people’ and will only disappear with the spread of Western civilisation, education, and Christianity”.²⁰ Legislation was another crucial pillar of “Western civilisation”: by outlawing witch trial proceedings, in which diviners were solicited to “smell out” a witch through divination, witchcraft beliefs would ostensibly be dealt a death blow. The 1957 Act did not therefore signal any major change in the judicial stance on witchcraft, but merely consolidated existing colonial legislation and made them nationally applicable.

Is it possible that it was these earlier colonial laws which set into motion fundamental changes in the adjudication of witchcraft? Were “seeds of chaos” sown from the late nineteenth century by the promulgation of witchcraft laws? Most available scholarship does not consider how this earlier legislation was applied, and the engagement between matters of witchcraft and the law in the early twentieth century is not interrogated with any sustained depth. This study aims to contribute to scholarship on the use of South African witchcraft law over the *longue duree*, bolstering the currently sparse literature that is available on the use of colonial legislation in the early twentieth century.

¹⁸ Delius, *Lion Amongst the Cattle*, p.167.

¹⁹ Cape Colony Suppression Act 24 of 1886 and Act 2 of 1895; Transvaal Witchcraft Ordinance 26 of 1904 (Transvaal).

²⁰ Isak Niehaus, “Witchcraft in the New South Africa: A Critical Overview of the Ralushai Commission Report,” in *Witchcraft Violence and the Law in South Africa* (Pretoria: Protea Book House, 2003), p.95.



Scholarship on the Application of Colonial Witchcraft Laws

What follows is an exposition of the available secondary literature which deals with how witchcraft was dealt with by officials in South Africa, from which a set of questions can be drawn out to interrogate what is murky and largely unexplored historical terrain.

A number of anthropologists wrote about African beliefs in witchcraft during the early twentieth century, but they do not offer much analysis on the application of the law. Their aims were rather to understand the nature of witchcraft belief from “within” African belief structures.²¹ Some occasional mentions of the effects of colonial law can be gleaned from these early accounts, however. In 1904, Dudley Kidd asserted that the law had helped reduce witch killings. He claimed that before the British annexation of Pondoland and the introduction of the 1886 Penal Code, “fully one person was put to death in that district every day, on an average, on charges of witchcraft”.²² In *Reaction to Conquest*, also based on studies in Pondoland, Monica Wilson described witchcraft laws as having brought “the most revolutionary change” to bear on African villagers. Citing Kidd, she asserted that the law had largely brought to an end “executions for alleged witchcraft or sorcery”.²³ Yet despite the prohibitions, Wilson argues, the African belief that witchcraft existed remained fundamentally unchanged.²⁴ As of 1936, she noted that “trials before a diviner” were still held frequently to determine witches.²⁵ In 1951, Wilson confirmed that some hundred witchcraft-related trials had occurred in Keiskammahoek in the preceding few years.²⁶ Writing in 1912, the anthropologist Henri Alexandre Junod believed that the efforts of the “civilised Governments in Africa” to put an end to the smelling out of witches and wizards had not put an end to witch trials, but had at least induced more leniency on the part of chiefs, who now

²¹ For anthropology on witchcraft beliefs in South Africa, see Henri Junod, *The Life of A South Africa Tribe*: (New York: University Books Inc, 1912); Monica Wilson, *Reaction to Conquest: Effects of Contact with Europeans on the Pondo of South Africa* (Cape Town: David Philip, 1936); Monica Wilson et al., *Keiskammahoek Rural Survey* (Pietermaritzburg: Shuter and Shooter, 1952); E.H. Ashton, “Medicine, Magic and Sorcery among the Southern Sotho,” *Communications from the School of African Studies, University of Cape Town New Series No. 10* (December 1943); Isaac Schapera, *The Tswana*. (London: International African Institute, 1953); Isaac Schapera, “The Crime of Sorcery,” *Proceedings of the Royal Anthropological Institute of Great Britain and Ireland*, 1969, 15–23; H. O Mönnig, *The Pedi* (Pretoria: Van Schaik, 1967); W.D. Hammond-Tooke, “The Symbolic Structure of Cape Nguni Cosmology,” in *Religion and Social Change in Southern Africa* (Cape Town: David Philip, 1975); W.D. Hammond-Tooke, *Boundaries and Belief: The Structure of a Sotho Worldview* (Johannesburg: University of Witwatersrand Press, 1981); W.D. Hammond-Tooke, *Rituals and Medicines: Indigenous Healing in South Africa* (Johannesburg: A.D. Donker, 1989); W.D. Hammond-Tooke, “Selective Borrowing? The Possibility of San Shamanistic Influence on the Southern Bantu Divination and Healing Practices.,” *South African Archaeological Bulletin* 53 (1998): 9–15.

²² Dudley Kidd, *The Essential Kafir* (London: Adam & Charles Black, 1904), p.176–178.

²³ Monica Wilson, *Reaction to Conquest: Effects of Contact with Europeans on the Pondo of South Africa* (Cape Town: David Philip, 1936), p.424.

²⁴ *Ibid.*, p.275.

²⁵ *Ibid.*, p.424.

²⁶ Monica Wilson et al., *Keiskammahoek Rural Survey* (Pietermaritzburg: Shuter and Shooter, 1952), p.182.

apparently no longer put people to death but were instead “content with fining the wizards £10 or £15, half of which remains in their own pockets”.²⁷ With witch trials apparently continuing, we might tentatively conclude that the legislation was not rigorously or uniformly implemented during the early twentieth century, but this certainly requires further substantiation.

In more contemporary works about witchcraft, authors generally gloss over the colonial period of witchcraft policing. While the late- and post-apartheid eras have attracted significant scholarly attention, far less work has been produced that deals explicitly with the use of witchcraft law in the early twentieth century. Where the period is mentioned, it is generally as a momentary stepping stone to a discussion about the witchcraft beliefs and their effects in more recent times. Where suggestions are made regarding how colonial witchcraft laws were employed, very little evidence is generally adduced in substantiation.

Adam Ashforth’s extraordinary *Witchcraft, Violence and Democracy in South Africa* offers a thorough account of “witchcraft, violence and justice” in the post-apartheid era, but makes only passing mention of colonial witchcraft policing. He contends that administrators were not truly committed to ending witchcraft accusations but were more concerned with neutralizing perceived threats to colonial order that supposed “superstitious beliefs” of Africans were believed to foster.²⁸ He believes that “healers” were “no doubt ... targeted from time to time in various districts of South Africa, probably where their activities intruded into political matters that complicated the everyday activities of white administrators”.²⁹ He suggests that, in practice, colonial witchcraft laws “were applied only when popular healers emerged who seemed a danger to colonial order”.³⁰ Yet he admits that he has “been unable to find accounts of the prosecution of healers for contravening this legislation”.³¹

Based on his study in Bushbuckridge, Isak Niehaus’ contends that the law was not rigorously employed to put an end to witch trials between 1930 and 1956: “Out of sight and earshot of the native commissioners, chiefs tried cases that touched on witchcraft ... Native Commissioners seemed to have ignored these infringements, perhaps because they involved minimal violence.”³² He argues that witchcraft laws like these were not employed rigorously as a tool for repressing witchcraft accusations, but were rather a “symbolic” seal of the state’s rhetorical commitment to the civilising mission.³³ Like Ashforth, however, he does not point to any specific records to substantiate these assertions.

²⁷ Henri Junod, *The Life of A South Africa Tribe: Part II* (New York: University Books Inc, 1912), p.534.

²⁸ Ashforth, *Witchcraft, Violence, Democracy*.

²⁹ *Ibid.*, p.286.

³⁰ *Ibid.*, p.254.

³¹ *Ibid.*, p.286.

³² Niehaus, “Witchcraft in the New South Africa,” p.97.

³³ Niehaus, “Witchcraft in the New South Africa: From Colonial Superstition to Postcolonial Reality?,” p.189.



Martin Chanock's *The Making of South African Legal Culture: 1902-1936* is one of the very few works which interrogates archival documents and court cases from the early twentieth century to advance some conclusions about judicial attitudes towards witchcraft matters at the time. Chanock's is a summary analysis, however, with only a few pages devoted to the matter. Moreover, his focus remains on cases of witchcraft-related killings. In the eight cases that Chanock presents, which came to the Natal High Court between 1910 and 1916, the charge of murder would have applied rather than colonial witchcraft laws.

Chanock's analysis is nonetheless useful in highlighting some of the encounters and attitudes of High Court judges in matters of witchcraft. The judges are held to have been frequently "puzzled" and "bewildered" by the cases, in which the accused seemed to act as "the result of obedience to others and to custom", murdering without concealment and in concert with a number of others.³⁴ The courts, he argues, regarded these cases as foolish superstitions, and they were viewed as being surrounded by an "air of implacable irrationality and brutality".³⁵ He quotes a judgment by Justice Jackson in 1915: "The native is brought up in an atmosphere of superstition, and superstition is engendered by every unusual circumstance".³⁶

Chanock also demonstrates what seems to have been a bias against diviners in the application of the law – they seem to have attracted the animosity of the judges of the Natal High Court. In every one of the cases analysed, the presiding judge noted the central instigating role of a diviner. He also cites archival documents from 1917 written by an unnamed law adviser to the Governor-General and High Commissioner, which seem to indicate that it was the diviner who most frequently received the death penalty in witchcraft murder cases. The law adviser found that in cases of witch killing that came before the Union courts between 1913 and 1917, the death penalty was usually imposed when the "witch doctor" had undertaken the killing, and commuted to life imprisonment when the accused had killed on the instructions of a "witch doctor".³⁷ The Governor-General weighed in on the issue, insisting that the death penalty should not follow as a matter of course, but only where "the practice is catching, and sometimes especially infests a district. It may take a resemblance to a vendetta. In such cases the severest penalties may be necessary".³⁸

³⁴ Martin Chanock, *The Making of South African Legal Culture, 1902-1936: Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001), p.322.

³⁵ *Ibid.*

³⁶ *Ibid.*, p.323.

³⁷ *Ibid.*, p.327.

³⁸ Quoted in *ibid.*, p.327.

Chanock's findings indicate that when it came to trying to curb murders based on "superstitious beliefs", pragmatic considerations of deterrence were more important than doggedly clinging to principle. Additionally, it suggests that the law operated with a bias against "witch doctors", perceived as potentially troublesome vectors of supposedly irrational beliefs in witchcraft. But these conclusions are only supported by thin set of archival documents, and greater research is required to determine how generalizable Chanock's findings are.

D.S. Koyana and J. Macintosh also wrote about witchcraft murder cases, specifically about how belief in witchcraft came to be recognized as a mitigating factor in sentencing. In the early decades of the twentieth century, witchcraft beliefs were not considered as diminishing criminal fault in cases of murder, yet by the 1930s it seems that the notion that witchcraft belief could be an extenuating circumstance came to be increasingly debated. In a legal review journal of 1939, J. Macintosh noted a "remarkable" case from 1933, *R. v. Mbombela*, in which "a native youth, believing that a small object he saw in a badly-lit hut was an evil spirit (tikiloshe), struck it with a stick and killed a small child".³⁹ The Appellate Division Court that questions of "race, or idiosyncrasies, or superstitions, or intelligence of the person" could not "enter into the question" of criminal liability.⁴⁰ But, as Koyana notes, witchcraft finally came to be regarded as an extenuating circumstance in the 1938 case of *R. v. Biyana*. The judge ruled that the minds of the four accused who had strangled an old woman "smelt out" as a witch were "subject to erroneous belief, in circumstances which [made the] crime committed under its influence less reprehensible than it would be in the case of a mind of normal condition".⁴¹ The accused received sentences ranging from fifteen to twenty years in prison. It seems, therefore, that the judiciary came to show a willingness to compromise in matters of witchcraft as the decades wore on.

Julie Parle's case study of the *Amandiki* of Zululand from 1894 to 1914 is one of the few historical works that deals exclusively with the issue of witchcraft during the first decades of the twentieth century in South Africa.⁴² In Parle's study, she makes mention of the confused and inconsistent application of the witchcraft law in Zululand (Proclamation II of 1887) in official strategies to manage what was characterised as a wave of "hysterical mania" among women called the *amandiki*. Many officials believed the women were undertaking practices "closely allied with witchcraft" and therefore charged a number of women for committing witchcraft under Section 9 of the Zululand Proclamation II of 1887.⁴³ The

³⁹ J.C. Macintosh, "Application of Criminal Law to Primitive People: How Far Belief in Witchcraft Is 'Extenuating Circumstance' in Murder," *The Cambridge Law Journal* 7, no. 1 (1939): p.158.

⁴⁰ *Ibid.*

⁴¹ D.S. Koyana, "The Demise of the Doctrine of Extenuating Circumstances in the Republics of South Africa and the Transkei," *Consultus*, October 1991, 115-18; Macintosh, "Application of Criminal Law," p.158.

⁴² Julie Parle, "Witchcraft or Madness? The Amandiki of Zululand, 1894-1914," *Journal of Southern African Studies* 29, no. 1 (2003): 105-32.

⁴³ *Ibid.*, p.112.



District Native Commissioner of the Lower Umfolozi District, Dick Addison, used the law vociferously in 1909 against the “*amandiki* nuisance”, which he argued needed to be “put down with a strong hand”.⁴⁴ Parle’s analysis suggests that local officials had a significant degree of autonomy in deciding on how to try cases dealing with witchcraft in their districts. In Zululand, it seems that the witchcraft statute was applied inconsistently by officials according to the localised contingencies they encountered and their concerns over public order. But one should be wary of generalising Parle’s findings from Zululand. The historical context of colonial rule here was markedly different from that of both the Transvaal and the Cape, and the prescriptions of Proclamation II were also distinct from the laws which prevailed in those provinces.⁴⁵ Nevertheless, there was communication about witchcraft matters between administrators of different provinces, and Parle’s study provides important clues about what broader attitudes towards witchcraft may have been.

Sean Redding has written about the intersection between the state and witchcraft in the early twentieth century. She argues that the increasingly intrusive actions of the colonial bureaucracy came to be described by Africans in the lexicon of witchcraft belief.⁴⁶ She argues that beliefs in witchcraft were intimately tied to notions of power, and that the belief that the state was manipulating evil supernatural powers provided the central thrust to a number of rural uprisings, including the 1880 Transkei Rebellion, the 1906 Bambatha Rebellion, and the rural revolts of the 1950s and 60s in the Transkei.⁴⁷ A similar argument is advanced by Clifton Crais of the situation in the apartheid era.⁴⁸ Redding also argues that the colonial state’s outlawing of chiefly witchcraft adjudication did nothing to dampen beliefs in witchcraft – ironically, the perceived protection of witches from traditional justice by colonial law

⁴⁴ *Ibid.*, p.110–111.

⁴⁵ Section 9 of Proclamation II outlawed “pretending to practise witchcraft”, while Section 10 criminalized “falsely accusing any person of witchcraft”. A conviction under either of these could attract “a fine or imprisonment in the discretion of the court or 25 lashes or any two such punishments”. Just how these laws came to be applied in the early twentieth century requires further research.

National Archives Repository [Hereafter “SAB”], Secretary for Native Affairs [Hereafter “NTS” or “SNA”] 9465, 19/362, “Witchcraft General File: Transkeian Territories Witchcraft”, Letter from Secretary of Native Affairs to the Secretary of Justice, including Survey of Witchcraft Law across South Africa, 1948.

⁴⁶ Timothy Lane, “Witchcraft, Chiefs and the State in the Northern Transvaal: 1900-1930,” in *The Culture of Power in Southern Africa: Essays on State Formation and the Political Imagination* (Portsmouth, NH: Heinemann, 2003), See also:

⁴⁷ Sean Redding, “Government Witchcraft: Taxation, the Supernatural, and the Mpondo Revolt in the Transkei, South Africa, 1955-1963,” *African Affairs* 95, no. 381 (1996): 555; Sean Redding, “Sorcery and Sovereignty: Taxation, Witchcraft, and Political Symbols in the 1880 Transkeian Rebellion,” *Journal of Southern African Studies* 22, no. 2 (1996): 249–70; Sean Redding, “A Blood-Stained Tax: Poll Tax and the Bambatha Rebellion in South Africa,” *African Studies Review* 43, no. 2 (September 1, 2000): 29–54.; Sean, McKittrick, Meredith Redding, “Sorcery and Sovereignty: Taxation, Power and Rebellion in South Africa, 1880-1963,” *African Studies Review*. 51, no. 1 (2008): 144.

⁴⁸ Clifton C. Crais, *The Politics of Evil: Magic, State Power, and the Political Imagination in South Africa*, African Studies Series 103 (Cambridge, U.K. ; New York: Cambridge University Press, 2002).

seemed to provide further proof that the state itself was a purveyor of witchcraft.⁴⁹ Yet, the magistrates of the Transkei continued to regard beliefs in witchcraft as simply “superstitious”, “rarely understood that the belief in witchcraft had larger social and political effects” and failed to “discern any direct relationship between how they were governing, and the belief in witchcraft”.⁵⁰ She cites letters written by magistrates of the Transkei which regarded witchcraft beliefs as proof that Africans were “uncivilised and culturally conservative”, extremely “gullible” and “childlike”, and even “dangerous”.⁵¹

Redding also notes official fears over the phenomenon of “war doctoring”: the administering of medicines by traditional healers before battle with the promise of invulnerability to attack – apparently regarded by officials as a form of “native witchcraft”.⁵² Such fears were also highlighted by Jeff Guy, who shows that such fears were present in the case of the Bambatha Rebellion of 1906.⁵³ These works suggest that officials were sometimes vexed by the perception that witchcraft beliefs could wreak on white rule. What is not made clear, however, is whether or how such fears informed strategies for policing witchcraft during this period.

The works presented thus far represent the limits of scholarship of the application of colonial witchcraft laws in South Africa in the early twentieth century. There are, however, a number of works written about the mid-nineteenth century which help reveal something of the deeper historical context of policing witchcraft prior to the promulgation of witchcraft laws.

Earlier Colonial Witchcraft Management

In his 1899 book *The Romance of a Pro-Consul*, James Milne writes about the approach to rule of Sir George Grey, the mid-nineteenth century Governor of the Cape Colony. Grey believed that Africans could be assimilated by eroding the trappings of “tribal life”, undermining institutions of traditional rule, rooting out “pagan customs” and moulding “raw human materials to higher ends”.⁵⁴ But he identified “witchcraft, which held in bonds the savage peoples whom I had to govern” as his “hardest trouble”.⁵⁵ William and Lily Rees’ *The Life and Times of Sir George Grey* shows that Grey believed the spread of

⁴⁹ Redding, “Sorcery and Sovereignty,” 1996, p.256.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p.265.

⁵² *Ibid.*, p.261.

⁵³ James Stuart quoted in Jeff Guy, *The Maphumulo Uprising: War, Law and Ritual in the Zulu Rebellion* (Scottsville, South Africa: University of KwaZulu-Natal Press, 2005), p.221.

⁵⁴ Hermann Buhr Giliomee, *From Apartheid to Nation-Building*, Contemporary South African Debates (Cape Town: Oxford University Press, 1989), p.5; Sir George Grey quoted in James Milne, *The Romance Of A Pro-Consul: Being The Personal Life And Memoirs Of The Right Hon. Sir George Grey, K.c.b*, Special ed (London: Chatto & Windus, 1899), p.72.

⁵⁵ Sir George Grey quoted in Milne, *The Romance Of A Pro-Consul*, p.72–73.



European education, medicine and Christianity would “win the people from their witch-doctors and overthrow witchcraft”.⁵⁶ Grey regarded witchcraft as an important pillar of chiefly power and legitimacy, insisting that chiefs colluded with “witch doctors” to have rivals “eaten up” or executed.⁵⁷ Yet it seems that the problem was one which largely escaped colonial control.

Attitudes towards witchcraft seem to have been little different in the nineteenth century administration of colonial Natal, despite its turn away from Grey’s assimilationist approach towards proto-segregation. Thomas McClendon’s *White Chief, Black Lords* demonstrates how, in spite of Theophilus Shepstone’s acceptance of customary rule, witchcraft remained something which the colonial state considered “repugnant” and in need of stamping out.⁵⁸ McClendon argues that this was fundamentally about power – about asserting the sovereignty of the British administration by wresting control of witchcraft away from the chiefs and denying them the power over the life and death of their subjects. “In effect,” McClendon argues, “the colonial state reserved capital punishment to itself” in a bid to “dilute the power of *amakhosi*”.⁵⁹

In a bid to assert the sovereignty of British colonial rule, Shepstone’s administration took it upon itself to deal with witchcraft matters, managing those accusations which emerged most visibly, sometimes through personal interventions. McClendon highlights occasions when accused witches were removed from localities by colonial officials. In one incident, officials were sent scurrying between rival chiefdoms who had traded accusations of witchcraft, eventually convincing one to relocate in order to avoid conflict. Ironically, the result was that the administration became more deeply embroiled into the matrix of witchcraft beliefs: even as it attempted to relegate the ‘repugnant’ category of witchcraft to invisibility... the colonial state made itself a participant in the discourse of witchcraft.”⁶⁰ McClendon shows that the colonial administration was forced to undertake a “delicate dance” with witchcraft matters – calculated compromises as opposed to consistent principle. Despite a stated abhorrence to the issue of witchcraft, there thus came to exist elements of pragmatic rapprochement with “repugnancy” in the actions undertaken.

These accounts of nineteenth century engagements with witchcraft beliefs help situate the study I undertake in deeper historical context of witchcraft policing. They draw attention to the connection between witchcraft and power, and demonstrate how the task of policing these beliefs was rather more

⁵⁶ William Lee Rees and Lily Rees, *The Life and Times of Sir George Grey, K.C.B.* (Cambridge: Cambridge University Press, 1892), p.232.

⁵⁷ *Ibid.*, p.228.

⁵⁸ Thomas McClendon, *White Chief, Black Lords: Shepstone and the Colonial State in Natal, South Africa 1845-1878* (Rochester: University of Rochester Press, 2010), p.50.

⁵⁹ *Ibid.*, p.61.

⁶⁰ *Ibid.*

complicated and contingent than official rhetoric admitted. In practice, pragmatism more often prevailed over dogmatic adherence to the civilising mission. What is not made clear is whether this attitude of compromise still informed the actions of colonial officials after the promulgation of the witchcraft laws in the late nineteenth century – a question which will be interrogated in this study.

Comparative History: Policing Witchcraft in British Africa

While there is a notable absence of studies focusing on the application of witchcraft laws in the early twentieth century in South Africa, a number of studies have been conducted elsewhere in Africa during this period – especially in former British colonies where similar witchcraft laws were imposed.

In his article on the policing of witchcraft in Swaziland by the early twentieth century state, for instance, Alan Booth argues “the colonial government went after witchcraft so obsessively because it perceived its practitioners as a competitive locus of power which it could not tolerate”.⁶¹ As was asserted by officials in nineteenth century South Africa, then, power seems to have been of primary concern in witchcraft management. As a result, he believes, chiefs felt deprived of an important ritual of power, and shared the perception that witches were being protected by the European courts.⁶² Yet it does not seem that the colonial prohibitions were wholly successful. In *The Realm of the Rainqueen*, Krige and Krige analyse the proceedings of some fifty witchcraft cases that came before Swazi chiefly courts.⁶³

Despite legal prohibitions, customary court proceedings in witchcraft matters seem to have continued in a number of countries.⁶⁴ Monica Hunter’s *Good Company* notes the continuation of witch trials in Southern Tanganyika and Northern Malawi in the 1930s: “We judge them openly but we do not have

⁶¹ A.R. Booth, “European Courts Protect Women and Witches’: Colonial Law Courts as Redistributors of Power in Swaziland 1920-1950,” *Journal of Southern African Studies*. 18, no. 2 (1992): p.272–273.

⁶² *Ibid.*

⁶³ J.D. Krige and E.J. Krige, *The Realm of the Rainqueen*. (Johannesburg: Juta & Co, 1943).

⁶⁴ For examples of anthropology from other African countries, see J.D. Krige and E.J. Krige, *The Realm of the Rainqueen*. (Johannesburg: Juta & Co, 1943); J. D Krige, “The Social Function Of Witchcraft,” *Theoria: A Journal of Social and Political Theory*, no. 1 (1947): 8–21; Monica Wilson, *Good Company* (Oxford U.p, 1951); M. G Marwick, *Sorcery in Its Social Setting; a Study of the Northern Rhodesian Ceŵa*. ([Manchester: Manchester Univ. Press, 1965]; J.R. Crawford, *Witchcraft and Sorcery in Rhodesia* (Oxford: Oxford University Press, 1967); Max Gluckman, *Custom and Conflict in Africa*. (Oxford: Blackwell, 1956); Max Gluckman, *Politics, Law, and Ritual in Tribal Society* (Oxford: New York, NY, USA : Basil Blackwell, 1965).



them written in the courtbook”.⁶⁵ In *The Tswana*, Isaac Schapera noted of the Bechuanaland Protectorate that “trials are often held, especially if the victim is still living”.⁶⁶

A number of studies produced about central Africa demonstrate that for colonial officials, pragmatism came to trump principle in matters of witchcraft policing. Richard Waller’s *Witchcraft and Colonial Law in Kenya* provides incisive analysis on the kinds of engagements that took place between the British colonial legal machinery and witchcraft matters. Here, the law was employed primarily against those classified as “witches” by the colonial authorities, but whom Waller regards as having been considered dangerous “charismatic individuals... whose claims to supernatural power threatened to provide a focus for community resistance”.⁶⁷ This provides pause for thought about the diversity of approaches undertaken by various colonial authorities across Africa, where the relative power of white rule varied considerably, necessitating different strategies to police witchcraft beliefs. Waller notes that in colonial Kenya, officers of the law found witchcraft cases incredibly troublesome for the image of colonial rule. Witchcraft cases were frequently overturned on technicalities or withdrawn due to a lack of evidence, and as a result, the espoused authority of local colonial officials was revealed to be rather more tenuous than their civilising proclamations were wont to suggest. These “witches” are said to have “boast[ed] of their immunity” and threatened those who had testified against them in court.⁶⁸ Waller concludes that “District Commissioners responded by simply refusing to prosecute – in effect turning a blind eye to more apparently effective local methods of control, provided that they were not made public.”⁶⁹ Administrators were thus willing to “bend the law” in the name of good governance.⁷⁰ Waller also shows that the attitudes of colonial officials changed remarkably over time. By the 1930s, he argues, they were “learning to live with witches – and with witch doctors”.⁷¹

Some works on colonial Tanganyika demonstrate a similar change in mindset of colonial officials. Stacey Ann Langwick quotes a Tanganyikan colonial official as having insisted that witchcraft law was only used “when the maintenance of peace and order and good government are at stake”.⁷² Green reports that by the 1940s, officers here had begun using “traditional expertise” themselves to deal with witchcraft. He notes that “increased witchcraft accusations prompted the district commissioner of

⁶⁵ Wilson, *Good Company*.

⁶⁶ Schapera, *The Tswana*, p.66.

⁶⁷ Richard D. Waller, “Witchcraft and Colonial Law in Kenya,” in *Past & Present*, Past & Present Society 180 (Oxford: Oxford University Press, 2003), p.262.

⁶⁸ *Ibid.*, p.247.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p.274–275.

⁷¹ *Ibid.*, p.266.

⁷² Stacey Ann Langwick, *Bodies, Politics, and African Healing: The Matter of Maladies in Tanzania* (Indiana University Press, 2011), p.50.

Ulanga, Tanganyika, to send *mganga* to conduct mass shavings... to suppress the powers of witches and to protect people against bewitchment. Within village communities a perception even arose that colonial governments had appointed anti-witchcraft specialists for purposes of development."⁷³

Karen Fields demonstrates the *The Political Contingencies of Witchcraft* in early twentieth century Zambia, Tanzania, Malawi and Kenya, arguing that official dealings with witchcraft came to be characterised by an approach of compromise and calculation. In her estimation, British officers "backpedalled" from the initially vigorous civilising imperative because they lacked the popular legitimacy, the manpower and resources to rule by force alone.⁷⁴ Realising witchcraft beliefs were not going to disappear soon, Fields argues that officials adopted a stance of "watchful tolerance" on the matter, calculating their responses according to the potential costs that such action might pose to their hold on power.⁷⁵ This strategy presented itself as a politically expedient way for "colonialism on the cheap" to approach the problem of witchcraft: officials kept "a sharp eye on developments", yet abstained from intrusive policing.⁷⁶

No similar, empirically substantiated studies have been produced which test whether the situations in other African colonies outlined above prevailed in the South African context in the early twentieth century.

The Study, the Sources and the Methodology

Without much serious analysis of the attitudes of administrators to the problem of witchcraft in the early twentieth century, there is a significant gap in scholarship. This study aims to bolster the sparse literature that exists on the use of witchcraft laws in early twentieth century South Africa by looking at the use of the Transvaal Witchcraft Ordinance No. 26 of 1904. I examine the broad discursive framework in which colonial officials apprehended matters of witchcraft, and provide evidence as to the nature of administrative and judicial responses to witchcraft matters as they came to be shaped by the particular setting in the Transvaal.

In the course of the review of literature undertaken above, a number of questions have arisen which have as yet remained unsatisfactorily answered by existing literature, lacking in sufficient empirical

⁷³ M Green, "Shaving Witchcraft in Ulanga: Kunyulewa and the Catholic Church," in *Witchcraft in Contemporary Tanzania* (Cambridge: African Studies Centre, University of Cambridge, 1994), p.29.

⁷⁴ K.E. Fields, "Political Contingencies of Witchcraft in Colonial Central Africa: Culture and the State in Marxist Theory," *Canadian Journal of African Studies* 16 (1982): p.569.

⁷⁵ *Ibid.*, p.575.

⁷⁶ Karen E Fields, "Political Contingencies of Witchcraft in Colonial Central Africa: Culture and the State in Marxist Theory," *Canadian Journal of African Studies* 16, no. 3 (1982): p.568; p.588.



depth. I approached the primary material I discovered about early twentieth century witchcraft policing with these concerns in mind:

1. Was the Witchcraft Ordinance merely a “symbol” of the state’s rhetorical commitment to the “civilising mission”, rather than a genuine legislative attempt to eradicate witchcraft accusations, as Niehaus suggests?
2. How accurate is Ashforth’s contention that the law “was applied only when popular healers emerged who seemed a danger to colonial order”?
3. Can we infer, as Chanock does, that the law operated with a bias against so-called “witch doctors”?
4. In early twentieth century Transvaal, were administrators forced to undertake a “delicate dance” with witchcraft matters, as Shepstone did in nineteenth century Natal? Did colonial administrators come to turn a “blind eye” to witchcraft matters, as Waller suggests? Did “watchful tolerance” undergird official responses, as Fields suggests of central and eastern Africa?

In a bid to provide some answers to these questions, this study interrogates a range of primary documents authored during the early twentieth century. Because the primary documentary evidence which is most readily accessible is largely concerned with the Transvaal region, this will form the geographical focus of my project. A major problem I have found with the available literature is a tendency to infer broad generalisations about witchcraft policing from particular contexts characterised by unique socio-political terrains. In this study, I have not desisted from advancing some tentative generalisations about the broad situation in the Transvaal, but I do aim to remain as sensitive to local particularities as the available sources allow. I chose to approach the study without rigid temporal parameters, leaving my research flexible to the primary evidence I discovered.

In **Chapter I**, I interrogate some prominent perceptions of the “witchcraft problem” in the segregationist climate of the early twentieth century. I investigate how the concepts of “witchcraft” and the “witch doctor” were understood amongst prominent white writers and officials of the time. I highlight some reasons advanced for why witchcraft presented a problem, both for colonial rule and for Africans themselves. I also examine some of the solutions proposed for ending this supposed problem. This chapter was drawn from a wide range of sources: reports of commissions of enquiry, the utterances of statesmen, the ethnographies of early anthropologists, the manifestos of segregationist intellectuals, and articles which featured in newspapers and periodicals. Of course, these sources cannot provide anything like a comprehensive account of “official beliefs” regarding witchcraft – there was not one

perspective on “witchcraft” which informed administrative responses to these matters. Beliefs are always highly individualised, erratic and inconsistent. Nevertheless, these sources do give us an indication of the discursive terrain in which official attitudes to witchcraft may have been formed.

In **Chapter II**, I examine instances in which the Transvaal Witchcraft Ordinance came to be applied in the colonial court room. I investigate the kinds of situations which came to attract the might of the law and the manner in which they were adjudicated. The conclusions advanced are drawn from cases which came before the Transvaal Supreme Court Circuit Division. The National Archives in Pretoria house extensive records of these cases, which include charge sheets, witness testimony, and concluding judgments. At the time of my research, construction work at the Archives hampered the accessibility of documents, and the only available criminal case registers ranged from the years 1910 to 1935. Nevertheless, the 37 cases which involved charges under the Witchcraft Ordinance during that time provide some useful insights into the operation of the law. One should of course bear in mind the limits of these records. In most cases it is unclear how the matter came before the court in the first instance. Moreover, the typed transcripts fall well short of capturing the detail of the dramas that unfolded in the court room. Most witnesses identified themselves as Xitsonga or Bavenda, and the testimonies which appear in the court records are therefore probably translations. Most, for instance, would probably not have used the terms “witch doctor”, “witch”, or “wizard” that appear in the final transcripts. While none of the questions asked by the prosecution are recorded, the fact that testimonies in the same case frequently mirror each other in terms of narrative structure seems to indicate that witnesses were interrogated along the same lines. This invites us further to bear in mind the constraints of the court system more generally in drawing inferences about the application of the law. The court room was characterised by sharp asymmetries of power, and many of those who appeared as witnesses may have harboured significant mistrust of the colonial legal system. I approached their testimonies with this in mind. Nevertheless, much can still be learned from these records, especially about the perspectives of judges on matters of witchcraft.

In **Chapter III**, I move from the elevated vantage point of the Supreme Court to the lower levels of grassroots “witchcraft management”. I investigate how notions of African supernatural beliefs were perceived amongst some local colonial officials and what their responses to them were. This chapter draws on a significant body of correspondence sent between the Native Affairs Department and lower level Native Commissioners and magistrates. Using these sources presents obvious limitations. They do not allow us to produce anything like a definitive and comprehensive account of official attitudes towards witchcraft in the period in question. And again, territorial context should be born in mind. While this study is concerned with the Transvaal generally, each locality seems to have been characterised by its own constellation of personalities and power dynamics which shaped beliefs about and responses to witchcraft. Nevertheless, these archival documents do provide us with a far greater sense of the kinds



of calculations that may have informed official responses to witchcraft in the early twentieth century than is currently offered in South African witchcraft scholarship.

I

Chapter I: The “Witchcraft Problem” and the Weight of Words

In the early twentieth century, an era in which ideas of social Darwinism and eugenics prevailed, the notion of “native witchcraft” was frequently employed as an emblem of untamed barbarity, irrationality and backwardness, a savage remnant of a primordial past. It was posited as a halt on “progress” and an obstacle to the deliverance of the African to “civilisation”. Even as the segregationist state took shape in the years after the Union of South Africa, espousing an apparently new-found respect for African culture, state rhetoric maintained the long held colonial view that beliefs in witchcraft were “repugnant” and in need of stamping out. Despite the government’s stated recognition of customary law, and its acceptance of practices like *lobola* and polygamy, there was apparently no official rapprochement with beliefs in witchcraft. Even as the Victorian assimilationist paradigm was losing purchase towards the end of the nineteenth century, and the state indicated a fundamental shift towards a form of indirect rule which bolstered chiefly powers, laws were being promulgated which banned the traditional adjudication of witchcraft matters. In this chapter, I examine why beliefs in witchcraft were considered problematic by a range of intellectuals and state officials in the early twentieth century.

What is Witchcraft?

The topic of African beliefs in “witchcraft” excited the imagination of a great many authors in the early twentieth century. Terrifying “heart of darkness” narratives were concocted which portrayed Africans hypnotised by fear and imprisoned by their outrageous superstitions. A 1900 edition of the *Christian Express* spoke of witchcraft as “voodooism”, a “remnant of barbarism” that even “still lingers in the minds of native Christians”.¹ A series of articles entitled “Nature Rambles in Zululand” that ran in the 1909 *African Monthly* told “fabulous tales” of the “superstitious fancies of the barbarian mind”:

¹ “The Prevalence of Witchcraft,” *The Christian Express*, January 6, 1900, p.1, World Newspaper Archive.



“primitive man... lost in a maze of doubt and horror”, victim to the machinations of “witches” and “wizards” and the “mysterious cult of the *isangoma*”.² African beliefs in witchcraft apparently proved just how truly enlightened the “European” man was in comparison. In a 1929 edition of the *Outspan*, J.W Househam portrayed Africans as:

a people so intensely superstitious [that] anything bearing on the mysterious and occult has a great and overpowering influence. Such a people is at all times moved by signs and sounds of which a more civilised and educated man would take little account... reason has no place where ignorance and superstition reign.³

Yet the concept of “witchcraft” was not employed in the African context free of historical baggage. Before their “enlightenment”, Europe had lived through its own nightmarish experiences with witches. Understandings of witchcraft thus arrived in the colonial context already invested with images of violence and injustice. Richard Waller argues that

colonial officials, as Englishmen who thought they knew their history, had a past to atone for. Africans were now, it seemed, where Englishmen had once been, and it was easy to construe an alien present through images of village hatreds, the credulity of the learned, officially sanctioned persecution and mob violence drawn from a familiar – if largely misrepresented – past.⁴

In the 16th and 17th century, British courts had sentenced thousands of witches to their deaths under official statutes. The judiciary regarded the crime of witchcraft as real, witches as genuine agents “in league with the devil”, engaging in “intercourse with evil spirits”.⁵ This finally changed when the British legislature passed the Witchcraft Act in 1735, signalling a complete reversal in the official attitude towards witchcraft. The new Act portrayed witchcraft as purely imaginary. It became a crime to accuse another of possessing magical powers.⁶ Individuals could no longer be tried for being a witch, but for “pretend[ing] to exercise or use any kind of Witchcraft, Sorcery, Inchantment, or Conjuration”.⁷ This Act would form the model for the witchcraft legislation of nineteenth century British Africa, and, as will be demonstrated, its fundamental assumptions of the irrationality and barbarism of witchcraft beliefs were apparently shared by a great many South African writers and intellectuals of the time too.⁸

² Alaena Mazoula, “Nature Rambles in Zululand: The Mamba,” *African Monthly*, August 1909, Vol. VI, No.33. Periodicals, Cullen Africa; Alaena Mazoula, “Nature Rambles in Zululand: The Python,” *African Monthly*, October 1909, Vol. VI, No.35. Periodicals, Cullen Africa.

³ J.W. Househam, “The Mystery of the Flying Stones,” *The Outspan*, August 2, 1929, p.43, Rhodes University Cory Library.

⁴ Waller, “Witchcraft and Colonial Law in Kenya,” p.256.

⁵ Ibid.; Rosemary Guiley, *The Encyclopedia of Witches, Witchcraft and Wicca* (Infobase Publishing, 2008), p.381.

⁶ Mensah-Aborampah Osei, “Witchcraft in the Religion of the Hlubi of Qumbu: Focusing on the Issues of Sickness and Healing in the Society” (PhD, University of South Africa, 2003), p.240.

⁷ The Witchcraft Act of 1735, 9 Geo. 2 c. 5.

⁸ Chanock, *Making of SA Legal Culture*, p.326.

Understandings of witchcraft were not only informed by European memories of witch killing, however. In its importation into the colonial context, the concept of witchcraft was also injected with notions of racial supremacy. Witchcraft apparently confirmed the myths about the supposed innate depravity and evolutionary backwardness of the African. If European witchcraft was considered irrational and barbaric, then African witchcraft was doubly so. Witchcraft belief was thus conceived in social Darwinist terms, as proof of irrational black barbarity and an obstacle to “civilisation” and the spread of “Western modernity”. Eliminating “native witchcraft” came to be a principal aim of the civilising mission undertaken by the supposedly superior white race.⁹ In the late nineteenth century, the legislatures in the colonies of South Africa promulgated laws which formalised the state’s commitment to stamping out witchcraft beliefs.

Yet at the same time, as a number of authors note, the form that the civilising mission took was undergoing some important changes. Saul Dubow argues that during this time, the fundamental premises of the past Victorian civilising mission were called into question. In the wake of drastic urbanization, increasing fears of black “swamping”, “miscegenation”, and the growing political fears prompted by educated Africans, prominent white intellectuals and statesmen questioned the wisdom of the “assimilationist” paradigm which had once predominated.¹⁰ Prominent intellectuals like Howard Pim, Maurice Evans, Charles Loram and Edgar Brookes argued that the African was not ready to be fully integrated into “civilisation”, and advocated a form of racial territorial segregation which recognised the value of maintaining “native culture”.¹¹

By the early twentieth century, African “customs” had thus undergone a rebaptism as ideas of segregation gained ascendancy. The structures of traditional rule were no longer simply seen as impediments to “civilisation” which needed to be destroyed, but as the instruments to ostensibly allow Africans to follow “the line of evolution [which] their race genius suggests”.¹² In 1903, Magistrate CO Griffin wrote that the educated “native is merely a mischief maker... he has proved himself unable to use his position for much good, but more often what he knows is used in airing imaginary grievances of his people”; by contrast, the “raw native” was “the truest gentleman there is. He is true to his traditions and

⁹ Niehaus, “Witchcraft in the New South Africa,” p.95.

¹⁰ John Cell, *The Highest Stage of White Supremacy: The Origins of Segregation in South Africa and the American South* (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1982), See, for instance; Saul Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919-36*, St. Antony’s/Macmillan Series (London, England) (Basingstoke: Macmillan in association with St Antony’s College, Oxford, 1989); Paul B. Rich, *State Power and Black Politics in South Africa, 1912-51* (Houndmills, Basingstoke, Hampshire; New York: Macmillan Press ; St. Martin’s Press, 1996).

¹¹ Saul Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919-36*, St. Antony’s/Macmillan Series (Houndmills, Basingstoke, Hampshire: Macmillan in association with St. Antony’s College, Oxford, 1989), p.25–50.

¹² Maurice S. Evans, *Black and White in South East Africa, a Study in Sociology* (London, New York [etc.] : Longmans, Green and Co., 1911), p.20, <http://archive.org/details/blackwhitesouth00evan>.



customs, and true to the authority under which he lives. Take him out of that and he is immediately a danger.”¹³ Segregation offered a form of indirect rule by which the white state could control the movements and limit the aspirations of Africans, especially in urban areas. Repressive segregation thus came to be euphemised in the language of “cultural difference”.¹⁴

Segregation was instituted through attempts to co-opt chiefs into the colonial bureaucracy. Their powers were expanded, and chiefly courts came to be officially entitled to administer “native law” – a parallel legal order to which all Africans were subjected. The 1927 Native Administration Act, crafted by J.B.M Hertzog’s administration, provided the definitive legislative seal for this commitment to “retraditionalisation”. But the operation of customary law was not without qualification: the Act stipulated that “native law” would apply as long as it was “not opposed to the principles of public policy or natural justice”.¹⁵ While matters of *lobola* and polygamy came to be recognised as more or less harmless customs which chiefs could deal with in their courts, there was no official rapprochement with witchcraft, the adjudication of which remained outside the ambit of chiefly authority. Witchcraft thus stood as something of a contradiction to the policies of retraditionalisation undertaken at the time, demonstrating that the civilising mission had not died.¹⁶

¹³ Norman Etherington, “Religion and Resistance in Natal, 1900-1910,” in *One Hundred Years of the ANC: Debating Liberation Histories Today* (Johannesburg: Wits University Press, 2012), p.58.

¹⁴ See: Maynard W Swanson, “The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909,” *The Journal of African History* 18, no. 3 (1977); John Cell, *The Highest Stage of White Supremacy: The Origins of Segregation in South Africa and the American South* (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1982); Saul Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919-36*, St. Antony’s/Macmillan Series (Houndmills, Basingstoke, Hampshire: Macmillan in association with St. Antony’s College, Oxford, 1989), p.30–31.; P. Maylam, “Explaining the Apartheid City: 20 Years of South African Urban Historiography,” *Journal of Southern African Studies*. 21, no. 1 (1995): 19; Paul B. Rich, *State Power and Black Politics in South Africa, 1912-51* (Houndmills, Basingstoke, Hampshire; New York: Macmillan Press; St. Martin’s Press, 1996); Ivan Thomas Evans, *Bureaucracy and Race: Native Administration in South Africa*, Perspectives on Southern Africa 53 (Berkeley: University of California Press, 1997).

¹⁵ 1927 Native Administration Act, n.d., p.8, section 11., <http://www.justice.gov.za/legislation/acts/1927-038.pdf>.

¹⁶ The 1927 “repugnancy” proviso on customary law represented a continuation of a long historical trend towards aspects of African “tradition” which colonial officials regarded as unpalatable. The South African Native Affairs Commission (SANAC) Report in 1905, one of the first official documents which endorsed segregation on a nationwide scale, had emphasised the importance of maintaining such a proviso in the recognition of customary law. The report spoke in ominous terms: “There has been and there continues a great struggle between the powers of good and evil, of light and darkness, of enlightenment and ignorance, of progress and tradition, of Christianity and heathenism” (SANAC Report, 1905: p.42, para.216). According to Sir Godfrey Lagden, the principal author of the SANAC Report in his capacity as Commissioner of Native Affairs, Africans could not simply be left to their own devices since they still had “weird ways” which they needed help eradicating (Quoted in Ashforth, 1990, p.38). Yet the elastic concept “repugnancy” had been formulated far earlier by Theophilus Shepstone, who provided the prototype for the later segregationist state: customary law would prevail “except so far as the same may be repugnant to the general principles of humanity, recognised throughout the civilised world” (McClendon, 2010, p.50). Shepstone had prohibited the chiefly adjudication of witchcraft trials on the grounds that it was repugnant. The state’s rhetorical opposition to witch trials had, it seems, remained largely unbroken since the nineteenth century.

Ashforth argues that, From the perspective of many state officials, belief in witchcraft was proof that Africans subsisted at a lower level of civilisation to the “enlightened” European. Beliefs in the existence of witches were frequently held up as proof that Africans were not “advanced” enough for complete self-government or the franchise. In the view of the state, “the rational subject of modern times [was] not supposed to be someone grappling with those forces of evil names as ‘witchcraft’”.¹⁷ In his biography of J.B.M Hertzog, Oswald Pirow claims that the Afrikaner nationalist had “very definite views” about the “general belief in witchcraft and associated phenomena”.¹⁸ Hertzog had regaled Pirow with a story about how one of his more “civilised” labourers, had expressed fears about “the black pigs” which were “threatening them night and day” because they built on a burial ground. This principal architect of early twentieth century segregation is said to have told Pirow: “That shows how far civilisation has gone with a native who normally would be described as a civilised man and a Christian. It just emphasizes how careful we must be before we place duties and responsibilities on them which they are incapable of carrying”.¹⁹ African incorporation into white society was, in Hertzog’s view “only skin deep”, and he concluded that even “the development of the natives must be carefully supervised by a sympathetic government. It would be dangerous to forgo this benevolent guardianship, as most of the Bantu intellectuals were not prepared to lead their own race and as the half-educated native was still at heart a barbarian.”²⁰

This sentiment was echoed by another foundational segregationist platform, the Native Economic Commission (NEC) of 1932, although with added pretensions of scientific objectivity. The NEC held that beliefs in witchcraft spoke to “the paramount need for modernising the tribal system”.²¹ The Commission report identified witchcraft belief as “anti-progressive” feature of “tribal life”.²² In the NEC’s estimation, witchcraft beliefs were “opposed to progress” and prevented Africans from accumulating wealth and “developing” by themselves: “the natives are too firmly held in the grip of primitive superstition and fear”.²³ Witchcraft beliefs proved that Africans could not be trusted with their own futures or expected to use the vote rationally. Instead, in the view of the NEC, continuing white paternalistic guidance was crucial to convince Africans that beliefs in witchcraft were superstitious, to

¹⁷ Adam Ashforth, “Muthi, Medicine and Witchcraft: Regulating ‘African Science’ in Post-Apartheid South Africa?,” *Social Dynamics* 31, no. 2 (2005): p.112., doi:10.1080/02533950508628714.

¹⁸ Oswald Pirow, *James Barry Munnik Hertzog* (Cape Town: Howard Timmins, 1937), p.196.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ J. E. Holloway et al., “Report of Native Economic Commission 1930-1932,” 1932, p.9., <http://uir.unisa.ac.za/handle/10500/5028>.

²² J. D. Rheinallt Jones and A. Lynn Saffery, *Social and Economic Conditions of Native Life in the Union of South Africa: Findings of the Native Economic Commission, 1930-1932* (Johannesburg: University of the Witwatersand Press, 1933), Paras.26, 31, 34.

²³ Holloway et al., “Report of Native Economic Commission 1930-1932,” p.12, para.81.



show them that “spirits, benevolent or malevolent, do not account for their good fortune, or their ill fortune” and to replace this “attitude for one which will permit of progress”.²⁴ Only then could the “dead hand of tribalism” be relaxed and a “dark future” avoided.²⁵

Stamping Out Witchcraft Beliefs

In the early twentieth century, prominent accounts of witchcraft characterised it as a set of absurd, anachronistic beliefs that prevented Africans from reaping the fruits of “modernity”. The anthropologist Dudley Kidd concluded that there was “little hope for the elevation of these tribes until the fear of the accusation of witchcraft is removed.”²⁶ Maurice Evans complained in 1911 that, despite the efforts made in trying to deliver Africans to “civilisation”, “the white man leaves his heart untouched... still he believes in witchcraft... the black man remains, increases, persists”.²⁷ The perception that African belief in witchcraft was a homogenous package of superstitions – rather than a malleable and evolving moral framework, as contemporary authors suggest – spawned the corollary that they could be uprooted wholesale. With the spread of “reason and enlightenment”, it was believed, African “superstitions” could be extinguished.

The most frequently prescribed solvents to get rid of witchcraft beliefs were Christianity and education – yet, in the view of some writers, these tools of “civilisation” were not to be deployed without a considerable degree of circumspection. In the estimation of C.T Loram, whom Ashforth credits for crafting one of the first arguments for a comprehensive education system for Africans, one of the “greatest blessings” that European education could bestow was to remove the “blighted influence” of witchcraft and to “free him from the dominance and deadening influence of the spirit world”.²⁸ Yet Loram was cognisant of the fact that even educated Africans still often believed in the reality of witchcraft. He quoted Dr. Neil Macvicar’s warning: “At present the vast majority of Native children when they go to school are already superstitious. . . . Much of the education . . . fails even to disturb the underlying superstition”.²⁹

An educator and long-time medical officer at Lovedale College, as well as a co-founder of the South African Native College at Fort Hare, Macvicar waged a personal crusade against beliefs in witchcraft, and

²⁴ *Ibid.*, p.9–10, paras.59–62.

²⁵ *Ibid.*, p.12, para.82.

²⁶ Kidd, *The Essential Kafir*, p.147.

²⁷ Evans, *Black and White*, p.101; p.6.

²⁸ C. T. Loram, *The Education of the South African Native* ([New York]: Columbia University, 1915), p.30–31, <http://archive.org/details/cu31924030619716>.

²⁹ Quoted in *ibid.*, p.31.

his thoughts on the subject first came to be published in a 1909 article in *The State*; he would, however, publish throughout the subsequent decades in *The Christian Express* and *South African Outlook*, articles which were compiled into a book entitled *Side-Lights Upon Superstition* in 1939.³⁰ Macvicar believed that education could effectively dissolve witchcraft beliefs, but only education of the “right sort”.³¹ He believed that the present system was failing: many school-leavers and teachers remained “firm believers in witchcraft”.³² Nevertheless, he put his hope in the “class of natives” who, through education, had come to be convinced that witchcraft was “false”.³³

Like so many writers on the subject, Macvicar also believed that Christianity was necessary in the dissolution of witchcraft beliefs. Yet he believed that a great deal hinged on “how that [Christian] truth is apprehended”.³⁴ The anthropologist H.A. Junod also believed that while the “Bantu” who converts to Christianity delivers a “deathblow to his old belief of witchcraft”, the belief is still “slow to die” and that it was by no means rare to witness “the accusation of *buloyi* thrown in the face of a convert by another convert”.³⁵ Macvicar believed that conversion should be undertaken with far greater sensitivity to the proclivities of the “superstitious” African. For instance, he warned against giving Africans access to the Old Testament, which was “continually in the mouths of those half-educated young natives who are reverting to the practices of their heathen ancestors”.³⁶ Exodus 22:18, for instance, insists: “thou halt not suffer a witch to live”.³⁷ When ministering to the “natives”, he suggested, bring the New Testament by itself, separate from the Old”.³⁸ Macvicar also argued that “inflammatory preaching” could induce “hysteria”, which was “to the natives never-failing proof of the reality of witchcraft and of the power of the witch-doctor”.³⁹

³⁰ Neil Macvicar, “Native Superstition and Native Education,” *The State*, June 1909, Cullen Africa; Neil Macvicar, “The Belief in Witchcraft: The Root of All Evil,” *The South African Outlook*, June 1936; Neil Macvicar, *Side-Lights upon Superstition* (Lovedale: The Lovedale Press, 1939); For more detailed elaboration on Macvicar’s contributions, see: Martin J Lunde, “North Meets South in Medical Missionary Work: Dr Neil Macvicar, African Belief, and Western Reaction,” *South African Historical Journal* 61, no. 2 (2009): 336–56.

³¹ Appendix to the *Report of the Cape Select Committee on Native Education*, 1908, p.xxxiii.

³² Dr. Neil Macvicar in the Appendix of the *ibid.*; Macvicar, “Native Superstition and Native Education,” p.671.

³³ Macvicar, “Native Superstition and Native Education,” p.661.

³⁴ *Ibid.*, p.669.

³⁵ Rev. Henri A. Junod, “The Theory of Witchcraft,” 1905, p.20., Cd, Wits Historical Papers, http://www.historicalpapers.wits.ac.za/inventories/inv_pdfo/A1655/A1655-Cd1-01-jpeg.pdf.

³⁶ Macvicar, “Native Superstition and Native Education,” p.669.

³⁷ Consider also: Galatians 5:19-20: Now the works of the flesh are manifest, which are [these]; Adultery, fornication, uncleanness, lasciviousness, Idolatry, witchcraft, hatred, variance, emulations, wrath, strife, seditions, heresies,..”; 2 Chronicles 33:6:“And he caused his children to pass through the fire in the valley of the son of Hinnom: also he observed times, and used enchantments, and used witchcraft, and dealt with a familiar spirit, and with wizards: he wrought much evil in the sight of the LORD, to provoke him to anger”.

³⁸ Macvicar, *Side-Lights upon Superstition*, p.32.

³⁹ Macvicar, “Native Superstition and Native Education,” p.670.



Macvicar was also concerned with the threat that witchcraft beliefs presented to the spread of western medicine. “The prevalent theory of disease”, Macvicar wrote in 1909, “is that it is due to some hostile personal influence emanating from the spirit of a dissatisfied ancestor or from a malevolent neighbour... Witchcraft holds the field as the accepted theory”.⁴⁰ He bemoaned the fact that people did “not readily adopt methods of prevention... when they know nothing of microorganisms and regard a series of deaths as evidence of exceptional malignity on the part of their enemy”.⁴¹ Macvicar insisted that “traditional health practitioners” needed to be supplanted by doctors trained in preventative health care.⁴² The presence of European medical skill could put an end to “the habit of calling in the witch doctor” when illness occurred.⁴³

In the accounts outlined above, the concept of “witchcraft” emerges as a “repugnant” remnant of a backwards race, a package of superstitious thoughts which prevented Africans from advancing along the path of “civilization”. In the segregationist context, it was also propounded as a reason to resist granting Africans full autonomy, justifying the continuing intrusions of white paternalists. Africans needed to be convinced by enlightened white people that witchcraft was a fallacy. Humanitarian concerns about the negative effects of witchcraft were frequently voiced in outlining why such beliefs needed to be stamped out. Yet in many accounts an additional reason for attacking witchcraft belief can be discerned: the influence of the “witch doctor” and the powerful metaphysical hold he exercised over people. Macvicar seems to have believed that the battle against witchcraft was intimately connected with a battle against “the witch doctor”, whom he described as “the heathen of heathens, all tails and horns and full of low cunning”.⁴⁴ The “pretensions of the witch-finders” were, he argued, integral to “the whole system of witchcraft faith”.⁴⁵ C.T. Loram similarly believed that “cunning witch doctors” were responsible for inducing “mental and spiritual darkness”.⁴⁶ In what follows, I investigate some dominant representations of “the witch doctor” in the early twentieth century.

Who is the “Witch Doctor”?

Throughout most of the accounts about witchcraft from the early twentieth century I interrogated, the “witch doctor” emerges as a powerful figure able to command the “superstitions” of Africans. Some

⁴⁰ *Ibid.*, p.660–661.

⁴¹ *Ibid.*, p.669.

⁴² Lunde, “North Meets South in Medical Missionary Work,” p.336.

⁴³ Macvicar, “Native Superstition and Native Education,” p.669.

⁴⁴ Macvicar, *Side-Lights upon Superstition*, p.33.

⁴⁵ Macvicar, “Native Superstition and Native Education,” p.661.

⁴⁶ Loram, *The Education of the South African Native*, p.26.

characterise the “witch doctor” as a dangerous personage whose influence threatened the stability of colonial rule. “The Witchdoctor”, an article in *The State*, offered a terrifying depiction: “The unspeakable greed of the witchdoctor is his chief characteristic, and he is as destitute of the quality of mercy as his ancestors – cannibals all – were in their time.”⁴⁷ “In the native mind”, the author continued, the doctor is able to author “dire calamity”. Even the chief is said to shiver in his presence, “quaking in apprehension” and “weeping and wailing” when he is informed that “the spirits are furious”.⁴⁸ In his 1929 article “The Witch Doctors I Have Met”, J.W. Househam characterised the “witch doctor” as living “in a world of his own; his kingdom is an exclusive domain in which he holds sway. He mixed with the people, but he is not of them... he revels in mysteries... which gives him such a hold on the imagination of the people...”⁴⁹

The kinds of representations produced by the press were not far off the descriptions given by self-proclaimed “experts” on witchcraft. It seems that the term was frequently applied indiscriminately to a host of different practitioners, and little distinction was made between their powers of healing and the harm of witchcraft. The claimed powers of all those bundled under the term “witch doctor” were characterised as fraudulent – a metaphysical confidence trick which ignorant Africans apparently failed to see through. Dudley Kidd wrote of the “immense amount of trickery used”: “By far the most important part of his capital consists in his shrewdness and mother-wit... a short course of tuition shows him how very easy it is to deceive the people”.⁵⁰ Househam scoffed that “it never occurs to [Africans] that his methods are the methods of shrewd common sense”.⁵¹

What frequently emerges in accounts of “witch doctors” is the idea that they exercised immense power over people. This sentiment was also expressed by state officials. In 1905, the SANAC report believed that the spread of trained medical men could aid in “weaning the Natives from faith in witch doctors, diviners or soothsayers, or men who profess to have supernatural power or knowledge whether as medicine men or otherwise”.⁵² In his celebrated 1930 Rhodes Memorial lecture, Jan Smuts insisted that “witchcraft and disease” were the persistent “devils” of Africa, and pointed to “the immemorial practice of the witch doctor” as an “intolerable evil”.⁵³ “The true ruler of Africa today, as he has been for

⁴⁷ Marie Knevitt, “The Witchdoctor,” *The State*, 1912, Vol. VII, No.3 edition, p.200–201.

⁴⁸ *Ibid.*

⁴⁹ J.W. Househam, “Witch Doctors I Have Met,” *The Outspan*, May 24, 1929, Rhodes University Cory Library.

⁵⁰ Kidd, *The Essential Kafir*, p.158.

⁵¹ Househam, “Witch Doctors I Have Met.”

⁵² South African Native Affairs Commission, *Report of the Commission with Annexures and Appendices A-D, 1903-5*, ed. Godfrey Yeatman Lagden (Cape Town: Cape Times, 1905), p.54, para.277.

⁵³ General J. C. Smuts, *Africa And Some World Problems* (Oxford University Press, 1930), p.75.



thousands of years in the past,” Smuts insisted, “is the medicine man”; his power would be only shaken as “the scientific and medical aspects of mission work” were fostered.⁵⁴

Smuts was not the first to insist that Africans needed to be rescued from the clutches of the “witch doctors” – it was a sentiment that had been long and frequently espoused. An 1858 account on witchcraft written by Mr Warner, a colonial agent of the Tambookie Residency in present-day Eastern Cape, portrayed “witch doctors” as the “priests” of witchcraft – a “false religion”.⁵⁵ For Warner, these “priests” were central to the maintenance of traditional power: “The priests support the Chiefs, and the Chiefs support the priests... the two departments may be considered but one vast system of paganism”.⁵⁶ He held that both needed to be eradicated before Africans could be delivered to “civilisation”.

Humanitarian reasons were frequently espoused for why the “witch doctor” needed to be attacked. The character came to be regarded not only as trickster, and an obstacle to the spread of western medicine, but as a purveyor of violence too. The SANAC report’s principal author, Sir Godfrey Lagden, declared that “Nothing was too vile for this sinister caste to perpetrate”.⁵⁷ He expressed revulsion at the proceedings of “witch trials”, where “witch doctors ... were allowed to condemn innocent as well as guilty, both of whom they held in everlasting terror” and “innocent persons ... could be remorselessly slain”.⁵⁸ Indeed, “trials” were regarded as a primary theatre for the violence of “witch doctors”. Kidd recounted stories of women tortured to death by hot stones or being roasted alive at the behest of a “witch doctor”, which left him with “a weight of horror”.⁵⁹ Junod also outlined the various punishments which might be inflicted on confirmed *baloyi* among the Thonga: flogging, banishment, impalement or drowning. He concluded that it had a “deadly effect on Native life... a continual source of trouble, fear, quarrels, sorrow... it ruins the villages”.⁶⁰

For some, the threat that witchcraft beliefs posed was not only to the well-being of Africans. Neil Macvicar believed that such “superstitious” conceptions were pregnant with the possibility of danger of white people. “What harm is it doing or likely to do to Europeans?” he asked, “To my mind the superstitions of the natives constitutes the dangerous feature in native life... Under the influence of superstition sane men lose their judgment.”⁶¹ Notions of *muti* murder often permeated ideas about the

⁵⁴ *Ibid.*, p.52–53.

⁵⁵ John Maclean, *A Compendium of Kafir Laws & Customs* (Pretoria: State Library, 1858), p.112.

⁵⁶ *Ibid.*

⁵⁷ Sir Godfrey Lagden, *The Native Races Of The Empire* (W.Collins Sons And Company Limited., 1924), p.12.

⁵⁸ *Ibid.*, p.10–11.

⁵⁹ Kidd, *The Essential Kafir*, p.176–178.

⁶⁰ Junod, *The Life of A South Africa Tribe: Part II*, p.535.

⁶¹ Macvicar, “Native Superstition and Native Education,” p.668.

“witch doctor”. Kidd wrote about a missing white child: “there was no doubt at all but that the native stole the child to make portions of its body into bewitching medicines.”⁶² Maurice Evans, who spoke of the “witch doctor” as having the power to “command the superstitions of the people”,⁶³ recounted the “especially tragic tale” of a “little white child who was swallowed up in some mysterious way, lost among the natives and never heard of again, presumably killed by a witch doctor for *muti* otherwise unobtainable”.⁶⁴ Macvicar warned that beliefs in witchcraft could provide the impulse necessary for rebellion:

any leader who is clever enough to appeal to some deeply rooted superstition can move his hearers to acts which they would never otherwise commit... Every Kafir war had its false prophet, who professed to be able to bewitch the enemy and to impart strength to the Kafirs to overcome the Europeans.⁶⁵

One should not forget that at the time that these authors were writing, memories were still fresh of the Bambatha Rebellion of 1906. Indeed, a number of authors mention the episode explicitly.⁶⁶ Both Sean Redding and Jeff Guy note a widely held belief amongst white society that “witch doctors” had provided “battle *muti*” to the rebels before the uprising with the promise of invulnerability to attack.⁶⁷ These concerns will be touched upon again in Chapter III, when a “snuff craze” is reported by a fearful Sub-Native Commissioner in 1917.

Anthropology’s Challenge?

Prominent ideas which posited witchcraft beliefs as irrational, depraved and barbaric leftovers of the past which could simply be supplanted by the pillars of “civilization” would come to find increasing challenge from intellectuals as the twentieth century proceeded, principally from the evolving field of anthropology, which sought to understand the finer dynamics of witchcraft beliefs. As the decades progressed, understandings of witchcraft amongst intellectuals would increasingly throw off the baggage of social Darwinism and scientific racism. The decline of evolutionist perspective and the growing purchase of cultural relativism within the academy came to fundamentally change the way that witchcraft was apprehended by anthropologists in the first half of the twentieth century

⁶² Kidd, *The Essential Kafir*, p.151.

⁶³ Evans, *Black and White*, p.41.

⁶⁴ *Ibid.*, p.41; p.5.

⁶⁵ Loram, *The Education of the South African Native*, p.31.; Originally published in Macvicar, “Native Superstition and Native Education,” p.668.

⁶⁶ See, for instance, Junod, “The Theory of Witchcraft,” p.1; Maurice S Evans, *The Native Problem in Natal*. (Durban: P. Davis, 1906).

⁶⁷ James Stuart quoted in Guy, *The Maphumulo Uprising*, p.221.



Recent scholarship by anthropologists and historians has demonstrated that witchcraft is not a static package of irrational, primordial superstitions. Rather, it is a rational and shifting idiom for explaining the present which differs in structure from person to person. Ideas about witchcraft form a malleable explanatory framework which is able to respond to new challenges and moral quandaries as they arise, and evolve with them - contested but current discourses about morality, power and wealth. These authors have undermined the rigid distinction between the “traditional” and “modern” so often posited.⁶⁸ The form and content of witchcraft idioms have been constantly reconfigured throughout history as new social “evils” present themselves. Rather than being fuelled by some kind of primordial urge, authors argue that accusations of witchcraft are catalysed by material deprivation and sharpening inequality. Witchcraft beliefs are, therefore, eminently modern.

In the early years of the 20th century, however, anthropology remained beholden to the ideas of racial evolutionary thought which predominated at the time. A number of anthropologists still perpetuated the idea that witchcraft was proof of innate black irrationality and civilisational backwardness which ran contrary to the forces of modernity. Dudley Kidd, for instance, portrayed the “native” as the eternal victim of the “whim of spirits, capriciousness of monsters, and uncertainty of natural processes”.⁶⁹ He believed that these beliefs were immune to reason: “In this soil witchcraft can luxuriate, for no one is in a position to point out the absurdity of the superstitions.”⁷⁰ He reported with bemusement how Africans responded to the sight of a camera: “they usually run away when they see the lens (or eye), declaring that the white man is about to bewitch them.”⁷¹ He also drew comparisons with European conceptions of witchcraft which still apparently afflicted Africans: “Who does not instinctively think of one of the witch scenes in *Macbeth*? — Fillet of fenny, in the cauldron boil and bake, eye of newt and toe of frog...”⁷² This list, he remarked “would exactly suit South African witches”.⁷³ Nevertheless, even this “scientific

⁶⁸ See, for instance: Peter Geschiere, *The Modernity of Witchcraft: Politics and the Occult in Postcolonial Africa* (London: University Press of Virginia, 1997); Jean Comaroff and John Comaroff, “Occult Economies and the Violence of Abstraction: Notes from the South African Postcolony,” *American Ethnologist* 26, no. 4 (2000): 279–309; Jean Comaroff and John Comaroff, “Privatising the Millenium: New Protestant Ethics and the Spirits of Capitalism in Africa, and Elsewhere,” *Afrika Spectrum* 35 (2000): 293–312; Jean, Comaroff, John Comaroff, “Naturing the Nation: Aliens, Apocalypse, and the Postcolonial State,” *Social Identities* 7, no. 2 (2001): 233–65; Jean Comaroff and John Comaroff, “Alien-Nation, Zombies, Immigrants, and Millennial Capitalism,” *South Atlantic Quarterly* 101 (2002); Luise White, “The Traffic in Heads: Bodies, Borders and the Articulation of Regional Histories,” *Jsoutafristud Journal of Southern African Studies* 23, no. 2 (1997): 325–38; Isak Niehaus, “Coins for Blood and Blood for Coins: Towards a Genealogy of Sacrifice in the Transvaal Lowveld, 1930-1993,” 2011, <http://hdl.handle.net/10539/9380>; Charlanne Burke, “They Cut Segametsi Into Parts: Ritual Murder, Youth, and the Politics of Knowledge in Botswana,” *Anthropological Quarterly* 73, no. 4 (2000): 204–14.

⁶⁹ Kidd, *The Essential Kafir*, p.130.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, p.144.

⁷² *Ibid.*, p.150.

⁷³ *Ibid.*, p.151.

racist” recognised the frequent fallacy that afflicted white understandings of witchcraft: “it is quite common to hear Europeans talk of the witchdoctor as a person who uses magic for evil purposes; they seem to think that he is a sorcerer or wizard”.⁷⁴ In reality, Kidd argued, “the witchdoctor is the protector of society, and his work is to detect the worthless people who are injuring others by magical arts or sorcery”.⁷⁵

The Swiss-French missionary, Henri Alexandre Junod, wrote in 1905 that “white people, as a rule... do not understand properly what is witchcraft for the natives”, and came to advance a remarkably detailed account of “witchcraft belief” amongst the Thonga.⁷⁶ He recounted how witchcraft accusations developed, how they were often underpinned by jealousy and rivalry, and how they were prompted by suspicions of illicit wealth accumulation, by the onset of serious illness, or by sudden inexplicable deaths.⁷⁷ Junod showed how “objective proof” was sought through the “diviner”, detailing the process of divination used to confirm the presence of witchcraft and “smell out” the guilty party.⁷⁸ He made a crucial distinction between “black” and “white magic”: where the first was harnessed for causing harm, the second provided protection against such harm.⁷⁹ He did not employ the term “witch doctor”, but rather spoke of “magicians”, highlighting their multiple roles as rainmakers, exorcists, bone-throwers, and “smellers out”.⁸⁰

Junod should be credited for having brought far greater insight into the way that witchcraft featured in African life. Despite offering a comparatively sensitive account for his time, he nonetheless did not drift entirely away from sensationalist understandings of witchcraft, seeing fit to declare that witchcraft beliefs were rooted in past practices of “cannibalism” and provided proof of “the terrible hatred of which the Native mind is capable”.⁸¹ His religious sensibilities should be born in mind when reading declarations like: “Witchcraft is flourishing amongst South African heathendom more brilliantly than anywhere on earth!”⁸². And the broader intellectual context – in which ideas of social Darwinism predominated – should be remembered when reading a speech he delivered in 1920, in which he insisted that the “fundamental difference between the European and the Bantu mind” was that twentieth

⁷⁴ *Ibid.*, p.155.

⁷⁵ *Ibid.*, p.156.

⁷⁶ Junod, “The Theory of Witchcraft,” p.1.

⁷⁷ Junod, *The Life of A South Africa Tribe: Part II*, p.509–516..

⁷⁸ *Ibid.*, p.528–529.

⁷⁹ *Ibid.*, p.475.

⁸⁰ *Ibid.*, p.518.

⁸¹ *Ibid.*, p.534–535. He continued: “If some people venture to accuse members of these tribes of such awful acts as those of killing and eating human beings, it is because they know that a Native who hates would not shrink from anything to satisfy his desire of vengeance”

⁸² Junod, “The Theory of Witchcraft,” p.1.



century Europeans possessed “the scientific spirit, whilst Bantus are still plunged in the magic conception of Nature”.⁸³

In later decades, Monica Hunter Wilson provided a study of witchcraft beliefs in Pondoland which did not employ evolutionary explanations or terrifying hyperbole. Wilson showed that witchcraft had a social function: “[it was] to some extent an integrating force in the community... the danger of being ‘smelt out’ for witchcraft is a sanction for social behaviour”.⁸⁴ And contrary to the idea that Africans were caught up in a maelstrom of supernatural fears, she argued that “normal people do not live in constant terror of witchcraft or sorcery, as is sometimes maintained”.⁸⁵ She insisted that not every illness, death or accident was attributed to witchcraft. Wilson also provided substantial analysis of African “doctors”, which she divided into two main kinds: “herbalists” (*amaxwhele*) and “diviners” (*amagqira*).⁸⁶ She portrayed the tasks undertaken by herbalists as wide-ranging: treating illnesses with herbs; providing medicines to induce pregnancy; protecting against lightning.⁸⁷ Wilson’s analysis dispelled the myth that African people were all under a kind of hypnotic hold exercised by diviners. Although she was impressed by the charisma of some of the diviners she met (“their emotion infects the audience... even the ethnologist feels a compulsion to belief when in a crowded hut full of people rhythmically expressing their belief”⁸⁸), she noted that no diviner was regarded as infallible, and there existed evidence of a “critical attitude” towards them, just as one might make a distinction between a good and a lousy doctor.⁸⁹

Junod and Wilson’s work demonstrated the diversity and utility of the various metaphysical practitioners that existed in the African village. They challenged the utility of the term “witch doctor” and showed that these characters were regarded as protectors of supernatural order, not simply the villains, cheats and frauds they were often portrayed to be at the time. However, in the chapters that follow, it will be argued that this distinction – as well as the multiplicity of roles undertaken by different traditional practitioners – was largely ignored in the application of the law. Many administrators still seem to have regarded the “witch doctor” as simply a conniving charlatan.

⁸³ Quoted in Saul Dubow, “The Idea of Race in Early 20th Century South Africa: Some Preliminary Thoughts.” (presented at the African Studies Institute, University of the Witwatersrand, April 1989), p.23–24.

⁸⁴ Wilson, *Reaction to Conquest*, p.317–318.

⁸⁵ *Ibid.*, p.272.

⁸⁶ *Ibid.*, p.320.

⁸⁷ Wilson, *Reaction to Conquest*.

⁸⁸ *Ibid.*, p.345.

⁸⁹ *Ibid.*, p.347.

It is difficult to ascertain the extent to which anthropological thinking seeped into government discourse and practice. Dubow points out that an ethnological wing of the Native Affairs Department (NAD) was created in 1925-6 under G.P. Lestrade. Major Herbst, the Secretary for Native Affairs from 1923, argued that ethnology was necessary “both from the point of view of pure scientific knowledge and to serve the more practical ends of native administration”.⁹⁰ Commissions of enquiry and permanent establishments of the bureaucracy employed the concept of culture furnished by the ethnological productions of the NAD as justification for segregation. These works were underpinned by the idea that one could “know the native” and therefore “classify” him.⁹¹ And it seems that in the production of this “knowledge” evolutionary conceptions still held sway. Lestrade was a co-author of the NEC report, which, it will be remembered, in 1932 spoke of witchcraft in terms of the “dead hand of tribalism” and “dark futures”.⁹²

Conclusion

This chapter has sought to reveal some prominent discourses that encircled the “witchcraft problem”, as espoused by officials and intellectuals in the early twentieth century. It seems that not even the most sensitive writers apprehended what “witchcraft” in South Africa actually was. Junod’s deep and detailed evaluation of witchcraft only seemed to confirm his ideas of African civilisational backwardness. Dr Neil Macvicar’s lengthy experience living amidst witchcraft beliefs did not change his mind about the need to extinguish witchcraft beliefs and dissolve the power of the “witch doctor”. And Monica Hunter Wilson continued to view witchcraft as a more or less homeostatic phenomenon.

Much of what was uttered about the subject in the early twentieth century – whether by commissions of enquiry, statesmen or segregationist ideologues – advanced sensationalist condemnations of witchcraft beliefs, proving that racist evolutionary conceptions of civilisational backwardness were slow to die. Humanitarian reasons were often espoused as the motivation for trying to “stamp out” witchcraft beliefs. Ideas that witchcraft beliefs induced fear, stunted ambition, halted the spread of western medicine, provoked violence and prevented Africans from progressing along the path towards “civilisation” were voiced in many accounts. In some accounts can also be discerned fears of the perceived link between witchcraft and power, principally the power of the “witch doctor”, characterised as the embodiment of irrationality, able to exercise a “hold” over African people which could be put to dangerous uses, such as white *muti* murder or, even, a rebellion against colonial order. These writings

⁹⁰ Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919-36*, p.90.

⁹¹ Adam Ashforth, *The Politics of Official Discourse in Twentieth-Century South Africa*, Oxford Studies in African Affairs (Oxford: Clarendon Press, 1990), p.27.

⁹² Holloway et al., “Report of Native Economic Commission 1930-1932,” p.12, para.82.



demonstrate that the influence of the best available anthropological thinking at the time made very little headway in changing perceptions about witchcraft and the “witch doctor”.

Junod wrote in 1905 that “the native mind has taken a special pleasure in developing beyond all limits the wonderful fancies of witchcraft. White people have very little idea of the richness of their imagination in that domain”.⁹³ Yet it seems that when it came to ideas of “witchcraft” and the “witch doctor” – terms which featured centrally in colonial witchcraft laws – it was the imagination of some white intellectuals and statesmen which was given free rein to invent all manner of fantasies, apparently without much fear of contradiction.

In concluding this chapter, it is perhaps worth noting two aspects of belief in witchcraft that were overwhelmingly neglected by the sources cited. Firstly, none of the accounts acknowledged that the increasingly oppressive white rule of the early twentieth century not only failed to extinguish beliefs in witchcraft, but may even have played an integral role in fostering it. A number of contemporary authors argue that the government itself came to be viewed as a source of witchcraft during the early twentieth century. Redding argues that the actions of the state, including the exaction of poll and hut taxes, were perceived as forms of sorcery, even though officials rarely discerned “any direct relationship between how they were governing and the belief in witchcraft... many Africans did indeed see this threat”.⁹⁴ Timothy Lane similarly argues that the intrusive actions of the modernising state from 1900 to 1930 came to be understood in the “language of witchcraft”.⁹⁵ If these assertions are true, there is certainly no mention of it in the sources I have analysed. Of all these texts from the early twentieth century, it is only in Hunter-Wilson’s *Reaction to Conquest* that any suggestion is made that white officials were incorporated into the calculus of witchcraft. One informant is said to have remarked: “All *ubuthi* [substances used for sorcery or witchcraft] comes from Europeans. They are the real ... witches or sorcerers”... “It is the European, the Government, who *ukuthakatha*”.⁹⁶ The state’s prohibition of witchcraft trials may have helped to foster this belief. Yet the state officials and intellectuals whom I investigated regarded themselves as entirely external to the matrix of witchcraft belief.

Secondly, in attributing witchcraft as a vestige of evolutionary backwardness peculiar of the African, the figures cited above posit a rigid racialisation in belief structures which does not seem to have existed in reality. Significant evidence adduced in subsequent chapters demonstrates that, far from having “progressed beyond” such “superstitions”, some white people were convinced of the reality of witchcraft

⁹³ Junod, “The Theory of Witchcraft,” p.1.

⁹⁴ Redding, “Sorcery and Sovereignty,” 1996, p.256.

⁹⁵ Lane, “Witchcraft, Chiefs and the State,” p.125.

⁹⁶ Wilson, *Reaction to Conquest*, p.316–317.

and solicited the services of diviners on occasion. The rigid ontological distinction implied by the authors cited above between “superstitious Africans” and “enlightened Europeans” will be shown to be fundamentally false.

The investigation undertaken in this chapter has remained largely in the realm of discursive constructions about African beliefs in witchcraft, demonstrating the continuing salience of colonial cultural imperialism in the rhetoric of prominent figures around matters of witchcraft. While high-minded rhetorical proclamations and sensationalist portrayals offer little concrete evidence of how witchcraft actually came to be policed on the ground, the delineation of the “witchcraft problem” above sets the stage for the subsequent chapters in which the kind of actions undertaken to address this problem are examined. This offers a means to compare the extent to which policing on the ground fell short of the government’s stated position on witchcraft beliefs.

II

Chapter II: Witchcraft Law in Operation

29. Any person who imputes to another the use of non-natural means in causing any disease in any person or property or in causing injury to any person or property or shall name or indicate another as a wizard or witch shall be liable upon conviction to imprisonment with hard labour for a period not exceeding five years.

30. Any person who having named or indicated another as a wizard or witch shall be proved to be by habit or repute a witch doctor or witch finder shall be liable upon conviction to imprisonment for life.

31. Any person who employs or solicits any witch doctor or witch finder to name or indicate another as a wizard or witch shall be liable upon conviction to imprisonment with hard labour for one year.

32. Any person professing a knowledge of so-called witchcraft or the use of charms who shall advise any person applying to him how to bewitch or injure persons, animals or other property or who shall supply any person with the pretended means of witchcraft shall be liable to imprisonment with hard labour for a period not exceeding ten years. (The margin note labels this clause as: "witch doctor supplying advice for witchcraft with intent to injure".)

33. Any person who on the advice of a witch or of his pretended knowledge of so-called witchcraft shall with intent to injure, any person or property shall be liable upon conviction to imprisonment with hard labour for a period not exceeding ten years.

34. Any person who for purposes of gain pretends to exercise or use any kind of supernatural power, witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found shall be liable upon conviction to imprisonment with hard labour for a period not exceeding one year

-- Transvaal Witchcraft Ordinance No. 26 of 1904

Targeting the "Witch Doctor"

From the end of the nineteenth century, countries across British Africa promulgated legislation to deal with local beliefs in witchcraft. As the legal analyst, Sir Granville St. John Orde Browne noted in his survey of anti-witchcraft laws, there were some "curious discrepancies" between the laws of Britain's various colonies: "each country appears to have worked out its own salvation, and the variation in result is surprising".¹ The Kenyan witchcraft ordinance, for instance, imposed severe punishments on

¹ Sir Granville St. John Orde Browne, "Witchcraft and British Colonial Law," *Africa: Journal of the International African Institute* 8, no. 4 (1935): p.481.

“pretended witchcraft”, but only came to outlaw accusations when it was redrafted in 1925.² Richard Waller argues that this was because, in Kenya, the primary threat to colonial rule was perceived to come from “charismatic individuals... whose claims to supernatural power threatened to provide a focus for community resistance”. The terms employed in the ordinance thus aimed to rein these individuals under colonial control.³ By contrast, in some states of Central Africa, the British first punitive actions sought to suppress accusations. Waller suggests this was because mediating accusations had been perceived as a key source of royal power” – another apparent rival to white rule.⁴ Witchcraft was not punished by officials simply because it was an impediment to “progress and enlightenment”, but because it was “powerful, and in the wrong hands”.⁵ In Waller’s estimation, then, humanitarian reasons were far less determinant in the creation of laws than the desire to create docile African bodies.

In South Africa, both accusations of witchcraft and the use of “pretended witchcraft” were criminalized. Whether these prohibitions were informed by humanitarian impulses, as stated, or were rather informed by calculations of power is not certain. Yet what does appear certain is that in South African witchcraft law, the figure of the “witch doctor” came to be targeted early on. Chanock notes that, in the case of the Transkeian Penal Code, enacted in 1886 as Act No. 24 of the Colony of the Cape of Good Hope, legislators explicitly “imported sections... solely with the view to suppressing the native witch-doctor”.⁶ The Code outlawed the levelling of an accusation, the professing of “a knowledge of so-called witchcraft”, and the hiring of a “witch-doctor or witch-finder”. The heaviest penalty was, however, reserved for anyone “proved to be by habit or repute a witch-doctor or witch finder” – one years imprisonment with or without hard labour and/or flogging. This would be increased to two years by a Proclamation in 1919, after a number of magistrates voiced complaints about the inadequacy of punishment at the official Transkei Witchcraft Conference.⁷ The Transvaal Witchcraft Ordinance No. 26 of 1904 provided an even harsher punishment for convicted “witch doctors” – from all of the accounts I have read, *the* harshest in all of British Africa: they could find themselves locked away for life.

In this chapter, I investigate instances in which the law came to be applied in the colonial court room in the early twentieth century. I consider whether, in the laws application, diviners were predominantly targeted by witchcraft law. I moreover test Niehaus’ contention that the law was largely “symbolic”, and evaluate Ashforth’s suggestion that the law was only applied in cases where “popular healers emerged

² Waller, “Witchcraft and Colonial Law in Kenya,” p.262.

³ *Ibid.*, p.262.

⁴ *Ibid.*, p.262–263.

⁵ *Ibid.*, p.260–261.

⁶ Cited in Chanock, *Making of SA Legal Culture*, p.326.

⁷ SAB JUS 276, 2/474/19 Official Conference 1919: Amendment to the Transkeian Code Re. Witchcraft or Smelling out Witchcraft, 1919.



who seemed a danger to colonial order". This will be undertaken by drawing on a body of archived criminal cases from the early twentieth century.

The National Archives in Pretoria house records of cases which came before the Transvaal Supreme Court Circuit Division in the early twentieth century.⁸ Between 1910 and 1935, thirty seven cases were recorded in the criminal register of this court in which the provisions of the Witchcraft Ordinance were applied. The Supreme Court was not an appeal court, but a review court: judges reviewed the evidence collected through the "preparatory examination" conducted by local magistrates and passed sentence. According to Martin Chanock, only the most serious cases were sent up to the Supreme Court, generally at the request of the public prosecutor – roughly five percent of all cases.⁹ If it is true, as Justice Tindell suggested in the 1924 case of *R. v. Sewelo Nepawe*, that witchcraft-related cases were "coming before the [magistrates] court every day", the thirty seven cases I have isolated from the Transvaal Provincial Division (TPD) criminal case register probably represent only a tiny fraction of the cases that would have come before lower level courts.¹⁰ While magistrate's records would provide far greater scope for quantitative analysis, these 37 Supreme Court cases nonetheless provide a sense of both the kinds of scenarios which gave rise to the application of the Transvaal Witchcraft Ordinance No.26 of 1904 and the manner in which they were adjudicated.

A Smelling Out

In the case of *R. v. Zulu Madumalane*, court records indicate that sometime in April 1913, a group of people who resided at Piesanghoek near Louis Trichardt approached a "witch doctor" and asked her to divine the cause of death of a number of their family members. After receiving five shillings and a goat in payment, Zulu Madumalane allegedly threw the divining bones (what court records identified as "dolos") and indicated that an old woman of the village, Nyalalumbe, was a witch responsible for the deaths. Among the party who visited Madumalane was Radzilane, who some time later is said to have gone to Nyalalumbe's hut and "hacked her to pieces with an axe because he believed her to be a witch and had caused the death of his relatives".¹¹

Radzilane was arrested and sentenced to death by the colonial judiciary. On 28 September 1913, Zulu Madumalane was also arrested and detained in the Pietersburg prison. On 18 October, she was

⁸ The Transvaal Supreme Court was based in Pretoria but circuited through major towns across the province. The witchcraft cases I analyse were variously convened in Barberton, Bloemhof, Christiana, Ermelo, Lichtenburg, Louis Trichardt, Lydenburg, Middelburg, Nylstroom, Pietersburg, Potchefstroom, Pretoria, Rustenburg, Volksrust, Wolmaranstad and Zoutpansberg..

⁹ Chanock, *Making of SA Legal Culture*, p.118.

¹⁰ *R. v. Sewelo Nepawe*, 1924 TPD 414 At 418.

¹¹ *R. v. Zulu Madumalane*, 1914 TPD 314 at 334.

committed for trial by the local magistrate, Ernest Stubbs, and charged with contravening s.30 of the Transvaal Witchcraft Ordinance: “Zulu Madumalane... did wrongfully and unlawfully name or indicate one Nyalalumbe as a witch, she the said Zulu Madumalane being by habit or repute a witch doctor or witch finder”.

During Stubbs’ “preparatory examination” which took place over several months, the public prosecutor called eleven witnesses to the stand. Six men who claimed to have been part of the group that visited Madumalane – including Nyalalumbe’s son – testified that Madumalane was a “witch doctor” and that she had indicated Nyalalumbe as a witch.¹² Also on the stand was a “native constable” who testified to having arrested the accused “on a charge of witchcraft”. He stated that the accused had said upon arrest: “It is true that I indicated the woman as a witch, she is a witch”.¹³

Madumalane’s mother, father, sister and aunt were also called to testify, not about the details of the incident, but about Madumalane’s history of divination. Her father explained to the court that as a young girl, Madumalane had fallen ill and only recovered sixteen years later after the “spirits had communed with her and made it known to her that the only possible means of recovering her health was by becoming a Witch Doctor and having with her the influence of the bones.”¹⁴ Her other relatives similarly testified to having seen Madumalane going into a trance and throwing the bones on many occasions.

Zulu Madumalane pleaded not guilty. She was undefended during the trial and seems to have addressed the court only once: “Eleven people came to me last year, they requested me to throw the bones – I did so. From my bones I could see the woman Nyalalumbe whom I did not point out was a witch. I said:- ‘You have got a woman with you who is a witch’. I did not name or indicate her. Negudogwa replied that they had at his kraal thrown their own bones, and that they had shewn that Nyalalumbe was a witch. I did not reply.”¹⁵

When a sitting of the Pietersburg and Zoutpansberg local circuit division of the Transvaal Supreme Court convened in June 1914 under Justice Krause, the case of *R. v. Madumalane* came up for review. It was now Krause and an all white jury who would decide upon guilt. This time, only three witnesses were called to the stand: the “spokesman” for the group who had consulted Madumalane, the son of the slain Nyalalumbe, and Madumalane’s father. The first two repeated that the accused had indicated Nyalalumbe; the last once again confirmed that she had long practised as a “witch doctor”.¹⁶ The accused

¹² *Ibid.*, At 331–33; 335–337.

¹³ *Ibid.*, At 333.

¹⁴ *Ibid.*, At 337.

¹⁵ *Ibid.*, At 335.

¹⁶ *Ibid.*, At 319–320.



was again undefended, but this time she challenged the witnesses: “Did I point her out at all?”¹⁷ She had no questions for her father, however. Madumalane repeated the statement she had delivered months earlier in the magistrate’s court, this time adding: “I think they are charging me falsely, because they killed a few people at their house. It is not true”.¹⁸

The jury clearly did not agree, finding her guilty of contravening section 30 of the Witchcraft Ordinance. Justice Krause’s judgment is included in the case records:

Tell her that the jury have found her guilty, that she said that Nyalalumbe was a witch. And in consequence of her action Nyalalumbe was murdered... She knows well enough that she cannot divine and pretend to read the dolos, and the stories she told her father she knows well enough are lies. And by the alleged powers she possesses she makes profit out of the ignorance of the kaffirs. She knows that she knows only as much as the any other person, and no more, and that the dolos can tell her nothing, and what she told the people are lies. Now she is a dangerous person among the natives, and because she caused the death of a person I am going to punish her very severely, that it may be a warning to other natives who make use of the same practice. Sentence: life imprisonment.¹⁹

“The Biggest Nonsense in the World”

The case of *R. v. Zulu Madumalane* is one of the most dramatic I have pieced together from voluminous court records and testimonies stored in the National Archives. In recounting Madumalane’s case in such detail, my aim was to show the mechanics of a particular judicial engagement with a divination when they came before the court. In the Supreme Court, cases of “smelling out” appear to have been adjudicated by men who sat far above the dynamics of witchcraft beliefs, clothed in the garb of benevolent paternalism, passing sentence over matters they knew very little about. It seems that, just as so many of those authors cited in the previous chapter, the judges of the Supreme Court understandings of the cases that came before them were clouded by misconceived concepts of “witchcraft” and the “witch doctor”.

Nineteen of these cases involved charges under s.29 or s.30 of the Ordinance for pointing out “witches” or “wizards”. Witness narratives outline the same basic schema: relatives of a sick or deceased person consulted a diviner to find out the cause of illness or death; for a fee of cattle or cash, the diviner performed a divination ritual, which generally included throwing the “dolos” or “divining bones”; the

¹⁷ *Ibid.*, At 321.

¹⁸ *Ibid.*, At 321–322.

¹⁹ *Ibid.*, At 320.

diviner then pointed out a particular “witch” or “wizard”, generally by name, and was later arrested for doing so.²⁰ In all of these cases, the accused was identified as a “witch doctor”.

In his criticism of colonial witchcraft law in British Africa, Sir G. St. J Orde Browne condemned the fact that the colonial judiciary regarded “magic as merely a form of fraud, by means of which various kinds of cheat victimize or terrorise their dupes for their own nefarious purposes. No discrimination is shown between the different forms of witchcraft”.²¹ Similarly, in the Transvaal Supreme Court, judgments were marked by a stupendous absence of clarity. It was frequently declared that the law did not allow for “this kind of thing”, but judges did not care to go into the finer specifics. They frequently betrayed their profound ignorance about matters of supernatural insecurity, healing and divination, which they often indiscriminately lumped together as “witchcraft”. None, for instance, credited diviners as providing protection against witches. In *R. v. Navalwana Dusa & Levona Vilagazi*, two accused diviners were charged with “witchcraft as defined under Ordinance 26/1904”.²² Similarly, in the 1917 s.29 case of *Risenga Shabane*, Justice Bristowe declared: “Tell the accused he has been found guilty of practising witchcraft. He admits he threw the bones... he pretended to find [the cause of death of a child] by means of those bones, and that is what is meant by witchcraft.”²³ According to witness testimony, Shabane had been asked to divine the cause of death of a young girl and pointed out an old woman, Nesishembeu, as being a witch. If the learned judge’s words were translated back to Shabane accurately, they must have sounded absurd. Throwing the bones was patently not “what is meant by witchcraft”.

Just as Krause characterised Madumalane’s activities as mere pretence, most judges reduced divination to a wily charade performed by opportunists seeking to exploit the “superstitious natives” and earn livestock and cash easily. Consider this condemnation from the learned Justice Curlewis:

I know the kaffirs believe in this doctorship of yours. It is the biggest nonsense in the world that a person by throwing the dolos can tell who had killed a person... You always look out that you are paid well for it. If you went to work, you would not be able to earn money in this easy manner... I know kaffirs still believe in it; they are foolish enough to believe in it. If they only knew that the doctor knows no more than they then they would not go to him... When you come out of prison, you must stop throwing dolos. If you want sheep, or money, you must go and work for them.²⁴

²⁰ The terminology is worth noting: they appear in the transcriptions of witness testimony. Yet witnesses largely identified themselves as Xitsonga or Bavenda and would surely not have used the term “witch doctor”; rather, their testimony must have been translated into these flattened terms.

²¹ Sir Granville St. John Orde Browne, “Witchcraft and British Colonial Law,” p.484.

²² *R. v. Navalwana Dusa & Levona Vilagazi*, 1917 TPD 67 at 74.

²³ *R. v. Risenga Shabane*, 1917 TPD 188 At 190.

²⁴ *R. v. Mpaupau*, 1914 TPD 389 At 416.



Justice Cregcrowski similarly opined: “I suppose as long as people are foolish enough to believe in witchcraft there will be people who will be wise enough, or criminal enough, to make money out of them.”²⁵

Orde Browne condemned the failure of the “European official attitude” to differentiate between the figures of the witch and the diviner: “To the African, such a standpoint must be most bewildering, since it confuses the good and the bad, and regards the physician and the poisoner as equally reprehensible”.²⁶ In many of the Supreme Court cases, diviners apparently did not believe they had done anything other than their duty. In a remarkable twelve cases, the accused diviner pleaded guilty to the charge of smelling out.²⁷ The diviner Hwandhla, for instance, undefended at his trial before Bristowe in 1912, pleaded guilty to the charge under s.29. When given the chance to speak, he said: “I have nothing to say”.²⁸ He was nonetheless sentenced to six months imprisonment with hard labour. The following year, Mpaupau similarly pleaded guilty to a s.29 charge, stating: “I have nothing to say. I was asked by the two parties to make a pronouncement. I threw the bones and read them”.²⁹ A policeman testified that Mpaupau had declared upon his arrest: ““I have faith in my judgment, these two natives are wizards”.³⁰

Rasenga Shabane was unfortunate enough to be arrested once again in 1923 on another smelling out charge. Witness, Kangale Nbutala, indicated that after their group had consulted Shabane, he had expressed concern over the possibility of arrest: “when you get home you will want to get me into trouble”. The group apparently agreed: “We all said no we will not say anything about it”.³¹ Somehow, though, Shabane found himself once again before a white judge and jury. Having apparently learned of the prejudicial operation of the court room from the last experience, this time Shabane hired a lawyer, Atty Bergh. (The vast majority of those who faced charges under s.29 or s.30 were, by contrast, undefended in court). While Shabane pleaded guilty to the s.29 charge, Bergh applied for the case to be dismissed since, contrary to the wording of the law, Shabane was not “pretending” to impute witchcraft at all: “there is no evidence to show that accused himself did not believe what he told them”. Justice

²⁵ *R. v. Navalwana Dusa & Levona Vilagazi*, 1917 TPD 67 at 72.

²⁶ Sir Granville St. John Orde Browne, “Witchcraft and British Colonial Law,” p.484.

²⁷ See: *R. v. Mpaupau*, 1914 TPD 389; *R. v. Hwandhla*, 1912 TPD 371; *R. v. Mdandas Jack*, 1915 TPD 660; *R. v. Navalwana Dusa & Levona Vilagazi*, 1917 TPD 67; *R. v. Jacobus Malusi*, 1918 TPD 337; *R. v. Muhlungupi Shikwengane*, 1921 TPD 57; *R. v. Moya Kushatu Dekudeku* 1923 TPD; *R. v. Rasenga Shabane*, 1923 TPD 155; *R. v. Shingainghai Chaka*, 1924 TPD 575; *R. v. Sewelo Nepawe*, 1924 TPD 415; *R. v. Matje Ndlunu*, 1931 TPD; *R. v. Ngungwa Resemga*, 1932 TPD.

²⁸ *R. v. Hwandhla*, 1912 TPD 371, At 380.

²⁹ *R. v. Mpaupau*, 1914 TPD 389, At 412.

³⁰ *Ibid.*, At 408.

³¹ *R. v. Rasenga Shabane*, 1923 TPD 155, At 167.

Morice is noted to have “refused the application”.³² Judges, for the most part, were unable to countenance genuine belief in these kinds of supernatural powers, and simply sidestepped prickly contestation over the claimed authenticity of divination.

“By Habit or Repute a Witch Doctor or Witch Finder”

In every case, prosecutors appear to have directly asked witnesses to confirm that the accused was a “witch doctor”. Frequently, “witch doctor” paraphernalia was submitted as further evidence. In the 1914 trial of *R. v. Matsilele Tsandengoma*, charged under s.29, the various tools of the divination were produced during court proceedings: the bones the accused threw (“Exhibit A”), the root he chewed (“B”), and the sjambok he rubbed the chewed root onto (“C”).³³ In *R. v. Navalwana Dusa and Levona Vilagazi*, another s.29 case, two women were confirmed by witnesses as being witch doctors on account of their “dress”, offered as evidence in their prosecution: two anklets, three assegais, a medicine bag, jackals tails, Sakabula feathers and “headgear”.³⁴ It is not clear why this evidence was deemed necessary. After all, a s.29 charge merely required proof that an imputation had been made – the wording of the section did not specify that the accused had to be proven to be a “witch doctor”. It was only in s.30 cases, which could attract the sentence of life imprisonment, the accused had to be proved to have been “by habit or repute a witch doctor or witch finder”.

In 1927, Edgar Brookes recounted the illustration to explain “habit or repute” provided by the Cape Commission of 1883, which established the Transkeian Penal Code from which the wording of the Transvaal Ordinance was derived:

B. is employed by A., the owner of a kraal in Griqualand East, to tell him why his child C. is suffering from measles. B. accuses D. of having bewitched the child by means of a charm which D. has received from a baboon. B. is proved to be by habit and repute a witch-finder. B. is liable to imprisonment under this section.³⁵

But this primitive formulation seems to have been challenged by judges in the Transkei in subsequent decades. In the 1918 case of *R. v. Tiki*, Justice Kotze insisted that “To establish a habit there must at least be sufficient evidence to that effect... that there must be evidence that the accused is accustomed to act as such and makes ordinary and usual calling and practice of it”.³⁶ Whether this meant that the accused

³² *R. v. Rasenga Shabane*, 1923 TPD 155 at 169–170.

³³ *R. v. Matsilele Tsandengoma*, 1914 TPD 209 at 223.

³⁴ *R. v. Navalwana Dusa & Levona Vilagazi*, 1917 TPD 67 at 78.

³⁵ Edgar Harry Brookes, *The History of Native Policy in South Africa from 1830 to the Present Day*. (Pretoria: J.L. van Schaik, 1927), p.215.

³⁶ SAB JUS 276, *R. v. Tiki*, included in Official Conference: Witchcraft Amendment to Transkeian Code Re Witchcraft or Smelling out, 1919.



had to have a proven history of finding witches, or merely a reputation for being any kind of magic practitioner is not made clear. This case, along with *R. v. Tshungwana*, another 1918 case in which charges were dismissed against the accused on the same grounds, apparently prompted consternation amongst the judiciary. In a 1919 conference of Transkeian judicial officers, many called for the “habit or repute” phrase to be struck out. Justice Sampson argued that “the proving of a habit of witchcraft in the Transkei by several acts is almost an impossibility... there will be hardly ever a decision on the question of habit, because you cannot get witnesses to come forward...”.³⁷ Law advisers believed that removing the phrase would not help matters since “the evidence to prove habit and repute will be very much the evidence still required to prove that the accused is a witch or wizard” (they presumably meant “witch doctor”). Instead, a Proclamation was passed in 1919 which increased the punishment for an imputation of witchcraft from one to two years in the Transkei.³⁸

It is not clear whether judges in the Transvaal were required to follow the stipulations laid down in *R. v. Tiki*. There does seem to have been a great deal of inconsistency in deciding whether s.29 or s.30 applied, however. In many cases, s.30 was imposed upon those with previous convictions under s.29.³⁹ In the 1923 case of *R. v. Rasenga Shabane*, however, the accused had already been found guilty of the same charge three times previously, yet he was only charged under s.29.⁴⁰ In the case of Zulu Madumalane, proved “by habit or repute a witch doctor or witch finder”, none of the witness testimony proved that she had smelt out witches in the past – only that she had a history of throwing the bones, that she fell into trances, and that she was identified as a “witch doctor” – yet again a term that obscured what Madumalane’s practices actually were. It seems that a reputation as a “witch doctor” was enough to earn her a life sentence.

For all its pretences of objectivity, the adjudication of smelling out cases seems to have been undertaken with a desperate lack of rigour and an enormous degree of inconsistency. The judge does not seem to have even vaguely entertained Madumalane’s contention that she was being scapegoated by those who gave testimony before the court. She was proved to be a “witch doctor”, and that was enough to override any sense of reasonable doubt. The fact that her family was called in to testify about her long history as a “witch doctor” added cruel indignity to what must already have seemed like a farce to Madumalane.

³⁷ SAB JUS 276, Official Conference: Witchcraft Amendment to Transkeian Code Re Witchcraft or Smelling out, 1919.

³⁸ SAB JUS 276, Official Conference: Witchcraft Amendment to Transkeian Code Re Witchcraft or Smelling out, 1919.

³⁹ In the case of *R. v. Matsilele Tsandengoma* (1914 TPD 209), Justice Bristowe noted that the accused had been warned of the illegality of “witch doctoring” before. In the case of *R. v. Muhlungupi Shikwengane* (1921 TPD 57 at 59), Justice De Waal noted that the accused had “been before the court three times for the same thing”.

⁴⁰ *R. v. Rasenga Shabane*, 1923 TPD 155..

Their statements may well have been elicited to definitively prove “habit or repute” and thereby qualify her for the maximum sentence.

Brought Before the Court

In very few smelling out cases is it made clear how the matter arrived in court. In *R. v. Sugumbuli Nkosi*, for instance, three people allegedly smelt out by the accused all explicitly denied approaching the police. The smelt-out “wizard” Ponyane Maseko indicated that he had “made no complaint about the matter” and that it was only much later that “the police sent for me to come to the Gem and there took a statement”.⁴¹ Nombango Mnisi said “I am surprised the police called me as I had made no complaint”, while Stuurman Maseko said he “[didn’t] know who called in the police to investigate the case; I didn’t”.⁴² It is possible that these witnesses did not want to admit in court to having called the police on a diviner for fear of possible repercussions. In *R. v. Mdandas Jack*, for instance, a number of witnesses testified to being “afraid of the accused” because he could point them out as being witches.⁴³

It may also have been true, however, that many simply did not want to embroil themselves in the colonial legal order. In 1935, D.O. Frank Melland, who had experience of administering a similar witchcraft law in Zambia, noted that “villagers feared entrapment by the senseless legalities of the Ordinance, for their way of talking about aggression and general wrongdoing might unpredictably turn them into accused”.⁴⁴

In a number of cases, policemen appear to have taken an active role in apprehending the “witch doctors” in their areas, yet it is not certain if their actions were spurred by complaints made by locals who did not wish to be named. In some cases, however, accused witches or their family members testified to having approached the police. In *R. v. Sewelo Nepawe*, the wife and son of a smelt-out “wizard” reported the matter to the police after he had run away and apparently never returned.⁴⁵ In the 1923 case of *R. v. Rasenga Shabane*, an accused “wizard” Mgwambane Sitango filed a complaint “because Chief Netsianda took my three children and twenty goats saying that I and my mother-in law were witches and must leave his country. We left”.⁴⁶

One should be wary of projecting a rigid ontological divide which posits “believing Africans” constantly subverting the attempts of “sceptical Europeans” trying to impose their white man’s law. The reality, it

⁴¹ *R. v. Sugumbuli Nkosi*, 1923 TPD 594 at 602–603.

⁴² *Ibid.*, At 605; 610.

⁴³ *R. v. Mdandas Jack*, 1915 TPD 660 At 675; 679.

⁴⁴ Frank Hulme Melland, “Ethical and Political Aspects of African Witchcraft,” *Africa* 8 (1935): p.498.

⁴⁵ *R. v. Sewelo Nepawe*, 1924 TPD 415 at 422–433.

⁴⁶ *R. v. Rasenga Shabane*, 1923 TPD 155 at 165.



seems, was far more complex. While many Africans would probably have agreed that these judicial responses represented “the most conspicuous instance of the superimposition of the white man’s law and opinion, without any consideration of the African’s view”, as Orde Browne insisted in 1935, it appears that for a few, the law may have offered potential remedy from accusations they regarded as false.⁴⁷

It does not seem that all of those who took the stand were convinced of the diviner’s diagnosis. While a host of testimonies indicated belief that the verdict of the “smelling out” was correct, in a number of instances, witnesses testified to not believing the verdict of the diviner. Perhaps unsurprisingly, most of those alleged witches who took the stand insisted that they were wrongly accused, and sometimes registered ambivalence about the reality of witchcraft. In *R. v. Mdandas Jack*, accused witch Makoma stated: “I believe in witchcraft. I am not sure that I believe in accused [diviner]”.⁴⁸ In the same case, smelt-out Jantjie indicated: “I know nothing about witchcraft myself. I don’t think it possible to know any name without being told. I believe in the doctor for medicines but not for telling past and future events”.⁴⁹ In *R. v. Shingainghai*, witness Redonga stated: “I believe in witch doctors when they tell the truth, but the accused did not tell the truth when he said I killed [a child].”⁵⁰ It was not only accused witches who disputed the result of a smelling out in court. In *R. v. Matje Ndlunu*, for instance, a witness unrelated to alleged witch stated: “I did not believe accused... I did not believe Modiba was a wizard”.⁵¹

These witnesses may have been hiding their true thoughts for fear of attracting trouble from colonial law; on the other hand, this scepticism may have been genuine. The “critical attitude” that Wilson pointed out should be born in mind. Such an attitude was attested to by Induna Mbulwana Mkonza in *R. v. Sugumbuli Nkosi*, who insisted that “If a native doctor smelt out a native some would believe, some not.”⁵² For those who believed themselves wrongly accused, the law may have been regarded as an aid.

Humanitarian Aims or Political Calculation?

In none of the judgments could I find any explicit mention that the accused diviner was arrested out of concerns of threats to white rule. Adam Ashforth’s assumption that witchcraft laws were only employed against healers challenging colonial order does not seem to be borne out by these case records. Many judges stated that the law was being employed for humanitarian purposes: they condemned the violence that emerged over “smelling out” proceedings, and warned diviners of the disastrous consequences that

⁴⁷ Sir Granville St. John Orde Browne, “Witchcraft and British Colonial Law,” p.435.

⁴⁸ *R. v. Mdandas Jack*, 1915 TPD 660 at 678.

⁴⁹ *Ibid.*, At 677.

⁵⁰ *R. v. Shingainghai Chaka*, 1924 TPD 575 at 582..

⁵¹ *R. v. Matje Ndlunu*, 1931 TPD At 6.

⁵² *R. v. Sugumbuli Nkosi*, 1923 TPD 594 at 616.

could follow those they accused of witchcraft. This, they held, was the reason why the law could impose the onerous penalty of life imprisonment. “One can understand why the legislature provided this serious penalty in cases of this kind,” Justice Tindell stated, “You native witch doctors exercise a most pernicious influence on the minds of the natives... you point out some unfortunate native ... The next thing is that native disappears. Somebody kills that native.”⁵³ Judges frequently frame the application of the law in terms of benevolent paternalism, concerned to protect the well-being of Africans.

It is questionable whether the law was the best tool with which to advance humanitarian concerns. As has been shown, it operated in a way that often demonstrated a profound disconnection from the realities of witchcraft. But one should be wary of dismissing the cruelties that could follow accusations of witchcraft as simply a colonial fiction. It is true that, in most of these cases, no serious harm was indicated to have befallen the alleged witch.⁵⁴ In *R. v. Shingainghai*, the smelt-out “wizard” Redonga indicated: “It is not our tribal custom to do anything to the one who is pointed out as a wizard. Nothing has happened to me”.⁵⁵ But in a number of cases, accused witches apparently endured great suffering. Some were forced to flee in fear for their lives. In *R. v. Mpaupau*, for instance, accused witch Chow Chow claimed that the chief “chased me away with an axe”.⁵⁶ In *R. v. Sugumbuli Nkosi*, a white farmer, Mr Paul Dunn, involved himself in the smelling out procedure. Ponyane Maseko testified that “the master chased me away because the guesser had smelt me out ... I had a hard life after being smelt out”.⁵⁷ In the same case, another smelt-out for witchcraft, Stuurman Maseko, said: “The baas said to the missus for me to leave the farm and look for another baas ... Now none except Mblauw come near me. I don’t know what is the matter. I feel sore about it. I am old. I know nothing about ghosts”.⁵⁸ The cases of Zulu Madumalane and Matje Ndlunu are the only in which the accused witch was executed, however.

Stated humanitarian aims do not of course prove that concerns of colonial order were entirely absent from these incidents. In a broad sense, colonial rule sought to obtain the monopoly on violence – or the illusion thereof – and prevent people from administering their own forms of justice. But in the direct sense, of causing ruptures which posed a political threat to continuing colonial rule, no evidence can be distilled from the court records. In most cases we know nothing of the administrative story which

⁵³ *R. v. Sewelo Nepawe*, 1924 PD 415 at 419 See also: *R. v. Matsilele Tsandengoma*, 1914 TPD 209 at 216. *R. v. Muhlungupi Shikwengane*, 1921 TPD 57 at 59. ; *R. v. Rasenga Shabane*, 1923 TPD 155 at 157.

⁵⁴ In passing, it is worth noting that, in these Supreme Court cases, the vast majority of those smelt out were in fact men.

⁵⁵ *R. v. Shingainghai Chaka* 1924 TPD 575.

⁵⁶ *R. v. Mpaupau*, 1914 TPD 389 at 405.

⁵⁷ *R. v. Sugumbuli Nkosi*, 1923 TPD 594 at 604.

⁵⁸ *Ibid.*, p.609.



preceded the arrival of the accused in court, and it is possible that some were reined in by the law out of such concerns.

One set of archived documents which may provide some clues about the policy of colonial officials in “smelling out” cases. In 1906, the Resident Magistrate of Lydenburg wrote to the Secretary for Native Affairs (SNA) in Pretoria, W. Windham, to ask his advice about a man who had apparently had a history of “smelling out” witches in the area. “Kindly favour me with your instructions as to whether a prosecution should be instituted or not”.⁵⁹ After having conducted some inquiries, the Undersecretary for Native Affairs, G.A. Godley ordered a telegram to be sent to the Resident Magistrate of Lydenburg: “Am of opinion that the case should proceed”.⁶⁰ Along with the documents is a handwritten note: “from the statements it would appear that even if a conviction were not obtained, a prosecution would have a deterring effect upon the accused and others of his profession in the district”.⁶¹ On 10 August 1906, the DC forwarded a note to the SNA written by Sub-Inspector F.B. Hardy indicating that “the native was convicted at the local periodical court and sentenced to three months hard labour”.⁶²

This correspondence does seem to indicate that notions of deterrence were prominent in deciding whether to prosecute alleged “witch doctors”. A number of judges do seem to have been eager to make an example out of “witch doctors”. In *R. v. Mpaupau*, Justice Curlewis took the opportunity to teach a lesson: “The law for this once is that the doctorship shall be put a stop to among the kaffirs, it is the cause of much mischief amongst them... I have had the witnesses brought into the court so they could hear what I have told you. I want them to know that the law does not allow any person to practise as a doctor”.⁶³ For Krause in 1914, the trial of Madumalane presented the opportunity to “send a warning to other natives who make use of the same practice”.⁶⁴ It is unclear whether this was informed by a humanitarian concern for the well-being of Africans, or by a concern to affirm colonial power over these practitioners, characterised as charlatans and cheats. In “civilising missions”, the two are not easily disentangled.

It is noteworthy, however, that most judges chose not to impose the maximum penalties prescribed under the law, even in the case of repeat offenders. In passing judgment in 1923 for what was Rasenga

⁵⁹ SAB SNA 325, 1706/06, Letter from Resident Magistrate, Lydenburg to Secretary of Native Affairs, Pretoria, W. Windham. Forwarded statements taken by the District Commandant, Pilgrim’s Rest. 18 May 1906.

⁶⁰ SAB SNA 325, 1706/06, Handwritten Telegram Note by Undersecretary for Native Affairs, Pretoria, G.A. Godley. 8 June 1906.

⁶¹ SAB SNA 325, 1706/06, Handwritten Note by Acting Secretary for Native Affairs. June 1906.

⁶² SAB SNA 325, 1706/06, Forwarded Note of Successful Conviction, District Commandant, Pilgrims Rest to Resident Magistrate, Lydenburg,. 10 August 1906.

⁶³ *R. v. Zulu Madumalane*, 1914 TPD 314 at 323.

⁶⁴ *In R. v. Mpaupau*, 1914 TPD 389 at 416–417.

Shabane's fourth conviction under the Ordinance, Acting Justice Morice stated: "What he did in this case does not seem to have caused any great harm. So I won't give him a bigger sentence than the one that was given last time... The sentence of the court is two years imprisonment with hard labour".⁶⁵ *R. v. Zulu Madumalane* and *R. v. Matje Ndlunu* are also the only cases in which a sentence of life imprisonment was imposed. In both cases, the presiding judges made it clear that the onerous punishment of life imprisonment was being imposed because the alleged witch had been murdered. In all other cases in which a successful conviction was achieved under s.30, presiding judges not only resisted imposing life imprisonment, but they did not exceed the maximum punishment of five years stipulated under the less serious s.29 charge.⁶⁶ Many apparently decided to show restraint. Justice Bristowe told Matsilele Tsandengoma, a repeat offender convicted under s.30:

He knows that this is illegal. He has been warned of its before and he knows that it is regarded as a serious offence, and the penalty to which he is liable under the statute is life imprisonment. But I do not intend to sentence him to anything like that... he will be sentenced to four years imprisonment with hard labour.⁶⁷

In the case of *R. v. Shingainghai*, Justice Krause: "I will give him another chance... if you come before the court again it will go very hard with you; both his legs will be tied and he won't be able to go free again. This time the court will be merciful to him... He will get twelve months imprisonment with hard labour".⁶⁸ Of course, this in no way detracts from the frequently unjust operation of the colonial court. However, it does raise further questions about whether considerations of colonial order were always truly at the basis of the application of the Witchcraft Ordinance, as Ashforth suggests.

"Pretended Witchcraft" Cases: Skelms and Humbuggers

It was not only "smelling out" cases that came before the Transvaal Supreme Court. Eighteen cases were prosecuted under section 34 for the "pretended" use of "supernatural power, witchcraft, sorcery, enchantment, or conjuration". In many cases, the charge was brought against African healers who had diagnosed illnesses and prescribed remedies. But a variety of other activities attracted a s.34 charge. Philemon Ranque earned five charges under this section for diagnosing illnesses, and one for having claimed to locate the missing sheep of a certain Johannes Terblanche by throwing the "dolos".⁶⁹ In 1917, William Sebambo was charged for having sold a powder which he promised would prevent thieves from entering a room.⁷⁰ Justice Curlewis seems to have struggled to define exactly what the crime was:

⁶⁵ *R. v. Rasenga Shabane*, 1923 TPD 155 at 157.

⁶⁶ Matsilele Tsandengoma and Muhlungupi Shikwengani each received four years IHL; Jacobus Malusi and Moya Dekudeku received eighteen months; Mashapola Mapenekes received just one year.

⁶⁷ *R. v. Matsilele Tsandengoma*, 1914 TPD 209 at 218.

⁶⁸ *R. v. Shingainghai Chaka*, 1924 TPD 575 at 577.

⁶⁹ *R. v. Philemon Ranque*, 1918 TPD 448 at 451.

⁷⁰ *R. v. William Sebambo*, 1919 TPD 170 at 174..



“pretended to exercise witchcraft or conjuration and to charm property”.⁷¹ In 1918, Mganu Ndhlovu was charged for discovering and removing “bewitching” items from the huts of sick people – goats’ horns, burned sticks, human hair, locusts – for a payment of cash and livestock.⁷² In 1921, Mpokani Mundagazane was charged for divining the cause of two deaths, having told a man that “the spirits of his forefathers” had entered the bodies of his deceased daughter and sister.⁷³ Judge de Waal was vague in spelling out the crime: “she is living in a civilised country... this kind of thing the law does not allow”.⁷⁴ In 1923, Scotchman Mmatala faced two counts under s.34, one for diagnosing the illness of Johannes Mphela, the second for providing medicine to boost crop yields.⁷⁵ In 1927, William Nkobene was charged for selling a root which he promised would return lost objects to their owner when burned.⁷⁶

Adding to the amorphous, indefinite nature of the charge, in nine cases in which medicines were prescribed by the accused with the promise of curing an illness, a charge for contravening s.39 of the Medical, Dental and Pharmacy Ordinance 29 of 1904 was filed in the alternative. The Ordinance outlawed the undertaking of “acts specially belonging to the calling of a general medical practitioner” – a clause which would be reinscribed in 1928 by s.34(a) of Law 13. It seems that the judiciary was not quite certain how to deal with scenarios of “supernatural” healing, forced to undertake intellectual somersaults across the boundary between “legitimate” medical practice and the “pretence” of supernatural powers. There seems to have been little consistency in deciding which of these charges applied. In the case of *R. v. Philemon Ranque*, the accused received a charge under s.34 and one under s.39 in the alternative: the former for having determined the cause of Simunka Utito’s illness through the bones, the second for having prescribed a remedy to her.⁷⁷ But while the accused in *R. v. William Comette* had similarly diagnosed an ailment and provided medicine for it, the incident only attracted a charge under the Medical Ordinance.⁷⁸ By contrast, Andries Motojanie allegedly divined the cause of illness and administered a “certain liquid” on six separate occasions, but was only charged under the Witchcraft Ordinance.⁷⁹ It seems that, in many cases, the judiciary was far from certain about what the accused had exactly done wrong.

⁷¹ *Ibid.*, At 178.

⁷² *R. v. Mganu Ndhlovu* 1918 TPD 100.

⁷³ *R. v. Mpokani Mdungazane* 1921 TPD 19.

⁷⁴ *Ibid.*, At 21.

⁷⁵ *R. v. Scotchman Mmatala*, 1929 TPD Unnumbered.

⁷⁶ *R. v. William Nkobene*, 1927 TPD Unnumbered.

⁷⁷ *R. v. Philemon Ranque*, 1918 TPD 448 at 459.

⁷⁸ *R. v. William Comette*, 1927 TPD Unnumbered.

⁷⁹ *R. v. Andries Motojanie*, 1928 TPD Unnumbered.

Ashforth notes that under the various witchcraft laws, divination was outlawed – a practice that forms “the heart of healing in Africa”. Thus, all forms of healing were effectively outlawed by anti-witchcraft law, including the Transvaal Ordinance.⁸⁰ The Witchcraft and Medicine Ordinance appears to have been an alternative or supplementary tool for clamping down on healers. Ashforth notes further that he has “been unable to find accounts of the prosecution of healers for contravening this legislation. No doubt healers have been targeted from time to time in various districts of South Africa, probably where their activities intruded into political matters of complicated the everyday activities of white administrators”.⁸¹ Yet in the cases I have sourced, this claim is not so clearly borne out – none of their activities appear to have been especially threatening to white administrators. In a number of cases, it was those who had felt deceived by the accused – among them, a number of African people – rather than concerned officials who called in the police.⁸²

A series of letters from 1911 does, however, seem to show that there is some truth to Ashforth’s contention. On 15th August, the Resident Magistrate of Piet Retief, W.F. Peachey, wrote to Edward Dower, the Secretary for Native Affairs in Pretoria, about the case of *R. v. Sipata*.⁸³ The accused diviner had been charged under s.34 for having administered medicine for “preventing the effect of lightning” over a period of eight years, but he also received a charge in the alternative under s.39 of the Medical Ordinance. The magistrate wrote “I have served in several districts in the Transvaal but have never heard of this Law being put into force against natives”, and inquired as to whether the Ordinance applied since “a number of prosecutions may be expected and many innocent persons are bound to suffer unmerited punishment”.⁸⁴ Dower wrote to the Secretary for Justice to ask for advice: “I beg to state that it has not been considered desirable in the past to interfere with the activities of Native Witch Doctors... so long as their actions do not become mischievous or result in injurious consequences to individuals or are likely to create disturbances”.⁸⁵ He also submitted thoughts to Henry Burton, the Minister of Native Affairs, arguing that the practise of the Transkei should prevail in the Transvaal:

⁸⁰ Ashforth, *Witchcraft, Violence, Democracy*, p.286.

⁸¹ *Ibid.*

⁸² In *R. v. David Mlofuso* (1922 TPD 460 at 490), for instance, Solomon Kumalo stated that he reported Mlofuso to the police because he had apparently failed to remove the cause of illness in Kumalo’s family as promised: “the devil had not been cleared. Accused told me he had a licence to practice medicine. I did not think he had a licence to kill spooks”

⁸³ SAB NTS 9465, 4321/F.1079, Letter from W.F. Peachey, Resident Magistrate, Piet Retief, to Edward Dower, Secretary for Native Affairs Pretoria, Forwarded Copy of *Rex v. Sipata*, 15th August 1911.

This case was not listed in the TPD criminal registers I examined.

⁸⁴ SAB NTS 9465, 4321/F.1079, Letter from W.F. Peachey, Resident Magistrate, Piet Retief, to Edward Dower, Secretary for Native Affairs Pretoria, Forwarded Copy of *Rex v. Sipata*, 15th August 1911.

⁸⁵ SAB NTS 9465, 4321/F.1079, Letter from Edward Dower, Secretary for Native Affairs, Pretoria, to Secretary for Justice, Pretoria, 7 September 1911.



It is considered inequitable to endeavour to deprive Natives in Native areas of the services of their own practitioners many of whose native remedies are beneficial to their patients... [In the Transkei] Native doctors and herbalists [are] not be prosecuted for the act of practising although they remain liable under the General Criminal Law for the result of their actions and [are] unable to sue for payment of their fees... I would recommend this policy... I am not in favour of the Natal policy of recognition by a system of licences which does not appear to offer any guarantee of efficiency or check on chicanery.⁸⁶

Burton wrote a note of agreement: “This is an extremely difficult matter to deal with fairly, reasonably and without anomalous results... these practitioners should be winked at when there are no proper qualified medical men available but not otherwise. How to draw the line? ... I agree with the view adopted in this memo”.⁸⁷ Burton expressed these thoughts to the Minister of Justice on the 9th October, and received the following reply: “While there is no doubt that s.39 of Ordinance 29 of 1904 is applicable to all persons whether black or white, he quite agrees that prosecutions against natives should not be instituted as a rule... public prosecutors should consult him in particular cases as they arise”.⁸⁸

Officials of the NAD and the Justice Department seem to have agreed that it was sometimes better to “wink” at healers than apply the Medical Ordinance uniformly. It does seem that Ashforth is correct, therefore, in attributing concerns about public “disturbances” as sometimes motivating the prosecution of healers, but Dower’s concern for “injurious consequences to individuals” should also be acknowledged. It is not clear whether this policy persisted throughout the decades, but if it did, this would seem to indicate that officials did indeed prefer to turn a blind eye when it came to the activities of “witch doctors” – although we cannot ascertain whether the same held true for cases of “smelling out”.

In the s.34 cases I have sourced, it is not clear whether humanitarian impulses or concerns of law and order served as primary motives for prosecution. Like the smelling out cases, the circumstances by which these cases came before the court is not always made clear. But where it is, the prospect of “disturbances” does not seem to have featured at all. Most seem to have involved cases of personal harm. In *R. v. David Mlofuso*, Solomon Kumalo stated that he reported Mlofuso to the police because he had apparently failed to remove the cause of illness in Kumalo’s family as promised: “the devil had not been cleared. Accused told me he had a licence to practice medicine. I did not think he had a licence to kill

⁸⁶ SAB NTS 9465, 4321/F.1079, Letter from Edward Dower, Secretary for Native Affairs, to Henry Burton, Minister of Native Affairs, Pretoria entitled “Doctors and Herbalists – Practising of”, including hand-written note by Burton, 3 October 1911.

⁸⁷ SAB NTS 9465, 4321/F.1079, Letter from Edward Dower, Secretary for Native Affairs, to Henry Burton, Minister of Native Affairs, Pretoria entitled “Doctors and Herbalists – Practising of”, including hand-written note by Burton, 3 October 1911.

⁸⁸ SAB NTS 9465, 4321/F.1079, Letter from Secretary for Justice, Pretoria, to Edward Dower, Secretary for Native Affairs, Pretoria, 4 November 1911.

spooks”.⁸⁹ This case record is the only one I could find in which the police were called in due to a failure on the part of the healer to actually heal.

In a number of other cases, the accused was reported to the police for other crimes, and only subsequently came to be charged under s.34. For instance, Dumazi Ngwanamanuga was not initially arrested for “pretended witchcraft”, but rather culpable homicide. He had rubbed an unknown concoction on a woman with the promise of pregnancy, but she became sick and died shortly after.⁹⁰ Her husband testified to having “arrested accused and reported to the police... my wife was a young healthy woman before this”.⁹¹ But since the powder was meant to “break the spell of witchcraft” which he believed was preventing the woman from falling pregnant, and was administered with “the beating of drums and the killing of a goat”, Ngwanamanuga was charged in the alternative of contravening s.34.⁹² In 1927, William Nkobene was initially arrested after he had allegedly attempted to rape a twelve year old girl. The mother, whom Nkobene had been treating, made it clear why she had called the police: “I had accepted you for a doctor. I complained about your treatment of my child, not about your doctoring me”. Yet it was for doctoring, not the alleged rape, that Nkobene would ultimately serve 18 months in prison: he was found guilty of four charges under s.34 for having prescribed various liquids, powders, roots and snake skins to cure people of their ailments. In 1933, William Mohale was arrested for having stolen a tin of lard on one occasion, and suitcases, clothes, quilts and razor blades on another.⁹³ Jon Sekudu, who had called the police after the loss of his two ties and a shirt, provided testimony which justified an additional charge under s.34: “he said he would give me medicines that my baas would raise my wages... he also gave me medicine that I could fight well and put some black ointment in my wristbands... to make me strong... My baas did not raise my wages and I could not fight better. The others beat me.”⁹⁴

In many cases, witnesses identified the accused as “liars” and “thieves”. But in some cases, witnesses testified to the efficacy of the treatments they received. This was not countenanced by the judges, however. For instance, despite a witness’ insistence that Scotchman Mmatale’s “medicine cured me”, Justice Krause condemned him as “a skelm, because you cannot cure people, and you humbug them with your so-called medicine... “If you keep committing these offences we shall have to tie you up.”⁹⁵ In the

⁸⁹ *R. v. David Mlofuso*, 1922 TPD 860 at 890.

⁹⁰ *R. v. Dumazi Ngwanamanuga*, 1917 TPD 271 at 283.

⁹¹ *Ibid.*, p.286.

⁹² *Ibid.*, At 271.

⁹³ *R. v. William Mohale*, 1933 TPD Unnumbered.

⁹⁴ *Ibid.*

⁹⁵ *R. v. Scotchman Mmatale*, (1929 TPD Unnumbered); Also, in the case of *R. v. William Nkobene*, (1927 TPD Unnumbered) a woman testified that the treatment of black powders had made her daughter “quite well again”, and another claimed that his “bottle with watery medicine” had cured her of heart disease”. But Justice Tindell nevertheless declared, “You pretended that you used supernatural powers, and you doctored these people and got



judgments of the Supreme Court, the accused are all tarred with the same brush, portrayed as tricksters and swindlers. But none are characterised as agitators. I was not able to find evidence in any of these cases which suggest that the accused even remotely posed a political threat.

In two cases, charges under s.34 were instituted against fortune tellers. In 1912, Hadjee Jackson – described as a “Malay Male” – received four counts of contravening s.34: one count for having diagnosed the cause of Martha Catherine van Staden’s illness through dealing cards and burning powders; another for having allegedly rubbed powder into the forehead of Gert Pieter Henderson, encouraging him to inhale smoke, and selling him charms to both win boxing matches and ensure success “in all his love affairs”; and two for having told the fortunes of two others.⁹⁶ Achimuthoo – an “Asiatic male” – was another unfortunate fortune teller imprisoned for his trade.⁹⁷

The law’s apparent prohibition of fortune tellers seems to have raised some concern amongst “spiritualistic mediums” in Johannesburg. In September 1906, two years after the Witchcraft Ordinance had been passed, G.O. Griffiths from Germiston wrote to the Attorney General of the Transvaal to inquire about the interpretation of the law “relating to witchcraft”:

There are today very many Spiritualists in the Transvaal, some of the principal tenets of their belief and practice is ‘communion between spirits in the body and spirits out of the body’... I recently heard of one recognised medium being visited by a person with the intention of playing a ‘trap’ under section 34 of the Ordinance. I presume he is a member of the Detective force commissioned by someone to undertake such work. If this is a correct conclusion, it is very hard that people who are honest in their convictions, should have the most sacred portion of their religious observance submitted to the inquisition of obscene and irreligious persons. I would feel extremely obliged if you will inform me how the law looks upon the mediums.⁹⁸

The reply from the Attorney General’s secretary did not help clear up this issue of interpretation: “I am directed to refer you to your own Legal adviser as the Attorney-General cannot advise members of the public on points of law”.⁹⁹ Both Hadjee Jackson and Achimuthoo received charges under s.34 as well as the Medical Ordinance, indicating that perhaps fortune tellers who did not also diagnose illnesses and prescribe remedies were left alone, although this is not certain.

money from it, and did them no good”. The judge offered a word of fatherly wisdom: “I advise in future to do some honest work”.

⁹⁶ *R. v. Hadjee Jackson*, 1912 TPD 98 at 100.

⁹⁷ *R. v. Achimuthoo* (1922 TPD 535); *R. v. Appana Gurana* (1922 TPD 176).

⁹⁸ SAB LD 3988/06/134, Letter from G.O. Griffiths to Attorney General, Interpretation of Witchcraft Ordinance Re: Spiritualistic Mediums, 6 September 1906.

⁹⁹ SAB LD 3988/06/134, Letter from Attorney-General’s Office to G.O. Griffiths, Interpretation of Witchcraft Ordinance Re: Spiritualistic Mediums, 18 September 1906.

As the Minister of Justice indicated to SNA Dower, the law does seem to have applied to “all persons whether white or black”. Two white males were also charged with “pretended witchcraft”. In the 1921 case of *R. v. Michael Petrus Adriaan Oberholzer*, the accused was revealed to have duped a number of sick people into believing that he could detect bewitchment and source medicine to remove it.¹⁰⁰ In one instance, Oberholzer is said to have performed a dramatic ritual to diagnose what ailed a farmer’s wife: he inverted his pockets, covered himself with water, shook ecstatically and declared finally “I’ve got him!”. Oberholzer told the farmer that his wife had been bewitched by a servant. For the princely fee of £60, he sent the farmer a bottle of “medicine” from Johannesburg. The farmer testified that it did his wife “more harm than good” and called the police.¹⁰¹ The accused admitted before the Supreme Court that he was a con artist: “[Oberholzer] has come out and sworn that he does not believe in this very thing” declared Justice Stratford.¹⁰²

In the 1929 case of *R. v. James Smith*, the accused was charged under s.34 for his various exploits around the Transvaal. He is said to have consulted a “little book” to diagnose the cause of a number of white people’s illness. In the incidents described in court testimony, Smith invariably discerned “bewitchment” as the cause, promised to return with a cure, received payment and never returned.¹⁰³ He performed a similar disappearing act after having claimed that he could divine where a digger’s money was buried for the price of £4.¹⁰⁴ Justice Krause berated Smith for having taken advantage of “poor people, people who are really superstitious, people with whom you can do as you like”.¹⁰⁵

Smith and Oberholzer, were apparently able to convince a great many white people that they had been bewitched, and they handed over substantial amounts of money in the hopes of obtaining a cure. These cases reveal the fallacy of characterising belief in witchcraft as an “African superstition”. There are a number of indications that white people consulted diviners on occasion. In a letter entitled “Barbarism Competing with Civilisation”, Israel Mbono wrote to Chief Native Commissioner of Johannesburg, warning him of “a number of Europeans who visit native ‘Witch doctors’ by night and take them in their cars to their homes to trace out their troubles and allow them to doctor them, which is a great danger to white people”.¹⁰⁶ In *R. v. Navalwana Dusa and Levona Vilagazi*, a white family is noted to have requested the use of the divining talents of the two accused to ascertain the whereabouts of their missing

¹⁰⁰ *R. v. Michael Petrus Adriaan Oberholzer*, p.289–290. (1921 TPD 242).

¹⁰¹ *Ibid.*, 277–284.

¹⁰² *Ibid.*, At 245.

¹⁰³ *R. v. James Smith*, (1929 TPD Unnumbered).

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ SAB NTS 9465, 19/362, Letter from Israel Mbono B.A.C entitled “Barbarism Competing with Civilisation”, to Chief Native Commissioner, Johannesburg, 19 February 1938.



livestock.¹⁰⁷ In a number of instances, white farmers were involved in “smelling out” procedures. In *R. v. Sugumbuli Nkosi*, it was allegedly a white farmer, Mr Paul Dunn, who had called on Nkosi to perform divination to discover who was bewitching his labourers. The procedure was performed just beyond Dunn’s stoep, and he is alleged to have instructed the participants to clap rhythmically, as he did himself.¹⁰⁸

In the cases of Smith and Oberholzer, there does seem to have been a distinct racial bias in their sentencing, however. David Mlofuso, found guilty in 1922 of only one count under s.34, received a year’s prison sentence; Oberholzer, found guilty of three counts in 1921, received just two months. Both Andries Motojanie and Smith were found guilty of six charges; Motojanie was sentenced to three years in prison, while Smith received just six months.

There seems to have been great inconsistency in sentencing generally. On a few occasions, the maximum sentence of one year imprisonment with hard labour was imposed. Acting Justice Jeppe, for instance, intimated that, to his “regret”, he could impose no more than one year imprisonment “and I cannot add lashes”.¹⁰⁹ When the accused was found guilty of multiple charges under section 34, they did generally spend more time in prison. William Nkobene, for instance, received 18 months in prison for his four counts.¹¹⁰ Previous convictions also played a role in determining sentence.¹¹¹ Justice Barry made it clear that William Mokwena would receive the maximum sentence because he had spent three months in prison for three previous charges. He urged Mokwena to “leave this witch doctoring alone”.¹¹²

A number of judges chose not to impose the maximum penalty, deciding to be “merciful”. In sentencing William Sebambo to six months imprisonment, for instance, Curlewis J stated: “I have made up my mind to give you one more chance. The crimes on which you have now been convicted are not serious in their nature as far as injury to the natives is concerned”.¹¹³ William Comette received just four months imprisonment for a charge under s.34. Of all the sentences, Justice De Wet imposed the most lenient: William Mohale received just fourteen days in prison for having sold medicine to improve the fighting

¹⁰⁷ *R. v. Navalwana Dusa & Levona Vilagazi*, (1917 TPD 67 at 70–73).

¹⁰⁸ *R. v. Sugumbuli Nkosi*, (1923 TPD 594 at 596)

¹⁰⁹ *R. v. David Mlofuso*, (1922 TPD 860 at 863).

¹¹⁰ *R. v. William Nkobene*, (1927 TPD Unnumbered).

¹¹¹ Justice de Waal sentenced Mpokani Mundagazane to the full year because she had been found guilty of the same charge on four previous occasions in the case of *R. v. Mpokani Mdungazane* (1921 TPD 19 at 21).

¹¹² *R. v. William Mokwena*, (1929 TPD Unnumbered).

¹¹³ *R. v. William Sebambo* (1919 TPD 170 at 172).

abilities of a boxer, although he also received two years on the charge of theft.¹¹⁴ Again, if the accused posed serious threats to colonial order, there is no mention of it in the court records.

Conclusion:

This investigation into the 37 cases charged under the Transvaal Witchcraft Ordinance No. 26 of 1904 has revealed that the law was, in most cases, a blunt and blind instrument. Both its formulation and its application suffered from an acute absence of definition. The fact that diviners, herbalists, soothsayers, fortune tellers and self-professed con-artists were all incarcerated under the same law testifies to the woeful inconsistency and irregularity that plagued the operation of the Witchcraft Ordinance. The vast majority of judges in these Supreme Court cases demonstrated downright ignorance about the nature of beliefs of those who came before their court, summarily writing them off as superstitious nonsense, blinded to the complex dynamics of supernatural beliefs by a conceited sense of “rationalism” and “benevolent paternalism”.

Contrary to Niehaus’ suggestion that the law was merely “symbolic”, the case records show that it was employed on numerous occasions to apprehend a wide range of characters. The s.34 cases demonstrate that it was not only so-called “witch doctors” who were imprisoned under the law, nor that it was only Africans who came to feel its effects. Nonetheless, there does undoubtedly seem to have been a bias against these figures in the operation of the law, as Chanock’s findings suggest. This seems to be further confirmed by the fact that, while the Ordinance also outlawed the employment of a “witch doctor or witch finder” under s.31, no cases seem to have been prosecuted under this charge. Had this charge been put into force, most of those who testified in these trials could have been imprisoned. The courts would have had to arrest crowds of people at a time, people whose testimony the prosecution needed to prove cases against “witch doctors”.

In the encounter between judge and diviner in the colonial courtroom, the dramatic imbalance of power was demonstrated with what must have frequently been apprehended as an immense injustice by the accused, sentenced to prison for a crime they may not have regarded as such. A great many diviners pleaded guilty to the charge of “smelling out”. But while the application of colonial witchcraft law in these Supreme Court cases does seem to have been undertaken frequently with a great deal of blindness to the dynamics of witchcraft belief, records also indicate that it did not always simply amount to an unwelcome imposition of “white man’s law”. In some s.34 cases, the accused was quite obviously a criminal. And in some smelling out cases, it seems that Africans themselves called on the law to protect them from allegations of witchcraft they regarded as false. The law seems to have entered into local dynamics in a variety of ways, sometimes as an intrusive and unwelcome imposition, sometimes as a

¹¹⁴ *R. v. William Mohale*, (1933 TPD Unnumbered).



tool that Africans called upon – although, perhaps, the results of this appeal to colonial law may not always have been what they predicted.

There is some indication that some judges had more nuanced understandings of witchcraft beliefs – although they constituted a tiny minority. One judgment in a smelling out case from 1931 stands out for its relative sensitivity. In *R. v. Matje Ndlunu*, the accused allegedly pointed out a young man as the “wizard” who had “sent lightning” to kill his younger brother. The young man was then murdered with an axe by his own mother and sister, both of whom were subsequently hanged.¹¹⁵ This is the only other case besides *R. v. Zulu Madumalane* in which someone was executed after having been smelt out. During the trial, the father of the deceased testified that he did not think that Ndlunu, who lived some distance away, knew that “by native custom, such a man is killed”.¹¹⁶ Ndlunu pleaded guilty to the charge under s.30, and issued no statement in his defence.¹¹⁷ In passing sentence, Justice Barry stated:

What the custom is in the tribe to which the accused became attached is not clear. It may have been either killing or banishment. I think the accused should have known what the custom of the tribe was, and, if it was not his intention to have the deceased killed, he should have indicated the nature of the punishment. The consequence [of] his decision was appalling: the deceased was chopped to death by two of his female relatives. These two unfortunate women who carried out his orders were sentenced to death at the last Circuit. In these circumstances the Court must take a very serious view of the case... The sentence of the court is that he be imprisoned for life¹¹⁸

Both Krause and Barry sentenced the accused diviner to life imprisonment. Nevertheless, there are some distinct differences in their statements. Compared to the judgment of Krause in the case of *Zulu Madumalane* 17 years earlier, Barry’s judgment shows greater understanding of the process of smelling out, which he portrays as a routine part of “tribal life”, acknowledging that it was a “custom that prevailed in the tribe” rather than simply an act of dupery by individual opportunists. For Krause in 1914, the trial of *Madumalane* presented the opportunity to “send a warning to other natives who make use of the same practice”.¹¹⁹ Barry, by contrast, seems to have used the opportunity not to condemn divination wholesale, but to warn that more care needed to be taken when diviners delivered their diagnosis so as to avoid witch killings. Perhaps Barry was exceptional, and ignorant condemnations like those advanced by Krause continued to predominate Supreme Court judgments. But perhaps Supreme Court judges had become more sensitive to the dynamics of “witch smelling” as the decades progressed. The last case I found in the available registers, *R. v. Mohale*, includes the only judgment in which doubts are raised as to the wisdom of the Witchcraft Ordinance: “the legislature wants to stop the practice of

¹¹⁵ *R. v. Matje Ndlunu*, (1931 TPD Unnumbered).

¹¹⁶ *Ibid.*, At 4.

¹¹⁷ *R. v. Matje Ndlunu*, (1931 TPD Unnumbered).

¹¹⁸ *Ibid.*

¹¹⁹ *R. v. Zulu Madumalane*, (1914 TPD 313 at 323).

bone-throwing,” stated Justice de Wet, “Rightly or wrongly, they want it to stop.”¹²⁰ It is impossible to determine whether these doubts became more widespread or even deepened as the decades progressed, as Waller and Fields note of judges, magistrates and District Officers in central Africa.

In the court records, I could find no evidence to support Ashforth’s contention that the law was employed in these cases out of fears for the stability of colonial order. Although judges’ understandings of witchcraft dynamics were shown to be often gravely misinformed, they espoused humanitarian reasons for the application of the law, and many judges chose to exercise leniency. While considerations of public order and the threat of disturbances were not always explicitly mentioned in the court room, however, archival documents do lead us to believe that, in some cases, such concerns brought the trial to the court in the first place. Archival correspondence which details the “back stories” of the s.29 case of Matlotlomana, and the s.34 case of *R. v. Sipata* indicate that notions of public “disturbances” and “deterrence” may have featured in calculations about whether to impose the Witchcraft Ordinance in the first place. In very few of the cases of the Supreme Court are we provided with such “back stories”, and it is indeed possible that local magistrates may have perceived threats to local colonial rule when they decided to have the accused arrested. In the chapter that follows, however, greater context is provided of instances in which the law came to be applied. It is demonstrated that considerations of colonial order could feature acutely in the way that witchcraft beliefs were managed by local officials in the early twentieth century.

¹²⁰ *R. v. William Mohale*, (1933 TPD Unnumbered).

III

“While the sea of history remains calm, the ruler-administrator in his frail bark, holding on with a boat-hook to the ship of the people, and himself moving, naturally imagines that his efforts move the ship he is holding on to. But as soon as a storm arises and the sea begins to heave and the ship to move, such a delusion is no longer possible. The ship moves independently with its own enormous motion, the boat-hook no longer reaches the moving vessel, and suddenly the administrator, instead of appearing a ruler and a source of power, becomes an insignificant, useless, feeble man”

- D.A. Low quoted in Fields, 1982, p.580.

Chapter III: Witchcraft Management

In *R. v. Shinghainghai*, Justice Krause gave the accused some advice: “If the people come to him again to throw the dol-os, then he must say: ‘Look, the law is stronger than I am – the law is my master; and if I throw the dol-os the law will beat me’”.¹ It was perhaps easy for these high-minded justices of the Supreme Court to advance such claims – as they circuted through the Transvaal, they would have remained largely disconnected from the complexities of colonial rule at the “grassroots” and the dynamics of beliefs in the supernatural. It was the lower level magistrates and Native Commissioners, those tasked with ensuring the preservation of colonial rule in the far flung regions of the South African countryside in the early twentieth century, for whom beliefs in witchcraft posed some perplexing problems for which there were no ready answers. For these men, the supposed “mastery” of the law must have seemed far more illusory than it was for the learned Justice Krause.

In this Chapter, I descend from the level of the Transvaal Supreme Court to investigate the kinds of challenges faced by magistrates and Native Commissioners in matters of the supernatural on the “frontlines” of colonial rule in the Transvaal. I examine a string of archived Native Affairs Department (NAD) correspondence which suggests that, for the local representatives of colonial rule, deciding how to deal with matters of that which was perceived as “witchcraft” was sometimes a matter of pragmatic calculation in the face of a great deal of uncertainty. The centrepiece of the discussion takes the form of a 1917 “snuff craze” that confronted a baffled Sub-Native Commissioner of Barberton – a case study which demonstrates something of the difficulty that local colonial officials experienced in trying to police so-called “native superstitions” and maintain what was often little more than the illusion of colonial power in remote regions of the South African countryside. These officials could expect little by way of active assistance from their superiors at the NAD, a notoriously weak, poorly administered and

¹ *R. v. Shinghainghai Chaka*, (1924 TPD 575 at 577).

ill-resourced department, situated far from the “frontlines” of colonial rule. While the Transvaal Witchcraft Ordinance was sometimes called into effect, it by no means conclusively solved the problems facing these isolated officials. It seems that the boastful aims of civilising rhetoric were rather harder to achieve in reality. For these “men on the spot”, witchcraft beliefs raised questions for which there were apparently no ready or permanent answers.

Snuff, Superstition and Insurrection

Over the course of 1917, the SNC of the Barberton district, Guy Dudley Wheelwright, noted increasing alarm at the sale of snuff to African villagers by men from “the Portuguese territory” – present-day Mozambique. In a telegram to SNA Barrett on 19 March, Wheelwright indicated that:

after several attempts managed to arrest a Portuguese Native who had been administering a form of snuff to Natives in this district which snuff is claimed to have the power of making Natives immune against death from all causes. As there are several chiefs concerned Wheelwright wishes to see you as from Friday 30 Instant. I have no political fears from result of snuff already administered.²

Ideas about “invulnerability *muti*” have a long history in South Africa. Julie Wells recounts the frequently espoused myth about the 1819 battle for Grahamstown and Chief Makana’s alleged doctoring of his troops with promises that the bullets of the British would “turn to water”. Wells argues that the allegation stemmed from the work of Thomas Pringle in 1827, which laid the foundation for viewing the Xhosa chief and *inyanga* as “acting out of religious superstition” and “stretches the bounds of credibility”. Like so many other frontier myths, she argues, the “bullets-to-water” narrative served to obscure the “central issue of the conquest of Xhosa land”.³ Stories about African “war doctoring” lingered through the subsequent decades. Redding and Guy both note its salience in the 1906 Bambatha Rebellion. Redding notes that the Natal colonial official, James Stuart, wrote more than once of the recurring rumour that “bullets fired at Natives by Europeans would not ‘enter’”.⁴ Jeff Guy quotes Stuart’s warning of 1906: “there is no act, passive in its nature, which a Native can commit that betrays hostile intentions more plainly than being doctored for war. Once such ceremonies are held, all that remains is to await the signal for a simultaneous rising”.⁵ While Guy notes that strengthening rituals were sometimes

² SAB NTS 9465, 516/14/17, Telegram from Sub-Native Commissioner G.D. Wheelwright, Barberton (Hereafter “SNC Barberton”) to Secretary for Native Affairs Edward Barrett, Pretoria (Hereafter “SNA Pretoria”), 19 March 1917.

³ Julia C. Wells, *The Return of Makhanda: Exploring the Legend*, Thinking Africa (Scottsville: University of KwaZulu-Natal Press, 2012), p.54–55.

⁴ James Stuart in Redding, “A Blood-Stained Tax,” p.46.

⁵ James Stuart quoted in Guy, *The Maphumulo Uprising*, p.221.



performed by Zulu doctors before battle, he points to an “overwhelming tendency” on the part of officials like Stuart to reduce all rituals to “war-doctoring”, betraying a deep sense of paranoia.⁶

It seems that the potency of myths about war *muti* and “murderous frenzies” did not completely dissolve over the course of the twentieth century. Dr. Neil Macvicar’s ominous words from 1909 may have had considerable purchase in the context of what was oftentimes perceived as precarious white rule: “Every Kafir war had its false prophet, who professed to be able to bewitch the enemy and to impart strength to the Kafirs to overcome the Europeans”.⁷ In 1915, C.T. Loram held that when it came to “black peril outrages”, the “chief predisposing causes are the barbarism and superstition of the Native people”.⁸ A letter sent by the Chief Magistrate of Tembuland to the Regional Magistrate in Tsolo in July 1931, for instance, included a copy of an extract from the *Kaffrarian Watchmen* dated 26 September 1881, which described how rebel leaders in the Transkei rebellion believed “doctoring” weapons could make their troops impervious to gunfire.⁹ The fact that this article was deemed pertinent enough to warrant being sent to the Magistrate fifty years after its initial publication indicates continuing official anxiety about the potential disturbances that African “superstitions” could invoke. The notion of “superstitious uprisings” was raised as late as 1957, during the House of Assembly debates that took place around the Suppression of Witchcraft Act, for instance, a number of speakers voiced concern of the potential for “superstitious beliefs” to lead to uprising. Dr. D.L. Smit of the United Party, for instance, reminded legislators of the “the famous wizard Makana” who made assurances to his troops that “the white man’s bullets would be turned aside”.¹⁰ The words of Senator R.G.P. Pretorius were nothing less than apocalyptic:

The danger exists for all of us – not just the Natives alone, but also for the Europeans – that should a witch-doctor arise who wields great influence as some have wielded influence in the past... who comes with the message that the White man must be driven into the sea... they will simply kill us off because we possess a white skin which to them is the mark of Cain.¹¹

⁶ *Ibid.*

⁷ Loram, *The Education of the South African Native*, p.31.; Originally published in Macvicar, “Native Superstition and Native Education,” p.668.

⁸ Loram, *The Education of the South African Native*, p.58.

⁹ Footnote 54 on Redding, “Sorcery and Sovereignty,” 1996, p.261.

¹⁰ Hansards, *House of Assembly Debates*, 28 January 1957, Column 246.

¹¹ Hansards, *Senate Debates*, 13 February 1957, Column 725.

In 1917, SNC G.D. Wheelwright appears to have harboured similar fears.¹² When he reported that he had “no political fears about snuff already administered”, he indicated the possibility of future trouble.

“The Trouble Will Soon Fizzle Out”

Over the course of several months, SNC Wheelwright grew acutely anxious about the danger that seemed to foreshadow African beliefs in witchcraft, fears which he conveyed frequently to Barrett in a flurry of letters. But in spite of his concerns, Wheelwright was informed at the outset that he was on his own in dealing with the matter. His request for a visit by the SNA was rebuffed: “Regret do not see how occasion for visit arises out of snuff incident as offender can only be dealt with in accordance with law. If however Wheelwright is visiting Pretoria should naturally be pleased to see him”.¹³

What emerges in subsequent letters is a significant disjuncture between the reactions of central government administrators and their man on the “frontline”. While Wheelwright wrote with increasing concern about the scale of the “snuff craze”, which carried with it an air of insurrection, Pretoria’s reaction remained muted. A month after his first telegram, he wrote once again to the SNA: “this selling of snuff has been going on for a considerable time... I think it must be accepted that the selling of this snuff is being done on a very large scale.”¹⁴ This time, Wheelwright’s concern was conveyed all the way to the top echelons of government, reaching the desk of General Louis Botha, the Prime Minister of the Union. Barrett informed Botha: “Mr Wheelwright feels that Natives convinced of their security against death from all causes (including bullet wounds) might be more likely to give trouble than those conscious of being merely mortal”.¹⁵ Perhaps the SNA had not completely discounted the possibility of an uprising. But in response, Botha expressed hope that the “trouble will soon fizzle out but is glad to know that you [Wheelwright] are on the watch”.¹⁶

Wheelwright could expect little material help from his superiors, it seems. Even when he pointed out that “the sale of snuff was going on in other districts besides the Barberton one”, having apparently reached Pilgrim’s Rest too, the response of the Department was distinctly underwhelming.¹⁷ On 8 May 1917, SNA Barrett sent a letter to Colonel Damant, the Resident Magistrate of Lydenburg, notifying him

¹² It is not clear whether Wheelwright’s fears were drawn from this history of myths, or whether he had had personal experience with such notions. I have been unable to find any evidence that suggests that any such “superstitious” uprising took place in the area around that time.

¹³ SAB NTS 9465, 4321/1079, Letter from SNA Pretoria to SNC Barberton, 23 March 1917.

¹⁴ SAB NTS 9465, 4321/1079, Letter from SNC Barberton to SNA Pretoria, entitled “Sale of Snuff by Portuguese Natives to Natives in the Barberton District”, 19 April 1917.

¹⁵ SAB NTS 9465, 4321/F.1079, Letter from SNA Pretoria to SNA Cape Town, 21 April 1917.

¹⁶ SAB NTS 9465, 4321/F.1079, Letter from SNA Pretoria to SNC Barberton, 1 May 1917.

¹⁷ SAB NTS 9465, 4321/F.1079, Letter from SNC Barberton to SNA Pretoria, “Sale of Snuff by Portuguese Natives to Natives in the Barberton District”, 3 May 1917.



that Wheelwright had been “feeling uneasy” about the “secret sale to local natives of a certain snuff” and instructing Damant and his officials to be “quietly on the watch”.¹⁸

The guiding philosophy of the NAD had long been one which emphasised the virtues of the “personal touch” as opposed to overly centralised bureaucratic management. In dispensing colonial rule in the South African countryside, Evans argues, “it was strongly felt that prescriptive procedures interfered with the importance placed on discretion, experience, and ‘using one’s wits’.”¹⁹ It was up to the “man on the spot” to solve problems as quickly, quietly and cheaply as possible.²⁰ As such, colonial rule was far more *ad hoc* and opportunistic than British imperial ideology would admit.

Jeff Peires argues the rule of native commissioners was “a gigantic confidence trick ... euphemised by the rhetoric of benevolent paternalism.”²¹ In reality, Dubow notes, the NAD was “weak and poor, managing to attract only a tiny fraction of the state’s total expenditure” - the “Cinderella of the ministerial family”.²² Ivan Evans similarly argues that the NAD was “barely capable of addressing the tasks facing it” and that, throughout the first half of the twentieth century, it continued to “languish in obscurity”.²³ Native Commissioner Major Ernest Stubbs described the NAD as a department “without honour”, lacking “both adequate organisation and, even, a real head”.²⁴ Magistrate C.L.R. Harries described the various Secretaries for Native Affairs: the first, Edward Dower, was “capable and charming man, but unfortunately his insatiable thirst detracted considerably from his virtues as an efficient officer”; the next, J.B. Moffatt, died on the very day he accepted the post; M.C. Vos, quit after just 6 months. And of Edward Barrett, Harries wrote that “a more unfortunate election could not have been made”.²⁵ Barrett certainly seems to have provided little real help to Wheelwright in his time of apparent distress. Receiving no more than moral support from his superiors in the distant capital, Wheelwright was left to decide how to handle what he clearly perceived as an escalating crisis.

Wheelwright’s Troubled Crusade

Subsequent correspondence describes what seems to have been a kind of cat-and-mouse game in which Wheelwright, calling in the help of local policemen, attempts to apprehend the snuff sellers and charge

¹⁸ SAB NTS 9465, 4321/F.1079, Letter from SNA Pretoria to Resident Magistrate, Lydenburg, 8 May 1917.

¹⁹ Evans, *Bureaucracy and Race*, p.164.

²⁰ *Ibid.*, p.10.

²¹ Jeff Peires, “Nostalgia and the Native Commissioners: A Hundred Years in the Old Transkei,” *Kronos* 35, no. 1 (November 2009): 242–47.

²² Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919-36*, p.77.

²³ Evans, *Bureaucracy and Race*, p.13–14.

²⁴ Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919-36*, p.77.

²⁵ C.L.R. Harries quoted in *ibid.*, p.79.

them under s.34 of the Transvaal Witchcraft Ordinance. Over the course of six months, five snuff peddlers around the Barberton area were apprehended, charged and convicted: Kololo *alias* Mealies was imprisoned on 14th March 1917; Pahlana, Mbiko and Tumbile on 24th April; and Hlatwini on 31st August. Each was charged for having “wrongfully and unlawfully administered certain snuff, pretending to exercise supernatural power in that such snuff would make them immune from all forms of death except by natural causes”. Each received a sentence of six months imprisonment with hard labour. Wheelwright’s letters indicate that it was he who ordered the arrests, presided over the trials, and passed sentence on the guilty. A “one-man band” of colonial justice, Wheelwright was the driving force at every level of attempts to police the supposed “snuff craze” – a lone crusader against the “superstitious beliefs” of “the natives”.

Yet it seems that Wheelwright’s struggle was beset by chronic uncertainty and occasional bouts of panic. In many of his letters, the trepidation of the solitary commissioner in this remote district is palpable. In one sent to the SNA in May 1917, Wheelwright enclosed the statement of Kololo, the first to be arrested. In it, he indicated that a number of other people from the Portuguese Territory had received snuff from their “witch doctor Chief”, M’dumapanzi, who had ordered them to distribute it in the Transvaal. The problem, it seemed, was bigger than he had first thought. In the letter he submitted to Barrett, Wheelwright underlined in red ink portions of Kololo’s statement for his “deep consideration”: “[Chief] Makagesa required some snuff to give to his natives so that they could not be killed in any way”; “...they must all take a little of the snuff so that no one would be able to kill them”; “M’dumapanzi sent a lot of natives into the Transvaal with snuff”; “I know the snuff makes natives so that no one can kill them. I saw Suga Suga, who lives at my kraal, try to poison a native who had taken the snuff, but it only made him cry”; “M’dumapanzi said when I get back he will send more snuff...”; “I have taken snuff. They could not kill me at my home”.²⁶ Wheelwright clearly apprehended these statements with significant trepidation, yet there is no record of this letter having received a reply from the SNA.

Wheelwright appears to have regarded the chiefs as crucial players in the “snuff craze”, and in his letters to the NAD he indicated that he had met with “his chiefs” on a number of occasions to try and get to the bottom of the matter. Chief Makakeza is said to have informed Wheelwright that many chiefs further up on the border “had all their natives treated”: Chief Mbudula allegedly ordered the administering of snuff to all of his followers, as did Chief Matamu of Schoemansdal.²⁷ Wheelwright’s local administration tried to intervene in these episodes, but in both the sellers apparently evaded arrest. Even though “every effort was made to catch the seller”, Mbudula helped the seller evade arrest by having him “secretly

²⁶ SAB NTS 9465, 4321/F.1079, Letter from SNC Barberton to the SNA Pretoria, “Sale of Snuff by Portuguese Natives to Natives in the Barberton District”, 3 May 1917.

²⁷ SAB NTS 9465, 4321/1079, Letter from SNC Barberton to the SNA Pretoria, entitled “Sale of Snuff by Portuguese Natives to Natives in the Barberton District”, 19 April 1917.



conveyed” back to the Portuguese territory; Wheelwright had ordered police to wait around Chief Matamu’s kraal for the seller to arrive, but he “was evidently warned and they, the natives, were successful in effecting his escape”.²⁸ Wheelwright nonetheless insisted that “It is my intention to have them arrested on the first possible opportunity”.²⁹

A month later, Wheelwright once again wrote to inform the SNA that a “more or less educated and advanced native” named Mahashi had informed him that followers of Chief Tulamashi were also selling snuff, this time with the added promise of catching thieves if it was sprinkled on fields. “I told Mahashi that a native with his education should know better”.³⁰ This time Wheelwright was apparently more successful: police were dispatched to Tulamashi’s kraal and arrested “three natives”. Wheelwright once again warned “most of my chiefs to refrain from having anything to do with this snuff business”.³¹ Yet it seems that some chiefs remained obstructive. In describing the August 1917 arrest of Hlatwini, who he believed was the “last of the snuff sellers”, Wheelwright indicated that he had “had considerable trouble in getting hold of this man owing to his operations being carried on at night time and he appears to have had the assistance of many Headmen who dodged the police”.³² After Hlatwini was convicted, Wheelwright apparently “severely reprimanded” the three headmen who he believed had assisted the peddler. While Wheelwright apparently never wasted an opportunity to dispense his own “enlightened” opinion, he appears to have been the one in the dark on this issue, struggling to formulate an effective response, obstructed by those who were meant to answer to his demands.

At no point does Wheelwright offer us insights into why he believed the chiefs were proving so uncooperative on this issue.³³ In one meeting, Chief Makekeza had apparently insisted that if he did not administer the snuff, “all his tribe would die”. Wheelwright did not, however, ask the chief why he

²⁸ SAB NTS 9465, 4321/1079, Letter from SNC Barberton to the SNA Pretoria, entitled “Sale of Snuff by Portuguese Natives to Natives in the Barberton District”, 19 April 1917.

²⁹ SAB NTS 9465, 4321/1079, Letter from SNC Barberton to the SNA Pretoria, entitled “Sale of Snuff by Portuguese Natives to Natives in the Barberton District”, 19 April 1917.

³⁰ SAB NTS 9465, 4321/F.1079, Letter from SNC, Barberton to the SNA, Pretoria, “Sale of Snuff by Transvaal Natives to Natives in the Barberton District”, 7 May 1917.

³¹ SAB NTS 9465, 4321/F.1079, Letter from SNC Barberton to the SNA Pretoria, “Sale of Snuff by Transvaal Natives to Natives in the Barberton District”, 7 May 1917.

³² SAB NTS 9465, 4321/F.1079, Letter from SNC Barberton to SNA Pretoria, 5 September 1917.

³³ Wheelwright encountered a great deal of intransigence on the part of “his chiefs”. If indeed the snuff was an ingredient in a witch-cleansing movement, the chiefs’ orders to administer it to their people may have stemmed from their desire to reclaim an important source of power – a key source of chiefly legitimacy stemmed from their ability to provide supernatural security. A number of sources indicate that chiefs in northern Natal expressed frustration at not being able to punish witches. A 1909 article in the *Rand Daily Mail* noted that chiefs from the Ubombo district complained to magistrates the “great hardship that they were not allowed to have witch doctors... because when an offence was committed they had nobody to ‘smell out’ the offenders, whom they could punish, and so maintain public order” – order which the government apparently expected them to maintain “Natives’ Grievances: Uses of Witch Doctors,” *Rand Daily Mail*, February 19, 1908.

believed this. Instead, he “told him at the time that he was very foolish”.³⁴ Wheelwright approached the problem with what he must have considered sensible “European” rationality. He even sent a “specimen of kaffir snuff” for analysis by the police laboratories in Johannesburg (“when fed in small quantity to a rat the material produced no toxic symptoms”).³⁵ Yet Wheelwright was also caught up in his own superstitious myth, and he attributed far more power to the snuff than it actually had. Poring over court testimonies with a red pen, searching for hints of danger, Wheelwright saw the snuff, not simply as tobacco, as the lab tests confirmed, but as a potent ingredient that could incite rebellion.³⁶

Wider research suggests that the snuff was more likely a tool used in “witch cleansing”. In 1916, the explorer Keith Rennie reported the use of snuff in both Mozambique and the lower Limpopo region in the activities of the so-called “Murimi movement”, a “widespread anti-witchcraft revitalization movement”. According to Rennie, the snuff was believed to be a means to rid communities of witches: “Those who practised witchcraft after taking it would split open and die”.³⁷ These findings were reiterated by Henri Junod in 1924.³⁸

This link is further suggested in official correspondence from northern Natal that followed a similar “snuff craze” in the Ubombo District of northern Natal in 1918, not far from Barberton. Officials reported that snuff was being administered by peddlers originating from Portuguese East Africa. Like Wheelwright before, Magistrate Oxley-Oxland believed that the snuff might be connected with rebellion. He had received a report about a white store owner, Mr J. Nunn, reported hearing worrying information about snuff in the area: “the native stated that the bullet, instead of killing the person it was intended for, would ... kill the person discharging the firearm”.³⁹ At the request of the Chief Native Commissioner (CNC) of Pietermaritzburg, Magistrate Oswald Fynney conducted his own investigation. He wrote that the snuff was being touted as a means to expose witches, and that the chiefs had:

³⁴ SAB NTS 9465, Letter from SNC Barberton to the SNA Pretoria, entitled “Sale of Snuff by Portuguese Natives to Natives in the Barberton District”, 19 April 1917

³⁵ SAB NTS 9465, 4321/F.1079, SNC Barberton forwarded Report from Government Chemical Laboratories, Johannesburg, to the Public Prosecutor, Barberton, 1 June 1917

³⁶ Yet the realities confronting remained more than his tools of understanding could fathom. An inexplicable occurrence in one of the court proceedings only added to the utterly baffling circumstances: “The native Juwawa, who gave evidence against the accused, towards the end of his evidence was overcome and could barely speak and did not know what was the matter with him. This native became worse and was admitted to the hospital yesterday and died during the night.” Wheelwright does not admit to being spooked, but it surely sent shivers down his spine. Wheelwright instructed the District Surgeon to carry out a post-mortem on Juwawa’s body in search of a rational explanation for his untimely passing. SAB NTS 9465, 4321/F.1079, Forwarded case of “Rex v. Pahlana, Mbiko & Tom” from SNC Barberton to SNA Pretoria, 10 May 1917.

³⁷ Quoted in Terence Ranger, “Religious Studies and Political Economy,” in *Theoretical Explorations in African Religion* (London; Boston: KPI, 1985), p.309.

³⁸ Quoted in *Ibid.*, p.310.

³⁹ SAB NTS 9465, 4321/1079, Letter from Rifleman D. Thackeray, S.A.M.R. to Magistrate Oxley-Oxland, Ubombo District, Natal, 2 August 1918.



arranged at considerable cost, that each member of his Tribe may have the privilege of a kind of trial by ordeal... [snuff] will be administered to all those who desire to establish their innocence. This snuff will have no effect whatever on the innocent, but a guilty person having taken it in order to throw off suspicion, will die at the time of the corn's ripening. Should an innocent person neglect this opportunity, however, he, his family, his estate will become the victims of wild animals specially inspired to harass and destroy. It will be seen, therefore, that the Chief scores all round. Those having any guilty knowledge will almost inevitably declare themselves in some way and be hounded out... while the innocent will have contributed their 3/- to the Chief's money bag."⁴⁰

Fynney assured the CNC that all talk of rebellion was the "absurd" invention of "rumour mongers".⁴¹ With a large number of malarial deaths blamed on witchcraft, Fynney concluded that the snuff was just a shrewd ploy on the part of the chiefs to take advantage of these beliefs for their own gain. Fynney's may be a cynical reading of the situation, of course – chiefs may have genuinely believed that the snuff could stamp out the witchcraft afflicting their communities.

The developments that Wheelwright witnessed with great trepidation do seem to fit with timing and descriptions given of the witch-cleansing movements of the region. A number of witnesses in the trials Wheelwright conducted even pointed out this link specifically. At the trial of Kololo, for instance, Magugu testified: "I had heard that the accused administered snuff to prevent witches from bewitching a person".⁴² The fears Makekeza expressed to Wheelwright of widespread deaths may well have been linked to the prevalence of malaria – a persistent problem in the area. Wheelwright himself indicates this: "I am informed that some of the natives under chief Mbudula who took this snuff have since died from natural causes and Malarial Fever. This should to some extent break any belief they had in the snuff".⁴³ Yet he apparently failed to draw the link between witchcraft and disease, remaining fixated on the alleged promises of invulnerability.

Wheelwright's final correspondence ends with something of a triumphal tone, expressing certainty that any belief the headmen may have had in the snuff had been "broken up as all of them were suffering very severely from malarial fever and other complaints, in spite of having gone through the ceremony of taking the snuff".⁴⁴ One headman admitted that he no longer believed "in the healing power of the

⁴⁰ SAB NTS 9465, 4321/1079, Letter from Magistrate Oswald Fynney to Chief Native Commissioner, Natal, entitled "Taking Snuff As Medicine by the Natives", 4 September 1918.

⁴¹ SAB NTS 9465, 4321/1079, Letter from Magistrate Oswald Fynney to Chief Native Commissioner, Natal, entitled "Taking Snuff As Medicine by the Natives", 4 September 1918.

⁴² SAB NTS 9465, 4321/F.1079, SNC Barberton Forwarded Court records of *Rex v. Kololo* to SNA Pretoria, 5 September 1917.

⁴³ SAB NTS 9465, 4321/1079, Letter 19 April 1917 from SNC, Barberton to the SNA, Pretoria, entitled "Sale of Snuff by Portuguese Natives to Natives in the Barberton District".

⁴⁴ SAB NTS 9465, 4321/F.1079, Letter from SNC, Barberton to SNA, Pretoria, 5 September 1917.

snuff as I have been ill ever since I took it".⁴⁵ The final response of the SNA, who had throughout the predicament provided not a single truly useful piece of advice: "My dear Wheelwright... I have to congratulate you on the success of your efforts to stamp out the nuisance".⁴⁶

From reading these letters, one is struck less by a sense of "success" than of the impotence of the colonial administration in trying to police matters of the supernatural. Far from "knowing the people, speaking the language, [and being] acquainted with their needs and shortcomings", gifts which Barrett attributed to all NAD officials, Wheelwright emerges as a confused man in a world of smoke and mirrors, blind-sided by his "subordinates", left adrift by his superiors, enrapt in his own fearful superstitions.⁴⁷ Incidentally, in the wake of the Ubombo snuff incident a year later, Wheelwright was contacted for advice by the Chief Native Commissioner of Natal. A far cry from his earlier fearful despatches, Wheelwright informed the Ubombo magistrate that such beliefs were "not an unusual absurdity" among Africans and that there was therefore "no necessity to worry about it at present".⁴⁸ Perhaps Wheelwright had come to understand more of the dynamics of African beliefs in the supernatural; perhaps he also realised that officials actually had very little power to do anything about it.

Curious Happenings and the Limits of Colonial Rule

The task facing native commissioners and magistrates in trying to police African beliefs in the supernatural seems to have been incredibly difficult. With little actual power to intrusively intervene in witchcraft cases, it seems that most, like Wheelwright, had to reflect the ethos of the NAD: to exercise discretion and "use one's wits".⁴⁹ Archival documents seem to suggest that local officials lacked the capacity to eradicate witchcraft beliefs, and were forced to adopt the kind of "watchful tolerance" that Karen Fields speaks of in her analysis of the use of witchcraft law in colonial central and east Africa. In Fields' estimation, British officers "backpedalled" from their initially vigorous civilising ideology because they lacked both the popular legitimacy and the manpower and resources to rule by force alone.⁵⁰ Forceful intervention could expose the weakness of the colonial administration, revealing the "confidence trick" of colonial rule. "Watchful tolerance" presented itself as a politically expedient way for "colonialism on the cheap" to approach the problem of witchcraft: officials kept "a sharp eye on developments", yet abstained

⁴⁵ SAB NTS 9465, 4321/F.1079, SNC Barberton Forwarded Court records of *Rex v. Kololo* to SNA Pretoria, 5 September 1917.

⁴⁶ SAB NTS 9465, 4321/F.1079, Letter from SNA, Pretoria to the SNC Barberton, 19 September 1917

⁴⁷ Evans, *Bureaucracy and Race*, p.167.

⁴⁸ SAB NTS 9465, 4321/F.1079, Letter from Magistrate of Nongoma to Chief Native Commissioner, Natal, 24 September 1918

⁴⁹ Evans, *Bureaucracy and Race*, p.164.

⁵⁰ Fields, "Political Contingencies of Witchcraft in Colonial Central Africa: Culture and the State in Marxist Theory," p.569.



from intrusive policing.⁵¹ It seems that the stance of the South African government to witchcraft matters may have had something in common with this expedient strategy. Had high-level state officials been wholeheartedly committed to their stated civilizing mission – and indeed had the resources to prosecute it – their response might have been to advocate far greater intervention. Instead, even when insurrection was suspected in Barberton, for instance, SNC Wheelwright was simply instructed by the Prime Minister to “be, as he appears to be, on the watch”.⁵²

The actions available to magistrates and Native Commissioners were, it seems, embarrassingly limited. The limits of colonial action in matters of the supernatural were noted in the correspondence of D.W. Hook, the SNC of Graskop who, in 1922, was sent by the SNA to calm what was described as a “superstitious scare amongst native labourers” at Rosehaugh Estate, a farm just north of present-day Polokwane. It seems that a family of farm workers had become alarmed after some twenty member of their family had died in a short space of time, which elicited “a firm conviction that some evil agency is at work”.⁵³ Hook hoped that his visit would have a “pacifying effect”, but in his letter to the SNA, he noted that there was little else he could do in the face of “magic and things pertaining to the supernatural” other than insist that belief in witchcraft was a “silly conviction” and encourage the labourers to go back to work: “I may say that it is extraordinary in this part of the country to find the Native population so deeply imbued with superstition... It is perhaps a simple matter to deal with a tangible cause for restlessness and I feel you will readily understand that very little in the way of efficacious redress can be given to your complaint beyond the action I have already stated”.⁵⁴

Hook noted that the Rosehaugh labourers were “seriously suggesting” that they should be allowed to visit “native doctors” in the Portuguese Territory, but is said to have told them that “such a course could not possibly be consented to as acquiescence to such procedure would be tantamount to recognition by the Department to fan evil which the Government firmly resolved to endeavour to stamp out”.⁵⁵ It should be remembered that the Portuguese Territory was over 100 kilometres away, and one why they felt the need to travel such a great distance to find a diviner. A number of other documents indicate that “witch doctors” in the Portuguese Territory remained a problem for local officials. In 1926 the SNC of Sibasa believed that as a result of the activities of a doctor in the Portuguese Territory, a “grave crime might be committed

⁵¹ Fields, “Political Contingencies of Witchcraft in Colonial Central Africa,” p.568; p.588.

⁵² SAB NTS 9465, 4321/F.1079, Letter from SNA Pretoria to SNA Cape Town, 21 April 1917.

⁵³ SAB NTS 9465, 4321/F.1079, Letter from D.W. Hook, Sub-Native Commissioner, Graskop, to Secretary for Native Affairs, Pretoria, Forwarded copy of letter to Sir Walter Hamilton-Fowle, 30 August 1922.

⁵⁴ SAB NTS 9465, 4321/F.1079, Letter from D.W. Hook, Sub-Native Commissioner, Graskop, to Secretary for Native Affairs, Pretoria, Forwarded copy of letter to Sir Walter Hamilton-Fowle, 30 August 1922.

⁵⁵ SAB NTS 9465, 4321/F.1079, Letter from D.W. Hook, Sub-Native Commissioner, Graskop, to Secretary for Native Affairs, Pretoria, Forwarded copy of letter to Sir Walter Hamilton-Fowle, 30 August 1922.

when Native superstition and belief are taken into consideration”.⁵⁶ In 1941, the Assistant Native Commissioner of Barberton complained that locals were travelling to the Portuguese Territory to consult “witch doctors”, and “on the parties return, the evils of Witchcraft are brought to bear on the people within the Union”.⁵⁷ Yet in both cases, it seems that the “troublemakers” remained out of reach of colonial authorities.

It is possible that many chose to visit the Portuguese Territories for fear of the legal repercussions facing them in the Transvaal – the application of the Witchcraft Ordinance. Just how potent the threat of legal intervention was is impossible to judge from the sources I interrogated. But the role of the police in these situations does beg further consideration here. Very little is revealed about the role of policemen in the archival case records and correspondence I have found, yet it was undoubtedly integral to how – or if – witchcraft beliefs came to be managed in these situations: policemen. In a number of court cases, we get the sense that police were not entirely passive in witchcraft matters. In the case of *Sugumbuli Nkosi*, Mblauw Ngwenya testified that while applying for passes to travel to a diviner’s kraal, the police had asked what the purpose of their visit was which they had revealed.⁵⁸ Ngwenya recalled the policeman’s words as: “I see you are going to look for a doctor; if that is so you will get into trouble”.⁵⁹ The party were allowed to go on their way, and it is impossible to say if anything resulted from the exchange.

Wheelwright is noted to have made use of African policemen. Many of the police who testified before the Supreme Court to having arrested diviners were identified as “native constables”.⁶⁰ In recent scholarship, a number of authors have pointed to the hesitancy of black police to get involved in matters of witchcraft for fear of the retribution of diviners.⁶¹ One gets little sense of what the attitude of these

⁵⁶ SAB NTS 9465, 3/394, Letter from V. Addison, Native Commissioner, Potgietersrust, to John S. Allison, Secretary for Native Affairs, Pretoria, “Activities of Sikwamuke from Portuguese Territories”, Forwarding testimony of Gebuza about Sikwamuke, 8 March 1926.

⁵⁷ SAB NTS 9465, 3/394, Letter from Assistant Native Commissioner, Barberton, to Secretary for Native Affairs, Pretoria, “Native Witch Doctors in Portuguese Territory”, 9 May 1941.

⁵⁸ *R. v. Sugumbuli Nkosi* 1923 TPD 594.

⁵⁹ *Ibid.*, At 612.

⁶⁰ In a number of smelling out cases, testifying policemen indicate that they had apprehended the accused. In the case of *R. v. Hwandhla* (1912 TPD 371 at 378), “Native Constable” Kata indicated that he had received instructions to “arrest accused for practising witchcraft... I have known accused for the last three months as being a doctor. N.C. Mdungazi testified that he had arrested the diviner Mpaupau “as a result of investigations carried out by myself. I charged him with practising witchcraft and pointing out certain natives Tatiesa and Chow-Chow as wizards... and lodged him in the local lock-up”. (*R. v. Mpaupau* 1914 TPD 389 at 408). In *R. v. Mdandas Jack* (1915 TPD 660 at 681), N.C. Willem testified to having gone to the accused “hut and fetched him to the police station. Arrested him there for practising witchcraft. I have known him about 5 years and he does not do any work and I have heard that he is a witch doctor”.

⁶¹ See, for instance: K Peltzer and P Makgoshing, “Attitudes and Beliefs of Police Officers towards Witchcraft (boloi) and Their Intervention Role in the Northern Province, South Africa,” *Crim Acta Criminologica* 14, no. 2 (2001): 100–107; T. Petrus, “Defining Witchcraft-Related Crime in the Eastern Cape Province of South Africa,” *International Journal of Sociology and Anthropology* 3, no. 1 (2011): 1–8.



policemen from the early twentieth century was in the criminal cases, but their presence does demonstrate an additional layer to the policing of witchcraft which is obscured by caricatures which posit the law as being simply the “Eurocentric” imposition of sceptical white men. They may simply have been following orders – on the other hand, they may have regarded “smelling out” as a genuinely dangerous activity that they needed to stop.

Police presence in witchcraft matters was not entirely insignificant in the early twentieth century, and that it may have operated as something of a deterrent to “smelling out”. Yet this certainly requires further research. On the other hand, most of these procedures might simply remained unreported and undetected. A number of accounts throughout the early twentieth century point to the unwillingness of Africans to report matters of witchcraft to the police. In 1909, Neil Macvicar noted that in the Transkei, diviners pointed out witches “in such a way that while the people concerned cannot mistake their meaning yet they cannot be incriminated should the matter be brought to the court”.⁶² The idea that Africans were fearful of “witch doctors” and therefore hesitant to approach police was also echoed throughout the decades. In 1909, the *Rand Daily Mail* reported that “no native, not even an educated one, would dare to betray a bone thrower, or to give evidence in court against one, for fear of being bewitched or poisoned”.⁶³ In 1938, in response to Israel Mbono’s warnings about the activities of “witch doctors”, the Chief Native Commissioner of Johannesburg noted that their activities were prohibited by law, but that “The difficulty, however, is that it is well nigh impossible to procure evidence against witch doctors. If any specific cases of the practice of witchcraft should come to your notice you would be doing a public service in reporting them to the South African Police”.⁶⁴ In 1948, a letter was sent to the SNA from Justice Lewis of the Transkeian circuit court:

It is once possibly in a hundred cases that a witchdoctor is brought to justice. I speak from my own experience, but the experience of my colleagues on the bench is the same, the experience of all magistrates in the Transkei is the same, and the experience of all officials of the Native Affairs Department in these territories is the same ... it is only in the rarest of cases that one of them is brought to justice, because one knows how reluctant natives are to give evidence against witchdoctors”.⁶⁵

If Lewis is correct in asserting that the same situation obtained across all “native areas”, Transvaal colonial officials may have found effectively policing witchcraft beliefs significantly obstructed by the unwillingness of those over whom they “ruled” to report situations to the police.

⁶² Macvicar, “Native Superstition and Native Education,” p.665.

⁶³ “Native Witchcraft,” *Rand Daily Mail*, May 18, 1909, p.3.

⁶⁴ SAB NTS 9465, 19/362, Letter from Israel Mbono B.A.C, to Chief Native Commissioner, Johannesburg, 11 August 1938.

⁶⁵ SAB NTS 9465, 19/362, “Witchcraft General File: Transkeian Territories Witchcraft”, Letter from Secretary of Native Affairs to the Secretary of Justice, forwarding remarks of Hon. Mr. Justice Lewis, 1948.

Conclusion

This chapter has sought to reveal something of the complex landscape of beliefs in which local colonial officials were thrown in the early twentieth century, sometimes encountering mystifying challenges for which there were not always ready answers. Archival documents show that it was largely up to native commissioners and magistrates – the “men on the spot” – to formulate strategies to manage the questions posed by beliefs in witchcraft. This was frequently in a context in which chiefs proved intransigent and their subjects unwilling to cooperate with the colonial government in matters of the supernatural. The Transvaal Witchcraft Ordinance No. 26 of 1904 did on occasion come to be seen as a tool to apprehend troublesome diviners. In the case of the 1917 “snuff craze”, the law was called in to extinguish fears of a potential uprising against colonial rule. Here, then, we find some confirmation of Ashforth’s suggestion about the use of witchcraft law for apprehending “dangerous healers”. Yet it is also clear that the law could not provide a permanent solution to perceived “superstitious” threats, nor was the most appropriate response in other matters involving witchcraft beliefs. Throughout the early decades of the twentieth century, witchcraft beliefs continued to pose conundrums to colonial officials.

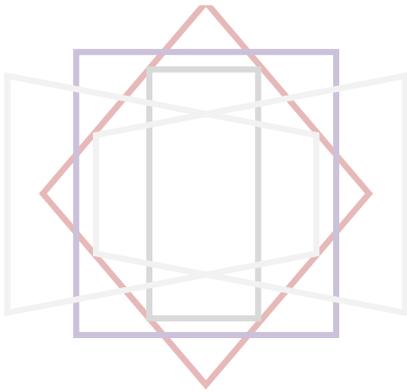
It should be emphasised that the understandings of local magistrates and Native Commissioners on matters of witchcraft were by no means uniform. The response of C.N.C. Fynney to the snuff incidents in Ubombo in 1918 were markedly different from those of SNC Wheelwright in Barberton the previous year. Where Wheelwright saw potential rebellion, Fynney saw merely a scam by opportunistic chiefs. In most of the correspondence, the NAD officials who feature do seem to share the assumption that witchcraft beliefs were ridiculous and irrational. But there may well have been some who had a more sensitive approach. Piet Retief Regional Magistrate Peachey, who was quoted in the previous chapter as having expressed concern over the wisdom of prosecuting healers under the Medicine Ordinance, demonstrated that not all local level officials evinced the same understandings with respect to notions of healing and witchcraft. One series of letters shows a comparatively great degree of empathy on the part of an NAD official in Bushbuckridge in 1937. The Additional Native Commissioner (ANC) there raised concerns to the SNA about the family of a man who had been convicted of “practising witchcraft”. The ANC believed that since the convict was the only male and sole breadwinner, his extensive family may suffer “destitution” while he was serving five years in prison – the maximum term prescribed under s.29.⁶⁶ (The SNA replied “the matter should be deferred until such time as you are satisfied that the

⁶⁶ SAB NTS 7650, 152/331, Letter from Additional Native Commissioner, Bushbuckridge, to SNA Pretoria, Re: Fears of Destitution of the Family of a Smelt Out Diviner, 14 May 1937.



dependents are destitute”).⁶⁷ The particularities of the characters and contexts involved should be remembered when making assessments about the engagements of the local state with matters of witchcraft.

⁶⁷ SAB NTS 7650, 152/331, Letter from SNA Pretoria to Additional Native Commissioner, Bushbuckridge, Re: Fears of Destitution of the Family of a Smelt Out Diviner, 20 May 1937.



Conclusion:

Lord Hailey insisted that “the subject of witchcraft is the outstanding problem of the lawgiver in Africa”.¹ Where statecraft and witchcraft beliefs intersect, perplexing encounters often result. This study set out to examine how colonial witchcraft legislation was implemented in the early twentieth century, revealing how matters of perceived “superstition” were dealt with more generally by state officials of varying authority in the Transvaal – or not, as was occasionally the case.

Investigating some prominent scholarly works and official utterances from the early twentieth century revealed broad misconceptions about the notions of “witchcraft” and the “witch doctor” in the early twentieth century. These obscuring terms, laden with notions of civilisational backwardness and irrationality, seem to have predominated in state discourse throughout the period, despite the rising challenge posed by anthropologists. Many prominent intellectuals and officials continued to view witchcraft as a primordial belief that needed to be stamped out, and “witch doctors” as nefarious personages whose apparently pernicious influence needed to be undermined. Many advanced ostensibly humanitarian reasons for why beliefs in witchcraft needed to be extinguished. Others pointed to the dangers that witchcraft beliefs could potentially pose for colonial order. These two concerns seem to have both shaped the way that witchcraft was policed on the ground by colonial judges and grassroots officials., although it is unclear which was the more determinant in prompting administrative and judicial action.

¹ Lord Hailey quoted in Chanock, *Making of SA Legal Culture*, p.321.



Archival case records demonstrate that the Transvaal Witchcraft Ordinance was not merely “symbolic”, as Niehaus suggests, but came to be applied to a diverse set of characters – with varying levels of faith in their own proclaimed powers. While in a majority of cases, the accused was identified as a “witch doctor”, this was not always the case. The law imprisoned a wide variety of characters engaged in a diversity of activities which sometimes evinced only a tentative link to notions of the supernatural. It seems that, at times, the Witchcraft Ordinance operated as a means to apprehend those who did not fit neatly into existing criminal categories, as Waller suggests of colonial Kenya.² Nevertheless, these cases also demonstrate that the law did operate with a distinct bias against diviners, as Chanock suggests, who formed the vast majority of those brought before the Supreme Court as “the accused”. Many of them apparently did not recognise that what they had done was a crime. Most pleaded guilty to the charges while judges often indiscriminately condemned their activities as dupery and chicanery.

None of those sentenced under the Witchcraft Ordinance in these cases seem to have posed explicit danger to colonial order, however. Neither witnesses nor judges of the Supreme Court made any mention of potential agitation. In passing sentence, judges instead justified the application of the law on supposed humanitarian grounds, expressing concern over the allegedly damaging effects that the “smelling out” of witches and the “pretence of witchcraft” could ostensibly evoke. They frequently spoke in the language of benevolent paternalism, employing the high-minded rhetoric of the civilising mission which insisted that witchcraft beliefs needed to be stamped out.

Questions of deterrence and upholding the image of colonial power were not entirely absent from the application of the law, though. This was demonstrated by investigating seams of correspondence between NAD officials, which indicated that the law was not always followed as a matter of course, but in situations where “danger” or “disturbances” were perceived to be a possible result. Such fears seem to have informed the decision by SNC Wheelwright in Barberton to employ the Ordinance in a bid to neutralize the 1917 “snuff craze”, which he perceived to be a potential threat to colonial rule: the sale of snuff which he mistook as a potent ingredient of rebellion. Ashforth’s contention is not baseless, therefore, although questions of the “injuriousness” to African individuals were also apparently considered. The only means by which the relative weight of these motivating factors in bringing about convictions under the Witchcraft Ordinance could be ascertained is with greater information about the administrative and judicial story which brought witchcraft matters before the courts. In only a very few instances do archival documents provide such insights.

Whether undertaken in a bid to protect Africans from their own “savage beliefs”, or to dissolve potential superstitious threats to colonial order, the findings outlined above show that colonial legislative

² Waller, “Witchcraft and Colonial Law in Kenya,” p.247.

interventions in the Transvaal of the early twentieth century were ill-suited to resolve the complex interpersonal conflicts that characterised beliefs in witchcraft. In the first instance, the laws were premised on faulty assumptions about the nature of African metaphysical beliefs, employing vague terminology about “witchcraft” and the “witch doctor” which was utterly lacking in any rigorous sense of legal precision. Secondly, when they were applied at the Supreme Court level at least, this was by-and-large undertaken by judges who quite obviously demonstrated their failure to apprehend the deeper dynamics of witchcraft beliefs. One recalls Justice Krause telling the accused Zulu Madumalane in 1914 that her role as a diviner was simply the stuff of invention, or Wheelwright insisting that a chief with an education “should know better”.

The portrayals of witchcraft I have come across from the early twentieth century which emanated from multiple levels of witchcraft policing – from the Supreme Court judges to magistrates to Native Commissioners – frequently perpetuated the fallacy that beliefs were singular, homogenous and static, a set of primordial blinkers which prevented Africans from perceiving reality as accurately or scientifically as the “enlightened” European did. Many moreover conflated (or perhaps simply regarded as insignificant) the distinction between malevolent and harmful magic, employing the term “witchcraft” as a catch-all for a host of misconceptions about African metaphysical beliefs, seeped in notions of backwardness, stagnation, irrationality and violence. The figure of the “witch doctor” largely emerges throughout official depictions as a fraud and an opportunist who had a “pernicious” hold over African minds, upholding “witchcraft faith”, preventing the spread of western medicine, and potentially wielding his/her power to endanger colonial order. None apparently saw fit to credit the diviner as a source of metaphysical security, demonstrating that developing anthropological insights had little sway on the way that the law was policed.

Nevertheless, we should also consider that there was a multiplicity of official perspectives on witchcraft. Not all of the judges chose to implement the prescriptions of the Witchcraft Ordinance uniformly. While some chose to be “merciful”, others expressed their regret that they could not impose harsher sentences. There may have been some changes in the attitudes of judges and as the decades wore on, as some of the latter judgments in the cases I sourced hint at. This certainly requires more empirical substantiation than is currently available at the National Archives.

Similarly, not all magistrates or Native Commissioners seem to have shared the same perspective on how to deal with witchcraft beliefs. Where Wheelwright launched a crusade against snuff peddlers using the Witchcraft Ordinance, others perhaps approached such incidents with more level-headedness and pragmatism, trying, like SNC Hook in 1922, to pacify situations when they arose. Lacking the resources and any significant interventionist organisational muscle, it seems that these officials were given (sometimes uncomfortably) wide powers of discretion to decide how to proceed as issues of malevolent



magic reared their head. Perhaps with increasing cognisance of the limits of their reach, opinions of these “men on the spot” may have significantly changed over their tenure as representatives of local officialdom. Just as Wheelwright came to moderate his initially fearful notions of “invulnerability snuff”, it seems that some may have come to realise the limits of colonial control of witchcraft beliefs, and been forced to undertake calculated courses of action when incidents related to these beliefs emerged. Sometimes, as in the case of diviners operating in the Portuguese Territory for instance, it seems that whether they liked it or not, officials could do little to stop the “superstitious” activities of those they claimed to rule.

Contemporary anthropologists and historians have shown that witchcraft is a shifting and evolving idiom for explaining the present which changes in structure. Case records and archival documents elucidate above have further challenged the assumption that belief in witchcraft was a uniquely African phenomenon, suggesting that such beliefs are instead highly individualised, syncretic, erratic and inconsistent, and do not necessarily accord neatly with racial classification. A number of white people were shown to have evinced faith in witchcraft and participated in rituals of divination. Moreover, questions were raised as to the fervency of beliefs in witchcraft by Africans, with some witnesses and characters in archival correspondence indicating a critical attitude both towards ideas of the supernatural and the role of the diviner. One should therefore desist from positing a simply “ontological barrier” between Africans and non-Africans – a barrier which frequently emerges today. In trying to craft any responses to witchcraft violence, it is crucial that the individualised nature of belief is apprehended – cognisance which witchcraft law flatly failed to achieve during the early twentieth century.

It seems that, in many ways, we still conceive of witchcraft in the racialised, evolutionary terms furnished by the colonial civilising mission over a hundred years ago. If less overtly condemnatory, official rhetoric still frequently posits a distinction between the “traditional” and the “modern”, and insists that education and Christianity are the means by which witchcraft beliefs will be extinguished. Niehaus argues that the *Ralushai Commission* of 1995, was underpinned by the assumption that “witchcraft is an expression of a unique and uniform African culture” whose more pernicious effects could be halted through schooling programmes and the work of churches.³ Yet the same solutions were being proposed as early as the mid-nineteenth century, based on the same assumption that witchcraft beliefs cannot withstand the forces of modernisation.

The findings of this study show that the extent to which the law can ever be an effective tool for extinguishing the sources of witchcraft violence is highly doubtful. The simple assertion that it is

³ Niehaus, “Witchcraft as Subtext,” p.68.

primarily the Suppression of Witchcraft Act No.3 of 1957 that needs to be reformed in order to bring resolution to these problems of the supernatural is questionable. I agree with the likes of Hund and Ludsin that as long as beliefs in witches continue to be regarded as baseless superstitions divorced from modern realities, as the Act suggests, we cannot hope to find a solution to the witchcraft problem in South Africa. But in order to get a deeper understanding of the complexities of evolving ideas about witchcraft, contemporary insights on the “modernity” of witchcraft beliefs demands that we examine their deeper social roots – material deprivation, social fragmentation, sharpening inequality, for instance. A permanent end to witchcraft violence can only be realised if these social evils are addressed. At best, new legislation can only address the symptoms of this deeper malaise.

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Witchcraft Ordinance 26 of 1904:

Section 29: Imputing the use of “non-natural means in ... causing disease or harm witchcraft to another;

Section 30: Imputing witchcraft and “by habit or repute a witch doctor or witch finder”

Section 34: Claiming to “use any kind of supernatural power, witchcraft, sorcery, enchantment or conjuration”; telling fortunes; discovering lost property

Medical, Dental and Pharmacy Ordinance 29 of 1904; (Later 34(a) of Law 13 1928)

Section 39: performing “acts specially belonging to the calling of a general medical practitioner”

Key:

C.S.– Contravening Section;

Ord. – Ordinance;

IHL – Imprisonment with Hard Labour

Date	Case No.	Name of Prisoner	Indictment	Remarks:	Plea	Verdict	Sentence	Place of Trial
1912.4.22	79	Nyana Umgani ("Native Male")	C.S. 29 Ord. 26/04	Smelling out Witch & Wizard as Cause of Illness & Death	Not Guilty	Judge: Guilty	15 Months IHL	Barberton
1912.8.7	161	Hadjee Jackson ("Malay Male")	Four counts of C.S. 34 Ord. 26/04; <u>Or</u> C.S. 39 of Ord. 29/04.	Selling Charms; Fortune Telling; Diagnosing Illness; Providing Remedies CASE INCOMPLETE	Guilty	Jury: Not Guilty	Discharged	Pretoria
1912.9.25	211	Hwandhla ("Native Male")	C.S. 29 Ord. 26/04	Smelling out Witch as Cause of Illness & Death	Guilty	Judge: Guilty	6 Months IHL	Lydenburg
1913.5.14	117	Mpaupau ("Native Male")	C.S. 29 Ord. 26/04	Smelling out Wizards as Cause of Illness & Death	Not Guilty	Judge: Guilty	7 Months IHL	Pietersburg
1914.5.6	113	Mdandas Jack ("Native Male")	C.S. 29 Ord. 26/04	Smelling out Witch & Wizard as Cause of Illness & Death	Not Guilty	Jury: Guilty	8 Months IHL	Barberton
1914.6.5	237	Zulu Madumalane ("Native Female")	C.S. 30 Ord. 26/04 <u>Or</u> C.S. 39 of Ord. 29/04.	Habitual Witch-Finder; Smelt-out Witch as Cause of Illness and Death - Witch Murdered as a Result	Not Guilty	Jury: Guilty on first charge	Imprisoned for Life	Pietersburg
1914.10.19	331	Matsilele Tsandengoma ("Native Male")	C.S. 30 Ord. 26/04	Habitual Witch-Finder; Smelt out Wizard as Cause of Illness and Death	Not Guilty	Jury: Guilty	4 Years IHL	Pietersburg
1916.10.3	6	Klaas Legoabi Macbuloane ("Native Male")	C.S. 30 Ord. 26/04	CASE MISSING	Not Guilty	Judge: Not Guilty	Discharged	Nylstroom
1917.4.4.	35	(1) Navalwana Dusa (2) Levona Vilagazi ("Native Females")	C.S. 29 Ord. 26/04	Imputing Non-Natural Causes of Lost Livestock; Smelling out Witch as Cause of Illness and Disease	Guilty	Judge: Guilty	(1) 9 Months IHL (2) 4 Months IHL	Volkstrust
1917.10.9	215	Risenga Shabane ("Native Male")	C.S. 29 Ord. 26/04	Smelling out Wizard as Cause of Illness & Death	Not Guilty	Jury: Guilty	2 Years IHL	Louis Trichardt
1917.10.10	218	Dumazi Ngwanamanuga ("Native Male")	Culpable Homicide <u>Or</u> C.S. 34 Ord. 26/04	Selling Medicine to Break Spell of Witchcraft	Not Guilty	Jury: Not Guilty	Discharged	Louis Trichardt
1918.4.26	55	Jacobus Malusi ("Native Male")	C.S. 30 Ord. 26/04	Habitual Witch-Finder; Smelt out Wizard as Cause of Illness and Death	Guilty	Judge: Guilty	18 Months IHL	Lydenburg

Date	Case No.	Name of Prisoner	Indictment	Remarks:	Plea	Verdict	Sentence	Place of Trial
1918.6.11	245	Philemon Ranque ("Native Male")	Five Counts C.S. 34 Ord. 26/04 & Five counts Theft by False Pretences & C.S. 39 Ord. 29/04	Selling Livestock He Didn't Own; Diagnosing Illnesses; Supplying Remedies	Not Guilty	Jury: Guilty	2 ½ Years IHL	Potchefstroom
1918.10.5	236	Mganu Ndhlovu ("Native Male")	Five counts of C.S. 34 Ord. 26/04	Selling Medicine to Break Spell of Witchcraft	Not Guilty	Jury: Guilty on all counts	2 ½ Years IHL + 6 Lashes	Ermelo
1919.5.20	152	William Sebambo ("Native Male")	Theft and C.S. 34 Ord. 26/04	Doctoring Against Thieves	Not Guilty	Jury: Guilty	Theft: 2 Years W/C: 6 Months IHL	Pretoria
1921.5.20	188	Mpokani Mundagazane ("Native Male")	C.S. 34 Ord. 26/04	Diagnosing Cause of Death	Guilty	Judge: Guilty	1 Year IHL	Zoutpansberg
1921.5.21	190	Muhlungupi Shikwengane ("Native Male")	C.S. 30 Ord. 26/04	Habitual Witch-finder; Smelt out Wizard as Cause of Illness & Death	Guilty	Judge: Guilty	4 Years IHL	Zoutpansberg
1921.11.4	383	Michael Petrus Oberholzer ("European Male")	Three Counts C.S. 34 Ord. 26/04	Imputing Witchcraft as Cause of Illnesses; Providing Remedies.	Not Guilty	Jury: Guilty	2 Months IHL	Christiana
1922.5.29	203	Achimuthoo ("Asiatic Male")	C.S. 34 Ord. 26/04 & C.S. 39 of Ord. 29/04	Fortune Telling; Diagnosing Illnesses; Providing Remedies	Guilty on All Counts	Judge: Guilty	8 Months IHL and £30 Fine or in Default 4 Months IHL on each count.	Rustenburg
1922.6.6	221	Appana Gurana ("Asiatic Male")	Two Counts C.S. 34 Ord. 26/04	Diagnosing Illnesses; Providing Remedies NO CASE RECORD OF TESTIMONIES	Not Guilty	Jury: Guilty on Both Counts	18 Months IHL	Bloemhof
1922.8.24	266	David Mlofuso ("Native Male")	C.S. 34 Ord. 26/04	Doctoring Against Witchcraft	Not Guilty	Jury: Guilty	1 Year IHL	Middelburg
1923.4.27	126	Sugumbuli Nkosi ("Native Male")	Two counts C.S. 29 Ord. 26/04	Smelt-out Wizard as Cause of Illness & Death	Not Guilty	Judge: Guilty	5 Months IHL	Ermelo
1923.5.9	151	Moya Kushatu Dekudeku ("Native Male")	Three counts C.S. 30 Ord. 26/04	CASE MISSING	Guilty	Judge: Guilty	18 Months IHL	Pietersburg
1923.5.14	161	Rasenga Tshabane ("Native Male")	C.S. 29 Ord. 26/04	Smelt-out Wizard as Cause of Illness & Death	Guilty	Judge: Guilty	2 Years IHL	Louis Trichardt

Date	Case No.	Name of Prisoner	Indictment	Remarks:	Plea	Verdict	Sentence	Place of Trial
1924.6.10	218	Shingainghai Chaka ("Native Male")	C.S. 29 Ord. 26/04	Smelt-out Wizard as Cause of Illness & Death	Guilty	Judge: Guilty	12 Months IHL	Louis Trichardt
1924.10.17	335	Zemelo Nepane ("Native Male")	C.S. 30 Ord. 26/04	Habitual Witch-Finder; Smelt out Wizard as Cause of Death	Guilty	Judge: Guilty	2 Years IHL	Lydenburg
1927.9.6	375	William Comette ("Native Male")	C.S. 34 Ord. 26/04; & Three Counts C.S. 39 of Ord. 29/04	Diagnosing Illness; Breaking "Spell of Witchcraft"	Not Guilty	Judge: Guilt of First Charge; Not Guilty of Second	4 Months IHL	Lydenburg
1927.11.5	496	William Nkobene ("Native Male")	Four Counts C.S. 34 Ord. 26/04 & Attempted Rape	Diagnosing Illness, Providing Remedies; Promising a Return of Stolen Property	Guilty	Judge: Guilty	18 Months IHL	Lichtenburg
1928.11.15	689	Andries Motojanie ("Native Male")	Six Counts C.S. 34 Ord. 26/04	Diagnosing & Providing Remedies	Guilty	Judge: Guilty	3 Years IHL	Wolmaranstad
1928.11.16	696	Samuel Pemo ("Native Male")	Theft of Stock & Three Counts C.S. 34 Ord. 26/04	Diagnosing illness Promising to Provide Remedies.	Not Guilty	Judge: Guilty on Two Counts	10 Months IHL each on Two Counts	Christiana
1929.5.3	221	James Smith ("European Male")	Five Counts C.S. 34 Ord. 26/04 & One Count C.S. 34(a) Law 13 1928.	Fortune Telling, Diagnosing Illnesses, Prescribing Remedies	Not Guilty	Judge: Guilty on All Counts	2½ Years IHL & £75 Fine	Christiana
1929.6.26	369	Scotchman Mmatala ("Native Male")	Two Counts C.S. 34 Ord. 26/04 & One Count C.S. 34(a) Law 13 1928.	Diagnosing Illness; Providing Remedy; Selling Medicine To Boost Harvest;	Guilty	Judge: Guilty on All Counts	6 Months IHL	Rustenburg
1929.11.3	546	Mashapola Mapenekes ("Native Male")	C.S. 34 Ord. 26/04 Or C.S. 30 Ord. 26/04	Diagnosing Cause of Death; Diagnosing Illness and Providing Remedies	Not Guilty	Judge: Guilty – strong recommendation to mercy	6 Weeks IHL for first charge; 1 Year IHL for second charge.	Louis Trichardt
1929.11.15	655	William Mokwena ("Native Male")	Two Counts C.S. 34 Ord. 26/04 & Two Counts C.S. 34(a) Law 13 1928.	Diagnosing Illness; Providing Remedies;	Guilty	Judge: Guilty	2 Years IHL	Potchefstroom
1931.11.3	433	Matje Ndlunu ("Native Male")	C.S. 29 Ord. 26/04 Or C.S. 30 Ord. 26/04	Habitual Witch-Finder; Smelt out Wizard as Cause of Death – Wizard Murdered As A Result	Guilty	Judge: Guilty	Imprisoned for Life	Pietersburg
1932.6.2	301	Ngungwa Resemga ("Native Male")	C.S. 29 Ord. 26/04 Or C.S. 34 Ord. 26/04	CASE MISSING	Guilty of First Charge	Judge: Plea Accepted	2 Years IHL	Louis Trichardt
1933.6.12	271	William Mohale ("Native Male")	C.S. 34 Ord. 26/04 & C.S. 34(a) Law 13 1928.	Selling Medicine to Increase Wages	Not Guilt	Judge: Guilty of Witchcraft	14 Days IHL	Rustenburg