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THE POLITICAL AND LEGAL CONTRADICTIONS IN THE PRESERVATION AND DISSOLUTION OF THE PRECAPITALIST MODE OF PRODUCTION: THE FOKENG DISTURBANCES, 1921 - 1926

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PREFACE

The central focus of this study is on the political and legal implications of the preservation/dissolution of pre-capitalist modes of production. The literature to date has taken account of these criteria and related them intrinsically to the economic relations without actually developing this at a concrete level. In the case of the Fokeng an opportunity to do so presents itself, thereby both enhancing the notions of preservation and dissolution, as well as exploring the effects of this on a specific Chiefdom in a relatively understudied area of analysis. In addition to this, the study attempts to examine the functioning of the state, in its political role, found itself to be a haphazard and often contradictory process. This is done at the level of operation of Departments of State, an area of study, which despite this attempt, requires a great deal more analysis.

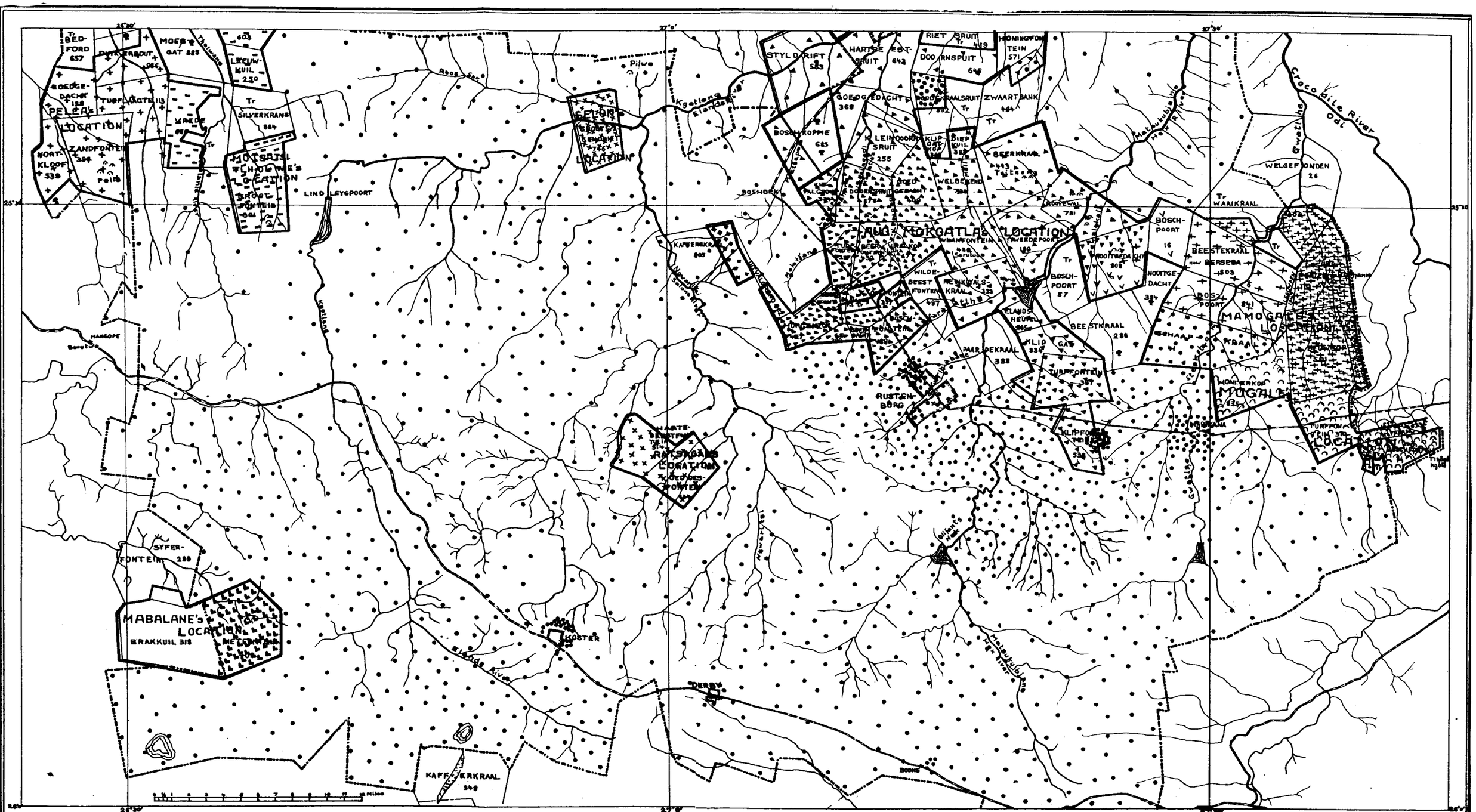
The study is, in effect a work in progress and thus the areas which were examined were examined in as much depth as possible, to the exclusion of fuller analysis in other areas. The examination of the effect of missions in the area, was somewhat neglected, due mainly to the fact that most of the mission records are now housed in Germany. However, the in-depth study of the legal disputes, and the wealth of information in the Secretary of Native Affairs files, specifically in Volume 316 (15/55), warranted the fine focus accorded them and rendered up some fascinating data.

I wish to thank Dr. Phillip Bonner, my supervisor, for tolerance of my lack of punctuality and, more importantly, informed guidance,which was absolutely indispensable. Also thanks are due to Rob Morrell who drew my attention to this case study, and to my parents for their support throughout, as well as to Phyllis Howarth who proved to be as much

my friend as theirs. Also I must thank Anita Fonn for her professional typing. Finally to all my friends for their tolerance and especially Mohsina for being there.

MAP OF THE RUSTENBURG DISTRICT from:

Breutz, P.L. The Tribes of the Rustenburg and Pilansberg Districts Pretoria: Department of Native Affairs Ethnological Publications, No. 28 (1953).



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1. INTRODUCTION

The underdevelopment of the rural areas of South Africa and the undermining of independent African agricultural producers, was a process which was neither regionally nor chronologically uniform (1). The path of underdevelopment tended to follow closely the path of proletarianization, by which means surplus was extracted from the rural areas through the expropriation of labour power in the form of wage labour. However, this very process of proletarianization took place at a differential pace in different regions of the country and had its roots in a variety of different processes of colonization as well as depending on the different structures of various peasant societies throughout the country. Ultimately, however, the pressures to enter wage-labour, induced by taxation, came for the African agricultural producer, to depend on this access to a means of producing successfully for the market, which in turn was dependent primarily on an access to the land. An awareness of this differential pace of land alienation, is crucial to any understanding of the history of rural areas in South Africa. Restated, this amounts to a demand that one understands fully, and in all its forms, the difficult and contradictory balance between the preservation and dissolution of non-capitalist forms of production in the countryside.

By the beginning of the twentieth century this process of land alienation had, in many areas of the country, had the effect of forcing rural inhabitants to move into the industrial areas of the country in search of wage labour, in order to meet the taxation demands imposed on them by the state. Participation in the wage labour market for many could not at this point be seen as discretionary, but was forced upon them as the only means available to meet the

cash demands made on them. This however was not the case for most chiefdoms in the Western Transvaal, who by various means were able to resist the relentless process of proletarianization. Primarily this was the result of their continued access to land and the specific productive use to which that land was put. These societies maintained a comparatively affluent existence and were, until the 1930's still able to enter the labour market in a comparatively more discretionary fashion.

However, before it is possible to understand fully the specific reasons why these conditions pertained in the Western Transvaal, as opposed to some other regions of the country, it is necessary to outline a number of concepts, crucial to understanding the nature of the penetration of capitalism and capitalist relations into these socio-economic formations. It is not possible to enter fully into the debate centred around the 'articulation' of modes of production. However, it is necessary to provide a few pointers which inform the chapters which follow.

Penetration, first by mercantile capitalism, followed by colonization and the establishment of industrial capitalist centres in the midst of pre-capitalist peasant modes of production, has resulted in extensive debate as to exactly what the effects and relationships of these 'two modes' or 'forms' of production constitute and their historical role in underdevelopment. Marx is quoted as saying :

> "As capitalist production develops, it has a disintegrating resolvent effect on all older forms of production". (2).

It would seem to be inherent in this argument, that all forms of

non-capitalist production are merely transitional and that their dissolution in the face of the development of capitalism, is both inevitable and necessary. Yet, beginning with Laclau, it has been repeatedly emphasised that these differing forms of production cannot be seen as exclusive to each other, as some sort of dualistic model might suppose. Rather, it is crucial to understand that non-capitalist modes of production exist, not completely externally to capitalism, nor even merely as "pockets of decline" (3). In fact these forms of production and their corresponding social relations, along with those characteristic of capitalism, are together "an intrinsic and structured part of a wider system" (4). Thus capitalism cannot be seen simply to evolve from a particular pre-capitalist mode of production in a simple passage of succession, nor can it be seen to simply dialectically transcend or dissolve the pre-capitalist modes.

> "On the contrary, this capitalism neither evolves mechanically from what precedes it, nor does it necessarily dissolve it. Indeed, so far from banishing pre-capitalist forms, it not only coexists with them, but buttresses them, and even on occasion devilishly conjures them up" (5).

This manifests itself in class struggles, confrontations and alliances between the classes which these modes of production define. Yet inherent in this argument, there remains a form of dualism, whereby two modes of production exist, "articulating" with each other, one establishing its domination over the other. It is even suggested that capitalism conjures up non-capitalist forms and social relations. This kind of argument assumes capitalism to possess some general mechanism which identifies in exactly what direction 'its' interests lie, and calculates exactly how to fulfill them (6). Any such

monolithic conception of capitalism, denies the essence of capitalist development, a process, which by its very nature, is wrought with contradictions. Roseberry to some extent, undermines this notion of 'articulation' with domination of the capitalist mode. He sees the notion of 'articulation' as reflecting another form of dualism. Peasants must be seen as part of social, political and economic wholes:

> "If peasants exist within larger societies, let us begin with those societies, examine the social, political and economic processes of development (or underdevelopment) which are at work within them, and then analyse larger regions within those processes. The problem of 'articulation' disappears because we are no longer talking about two discreet units which are somehow related, but about a total society" (7).

Roseberry goes on to say that we cannot simply add rural proletarians or partial proletarians to our traditional concepts of peasantries, but that we must analyse the process of production and reproduction of the social formation as a whole and the position of rural sectors and social groups within a "total society" (8).

In the South African social formation, the peasant economy can be seen as providing for the reproduction, both of subsistence requirements, and the biological reproduction, of the bulk of the African labour force, who are only partially proletarianised. The rural economy and peasant production thereby provided the basis for the rationalisation of cheap 'ultra-exploitable' African migrant labour, upon which the expanded production of capitalist industry, most

notably the gold mining industry, depended in the period prior to the 1930's. African reserves did, to all intents and purposes, leave the rural cultivators in control of their means of production - the land. This must be qualified, as access to land was limited, because it was only through the dual process of taxation and land alienation that peasants could be proletarianized. The preservation of peasant production in these limited areas is crucial to the reproduction of the work-force as a whole, and it is in these terms that one must view the preservation or dissolution of non-capitalist forms of production in South Africa.

The fundamental question then becomes, how one conceives of the relationship between reproduction of people as producers, and the actual production of the means of subsistence. Marx used the phrases production and reproduction to describe a unitary process:

> "Whatever the form of the process of production in a society, it must be a continuous process, must continue to go periodically through the same phases. A society can no more cease to produce than it can cease to consume. When viewed, therefore, as a connected whole, and as flowing on with incessant renewal, every social process of production is, at the same time a process of reproduction" (9).
>
> "According to this logic, the conditions of production are also those of reproduction. Thus if production is Capitalist in form, so also is reproduction" (10).

It thus becomes clear that it no longer makes sense, in this regard, to talk about two modes of production articulating with each other. This terminology fails to acknowledge, and in fact tends to underestimate, the depth of impact of colonialism and the simultaneous penetration of capitalism into traditional African societies. It is in this sense that Banaji takes the discussion a step further, when he suggests that the distinction drawn between 'modes of production' and 'social formations' serves to 'obscure and mystify the mechanisms of modes of production' (11). He demonstrates this further by example :

> "The slaves and hired labourers who intervened in this type of economy (feudal mode of production), were as much part of specifically feudal relations of production as the serf population itself. Their intervention did not signify the persistence or emergence of other relations of production ('slavery', capitalism), and did not therefore imply an 'articulation' of several distinct 'modes of production' (12).

Whilst Banaji directs one to a fuller understanding of the complexity of the economic and social interaction of peasant producers within capitalist society, he still does not take this far enough in analysing how this interaction comes to take place. Certainly he acknowledges as does Meillassoux, that each economic system is accompanied by a specific set of social relations and that these relations are not all compatible with each other. The penetration of capitalism into pre-capitalst modes of production, first by trade and then through the expropriation of wage labour, tends to deprive these pre-capitalist societies of their economic infrastructure (13). This is not necessarily a complete process, but still tends to undermine the ongoing independent existence of these social formations.

This, however, remains a somewhat narrow focus, concerned rather closely with the economic implications of capitalist penetration. It does not fully acknowledge the extent to which social, political and legal relations are functional to, as well as a function of, economic relations in this context. In these terms, it is vital to acknowledge the importance of politico-legal contradictions inherent in the penetration of capitalism into pre-capitalist social formations. For just as the economic infrastructure of these peasant societies is structurally undermined, so too are the political relations and systems of law which characterise these communities.

> "Thus the rich concept of mode of production must not be reduced to a much narrower one of an economic 'instance' or 'level', as (ultimately) the most significant of a number of other levels - a reduction which precisely renders inoperative the central assumption of Historical Materialism" (14).

In studying and analysing the contradictory tendencies of dissolution and preservation of these peasant economies, it is crucial to recognise the politico-legal implications of this in the colonial context. Primarily, this amounts to recognising the impact of capitalism as having the effect of leaving political and legal relations out of phase with the changed economic relations, which no longer provide the determination of these social relations. These then are the contradictions which become apparent, when studying the contradictory processes of dissolution and preservation of the non-capitalist forms of production.

It remains necessary, however, and important, to note the specific effects of the impact of capitalist relations over time. It is only

when this periodization is borne in mind, that it is possible to come to terms with the exact means through which the infrastructures of these traditional forms of production are undermined. In turn, only once this aspect is completely understood, is it possible to understand the effects and transitions in the class stratification of the traditional society and thereby gauge the future trajectory of class struggle in those societies, as well as the forms which that struggle is likely to take.

Meillassoux, in his discussion of Guro society throws some light on this matter (15). He notes the original functioning of traditional societies, prior to the penetration of capitalism in any form:

> "Originally social determinants arose from within the society, that is, from the inter-relations of its constituent units and with the natural environment" (16).

Kinship relations generally served also as relations of production. They corresponded to a social organisation of production and fitted a system of redistribution. It is of some consequence that these kinship relations generally extended beyond strict blood relations. In Guro society, the penetration of trade had a limited effect only in fragmenting the communitites. It did not bring about a specialisation of labour:

> "Trade relations and kinship relations remained mutually exclusive" (17).

Colonization on the other hand did not act merely from such an external basis:

> ".....it mobilised men's labour for its own benefit and penetrated inside the functional units by imposing a political and juridicial

framework, taken up from the traditional structures, but disfigured and rigid...." (18)

Meillassoux further outlines quite closely how social relations and economic relations of production are undermined by insertion into the market economy. He underlines the fact that this process brought about a transformation in the exploitation of land. Kinship relations, as a result, became increasingly incompatible with the relations of production which emerged from "the valorisation of the product of labour" (19). Land effectively became the nexus of new social relations. Finally Meillassoux recognises the contradictory nature of these developments. The emergence of cash cropping, while destroying the traditional structures; and the attempts to maintain these same structures,

> ".....which alone are capable of satisfying those basic needs which capitalism refuses to assume, in order, precisely to integrate family labour into its system of exploitation" (20).

In this way the relations of the peasant economy with those of the capitalist one, become very much more organic than was the case with externally operational trade relations. As such it is important also to note the transmission of capitalist ideology, which must be seen to have some impact on the conciousness of the members of the peasant society. This permeation of capitalist ideology and its concomitant effects on the perceived class place of a number of African peasants, must be seen also to determine, at least in part, the later trajectories of class struggle. This question of ideology will be further referred to below.

It is now possible to return to the analysis of peasant structures in the Western Transvaal. First it will be necessary to outline

the nature of the penetration of capitalism into this area, the extent, and means by which this process undermined the functioning of peasant society, as well as the means by which peasants in the Rustenburg district managed, to a large extent, to resist proletarianization until at least the 1930's. It is ultimately only possible to understand the functioning of these societies in the 1920's, on the basis of a full explanation of the impact of capitalist relations on the specific social relations of production in these peasant societies, in the course of the nineteenth and early twentieth centuries. Although it is apparent that many trends were common to the Western Transvaal as a whole, I shall make special reference to the Fokeng tribe of the Rustenburg district which will be the case study upon which the rest of this paper will focus.

The Fokeng location lies in the eastern half of the Rustenburg district adjoining the town lands of Rustenburg, and stretching as far north as the Elands River which forms the northern border of the district. The Chief's village, Phokeng, is approximately ten miles from what is today Rustenburg (21). The Fokeng had already settled at Phokeng during the eighteenth century. However, when Mzilikazi, fleeing from Shaka in the course of the Mfecane, raided the Rustenburg area in approximately 1829-30, the majority of the Fokeng were scattered (22). It was Chief Mokgatle; the grandfather of Chief August Mokgatle, with whom this study is primarily concerned; who returend to Phokeng in search of his people. At that time (prior to 1837) he had very few followers, but on hearing of his return, they gradually re-assembled (23). Mokgatle recognised his subordination to Mzilikazi until the latter was driven out by the Boers, to whom Mokgatle then instantly transferred his allegiance.

The first Voortrekker to settle in the Rustenburg district was Hendrick Potgieter. In 1839 the Boers founded the village of 'Magaliesburg' which in 1850 became Rustenburg. At that time it had 700 European inhabitants (24). It is of some interest to note the origins of the name 'Rustenburg'. It was supposedly attributed to the fact that the 'Kaffirs' of the area were unusually peaceful, allowing the Boers a more restful existence on their lands (25). In return for his support, Potgieter rewarded Mokgatle with a farm - Kookfontein 337. Thereafter the Fokeng lived in relative peace with the Boers who upheld and recognised Mokgatle's chieftainship. In 1883 President Paul Kruger paid a visit to the tribe (26).

Relly, on examining the effects of Boer settlement in the Western Transvaal, notes that few Chiefdoms were able to resist Boer claims to the land or demands for labour and tribute. However, she notes that some peoples were able to maintain some autonomy on the basis of 'tenuous treaties' or 'alliances' with trekker society (27). Especially in areas not densely settled by the Boers, some African peoples managed to effectively maintain control over access to the land. It is apparent that the Fokeng under Chief Mokgatle were able to do this. It is of some significance to note the means by which colonial influence first permeated these societies. The fact that Boer conquest was directed at Mzilikazi who was at that stage exploiting the local inhabitants through tribute, and terrorizing them through raiding, meant that the violent penetration of white colonisers was not directed specifically at the local Chiefdoms of the district themselves. In fact, it facilitated the sort of alliances outlined above. It also meant that as a result, local tribes were often spared the immediate dispersal and enforced disintegration of

their social structures, which might result from such violent conquest. The result was that a relative homogeneity of African societies in the Rustenburg district was maintained.

This may be contrasted with the fate of Zululand, where the process of primitive accumulation through conquest was much more direct, and colonization in the last quarter of the nineteenth century was very much more closely associated with military conquest, whether by the British themselves, or via the Zulu civil war of the late 1870's and 1880's. Guy directs our attentions to this distinction which may be drawn between the Zulu and the Fokeng examples:

> "One of the most important factors in determining the rapidity and intensity of the fall of the Zulu system in the 1880's, was the very success of the Zulu kings in protecting their kingdom from colonial intrusion earlier in the century" (28).

This was clearly not the case in the Western Transvaal as Boer penetration into the area on a permanent basis dated back to the 1830's. On the other hand, the direct and rapid conquest of the Zulu did not facilitate the adaptation of Zulu socio-economic structures over time, resulting in the equally rapid disintegration of these existing structures. This was of course due primarily to the precariously balanced Zulu economy (outlined in a number of articles by Guy), dependent on the circulation of cattle, exploitation of women, and access to large tracts of land with only seasonal grazing facilities, in a terrain and climate which was not altogether hospitable (29). Land alienation denied Zulu agriculturalists the geographical mobility vital in a land of fluctuating climatic conditions,

thereby undermining their productive base. Thus as Guy says:

> ".....the disruption struck at the heart of society - at those processes which had to continue to function without interruption for the society to survive" (30).

However, this process manifested itself also at the level of social relations within Zulu society. The limited access to land resulting from the establishment of Zulu reserves, meant that the power of Zulu Chiefs to grant their followers land and cattle, was severely undermined. This remained theoretically within their power, but practically,was often impossible. This must be seen at least in part to explain the waning authority of Zulu Chiefs. In addition, once the Chiefs were established as servants of the Government, the political mobility of Zulu society was also severely restricted (31).

By comparison the tribes of the Western Transvaal, situated on highly productive land with a moderate climate, were able not only to generate a substantial surplus, but also succeeded in maintaining a high degree of social and political cohesiveness. Over and above anything else, this facilitated the communal collection of funds, used primarily for the purchase of land (32). Land purchase in turn facilitated the maintenance of these forms of political organisation and social cohesiveness. As such, land buying in and around the Rustenburg district, became a focal point of Tswana life (33). By contrast Marks shows that in Zulu society, although in certain instances tribes had bought land communally,.....

> ".... in general the idea of buying land was foreign to African traditions" (34).

It fast becomes apparent that due to the nature of the Zulu productive process itself, Zulu society could not withstand the violent and immediate impact of colonization in the period after the 1870's. Zulu

social relations collapsed as their structural determinants were undermined. Zulu migrants were soon taking up wage labour in the colony of Natal and were also to find themselves on the mines at Kimberley and on the Rand. On the other hand, the maintenance of social and productive cohesion amongst the Tswana of the Western Transvaal, determined at least in part by the 'less immediate' form of colonization as well as the comparative resilience of the Tswana agricultural system, meant that in the years after the discovery of minerals, Tswana communities were still able to organise along the basic lines of their pre-colonial social relations. The primary end of such organisation, as has been mentioned, was the gaining of access to more land. The availability of this land until at least the early 1930's, despite the effects of the 1913 Land Act, provided the peasant producers of the Western Transvaal with a means of at least temporarily, resisting the pressures towards proletarianization (35). It allowed a prosperous group of independent peasants to maintain their position in the Western Transvaal until the 1930's, entering into the labour market in a relatively discretionary fashion.

The adaptability of Fokeng social relations to the market economy, becomes particularly apparent with the discovery of minerals. Immediately Chief Mokgatle Mokgatle sent about five hundred young men to work on the Kimberley diamond mines, in order to earn £5 each so that the Chief could buy farms in the name of the local Lutheran mission (36). Reverend Ernst Penzhorn of the Lutheran mission outlined this trend in his evidence to the Native Economic Commission in 1930. He said of Chief Mokgatle Mokgatle:

> "Daar die ou Kaptein het vir die volk baje plase gekoop" (37).

Initially land was registered through the name of the mission or other

Whites in the area, but later all these purchased lands were transferred to the name of the Native Commissioner. Bundy suggests that even as early as the 1870's there were individuals wanting to buy private farms (38). However, in the period before the turn of the Century, land purchase was usually undertaken through communal means, rather than by individuals. This tendency, or desire to buy land individually, seems rather to become characteristic of the early twentieth Century, and even then, was not a widespread process. The point is,that by whatever means it was undertaken, through land purchase in the second half of the nineteenth Century many African groups succeeded in remaining free from rent or labour tenancies on Boer farms (39). Despite this trend, for many the only alternative means of gaining access to land was through such occupation on neighbouring farms owned by White landowners. This did not,however, very often take the form of wage labour and Boer farmers found it near to impossible to -

> "procure labour if arable and grazing land were not offered as inducements" (40).

As a result those Boers who owned large tracts of land generally found it easier to entice labour tenants to fulfill their labour requirements. In addition to this, the development of industry, especially the rapid growth of gold and diamond mining, served to provide alternative and extremely vast labour markets,for Africans without immediate access to land. This competition for labour between White agriculture and industry permeates the entire period under observation and,generally speaking, for the entire period the wages offered to agricultural labourers were lower even than those offered on the gold mines (41).

An additional effect of the development of the mining industry in such near proximity to the peasant producers of the Western Transvaal, was

to provide markets for their produce. This served to stimulate agricultural production. African peasants proved to be extremely alert to the operation of the market economy, and the desire for cash in order to buy more land as well as manufactured goods, in addition to their tax and tribute fees, served also to stimulate agricultural production (42). Relly briefly gives some indication of the resultant accumulation of wealth by these groups by 1895. In 1866 there was but one plough and one wagon to be found at Phokeng, as well as only a limited amount of cultivated land. By 1895 almost every family had oxen and a plough and there were five successful retail stores in operation (43).

One of the immediate results of this relative success, was that by the 1880's there was a severe shortage of labour for the nearby White farms. These farmers increasingly began to demand that Africans' access to land be severely curbed. In 1881 the Native Locations Commission was established to reserve specific areas of the Transvaal for occupation by Africans, and the legalities of land purchase by Africans was established, depending on its transfer being effected through the Commission and held in trust by an officer of the Government. White farmers in the district, however, remained dissatisfied and demanded the breaking up of African land and the application of the Squatters Law to all land held under communal tenure. Despite this, and in response to pleas by Africans and missionaries, these lands were declared immune from the Squatters Law and were proclaimed 'location' lands (44). However, location sizes were determined by the Government, on the estimated basis of five to ten acres per family. Of the eighteen farms owned by the Fokeng, ten were deemed to be in excess of the land required by the resident population and as such remained subject to the Squatters Law (45).

The Squatters Law basically prohibited labour tenancy, share-cropping or any such forms of land tenure outside of the reserves. This did not necessarily mean such occupation of land stopped, as White farms depended as much on labour tenants for their labour requirements as the tenants did on them for access to land, and this induced them to evade the Law. It did however considerably undermine the security of tenure for many of these tenants. As soon as the labour requirements of the farmers were met by other means, (as was the case in the 1920's - largely through imported labour from Nyasaland and the Bechuanaland Protectorate) they could be forced off the lands, or called upon to meet much harsher labour requirements. These pressures obviously did not apply in the locations. In addition there were other advantages for land included in the Location. One crucial clause stipulated by the Locations Commission, was that Africans owning their locations retained the rights to mineral revenues on those lands. When in 1908, platinum mines were opened on farms Klipfontein 538 and Turffontein 997, this proved to provide a useful source of revenue to the tribe (46).

Land purchasing continued apace, and was seemingly to be further encouraged by the opportunity for capital accumulation during the Anglo-Boer War and through settlements of claims and receipts issued during the war. In the years immediately following the war, the necessity to register all African owned land in the name of the Commissioner of Native Affairs, revealed that much of the land ostensibly bought by missionaries was in fact owned by Africans (47). In 1905, the South African Native Affairs Commission suggested that African land purchasing be restricted to specific ares 'defined by legislative enactment' and that tribal or communal ownership of land should be prohibited. However, in the same year the Supreme Court reversed the necessity for Africans to register their land holdings in the name of the

Commissioner of Native Affairs. This provided for the ongoing process of purchasing land - especially in the Rustenburg district (48). In the course of his chieftainship, Chief August Mokgatle of Phokeng, bought no fewer than nine farms, apparently on behalf of the Fokeng (49).

The picture thus far would seem to be an all too attractive one. African peasants in the Rustenburg district simply adapted their tribal structures based on communally organised relations of production, to the vicissitudes of the cash economy, thereby enabling them to resist proletarianization and maintain an independent productive existence. This is belied by the fact that many members of the society did enter into wage labour, however they may have utlised the wealth accrued therefrom. Yet it is most important to recognise that the very process of land purchase itself, demonstrated the weaknesses inherent in communal ownership and production, when faced by the more subtle penetration of capitalism.

Prior to the turn of the century land was generally bought communally. This was a means of establishing communal title to a portion of land and, theoretically, meant that the land purchased would be equally distributed, irrespective of the differing contributions of any particular party to the purchase price. Pre-capitalist Tswana society was for the most part of the nineteenth century, subject to the dominance of such an ideology of communal land-holding. Land, as in the Guro example, was therefore of limited importance in determining the social stratification of Tswana society. Relly suggests that in Tswana social systems this was more likely to depend on the control over cattle and women (50). However the very emphasis on access to land, especially after the establishment of African locations, reflected by the growth in importance of the purchasing and hiring of land, tended to

undermine this ideology. Increasingly, from the end of the nineteenth century land became an important feature in the class stratification of society. Central to this, and inherent in the undermining of the ideology of communal tenure, was the growth of notions of private property in land. It was the manipulation of these notions, which was to play a crucial role in redefining class in Fokeng society. Thus Relly asserts that:

> "In the first decade of the twentieth century patterns emerged which revealed weaknesses in the structure of communal ownership" (51).

The political structures of Tswana society proved to be functional to this process of increasingly unequal distribution of land, and it is one of the fundamental contradictions of developing capitalism in the Western Transvaal, that this same process served ultimately to undermine the traditional political and legal framework upon which its development was based.

Relly notes that after the war, chiefs were increasingly buying land in their own names (52). Chief August Mokgatle was no exception. In 1906, he bought some land with the aid of some of his people, with a very definite eye to his own agricultural interests. He later repaid to the people involved, the original sums they had contributed, and was left with the land to himself (53). The trends complained about by Penzhorn in 1930 reflect this self same process on something of a broader scale. He suggested that land was unequally distributed amongst the Fokeng and blamed this largely on inefficient administration as well as corruption by the chiefs:

> "Daar is mense wat al sedert 1888 betaal het vir die plase Hul betaal nog; hul is van die eerstes wat betaal het, maar hul het nie land

nie om te ploeg" (54).

Over and above this, groups of people who had bought land communally began increasingly to attempt to shed the restraints and responsibilities of communal ownership (55). This is reflected by the example mentioned earlier, with the discovery of minerals on certain Fokeng owned farms. Although the resultant revenues eventually accrued to the Chiefdom as a whole, this was not before a legal dispute, in which certain individuals claimed to have exclusive rights to these revenues as a consequence of their private ownership of the land. (See Footnote No. 46). Even more notable, was the fact that not only was the distribution of communal lands no longer 'truly communally distributed', but communal land purchases were ceasing to be 'truly communally purchased'. By 1916 although groups still pooled their resources in order to purchase some land, the land would be divided up among the purchasers according to the amount contributed by them to the purchase price'

> ".....each gaining a portion that could be treated as private property in every sense except that it could not be registered as such" (56).

It thus becomes quickly apparent that Mr. T.A. Emmett, Native Commissioner in the Saulspoort area, was extremely short-sighted in his assertion (to the Native Economic Commission in 1930) that the purchase of land under 'tribal conditions' (that is to say through the advantages of greater communal purchasing power), if encouraged 'would obviate the landless native question' (57).

> "Communal ownership of land, both where communal occupation was intended, and where farms were divided into individual private

> portions, gave no guarantee to subscribers or their families of a viable agricultural subsistence" (58).

It becomes apparent that inclusion into the cash economy and the process of land alienation, incorporated in the formation of locations in the 1880's and furthered by the Lands Act of 1913, accompanied by demands for labour, effectively changed the basis of social stratification and undermined the communal ideology fundamental to the pre-capitalist mode. This reflects the effectual incorporation of peasant production into the 'organic whole' of the capitalist mode, and is identified by the development of an ideology of private property - fundamental to the capitalist mode of production. It is necessary to provide some analysis of what 'ideology' means in this context. Clearly, ideology cannot be seen as an external force consciously created, or designed to deliberately mystify real relations - the cloaked manipulative intent "in the minds of capitalists or bourgeois politicians" (59). O'Meara critisizes the mere basis of this conception of ideology and suggests that it fails inherently to :

> "transcend the fetished categories of 'economics' and 'politics'".

Rather he suggests '

> ".....it must begin with the historical development of capitalist production relations - the concrete process of class formation in class struggle, and the political and ideological forms this took" (60).

It was demonstrated above, that the form of colonization in the Western Transvaal allowed for the adaptation of Tswana political structures to meet the needs imposed by the incorporation in the cash

economy. These political structures served to a large extent to actually facilitate the development of new social relations of production, centred around the formation of private property, or unequal distribution of land. This was at the same time, a process of struggle with the impending threat to the peasant of the loss of all means of subsistence, and the resultant inevitable resort to sale of his labour power. As such, it was a process also of class formation. As O'Meara sums it up:

> ".....classes are fathered in struggle - born under specific historical conditions, the result of particular class struggles in concrete social formations, and carry their birthmarks with them as defining characteristics. .....Thus the very process of class formation itself - the particular ways in which capitalist relations are established in class struggle - gives rise to divergent ideological and organizational forms through which the class struggle is fought out" (61).

Thus ideological formation takes place at the level of specific relations of production under specific historical conditions. It comes to represent social relations "embodied in real material institutions"(62). Thus the ideological transformation in Fokeng society outlined above, must be seen to be both functional to the incorporation of peasant production in the capitalist mode, as well as a symptom of this process.

In material terms all this meant that land purchase and the developing private ownership or unequal distribution thereof, did not necessarily provide all the people in the Chiefdom with the means

of resisting proletarianization. For many the alternatives to buying land, was to rent it on nearby Boer farms. This usually took the form of labour-tenancy. Penzhorn makes the point that Africans realised they could make a better living off the land than they could as labourers. Thus he identifies the various forms of tenure on neighbouring privately owned farms, as providing a means of resisting proleterianization (63). However, by the 1920's this hiring of property on nearby farms - on the part of Africans, made all the more necessary by virtue of the 1913 Lands Act - was on the decline, due largely to the effective implementation of 'anti-squatter' legislation (64). Ernst Penzhorn made it clear that the 1913 Lands Act, through denying Africans the right to buy land outside of the reserves, restricted Africans' access to land thereafter. It was felt by both Penzhorn and most of the chiefs in the Rustenburg district, that the anti-squatter legislation and the Lands Act, complemented each other in denying Africans access to the land (65). Chiefs demonstrated their resentment of this and specifically their desire to buy farms outside of the African reserved areas. This was usually couched in the political terminology of the time, and chiefs in the Rustenburg district were openly opposed to the notions of segregation (66). Emmett, on the other hand indicates that the mutual dependence of labour tenants and White farmers on this form of tenure, meant that the legislation involved was not immediately suitable to either the farmer or the African tenants. He further suggested that the Lands Act, and the growing over-population in the reserves, served indirectly to actually hinder the application of the Squatters Law. He saw the Lands Act as providing some "mysterious legitimacy" in contravening the anti-squatter legislation (67). However even prior to this, certain inadequacies on the African lands had already become apparent. The most easily identifiable inadequacy of the land was the shortage of water, and the resultant

huge distances which African cattle had to travel in order to obtain drinking water (68). The water supply on neighbouring White farms was considerably better and so many of the Africans in the district grazed their cattle on the nearby farms, generally for a cash fee per head of cattle. However, this was not simply a matter of preference, as by 1916 and even before, pressure on the land was beginning to tell. Relly suggests that the population increase between 1909 and 1916 was at least 20,000, as the result of both natural increase and of migration to the Western Transvaal. By 1930, half of the Africans in the Rustenburg district were grazing their cattle on nearby White farms and by the 1920's overstocking had become a problem, accompanied,as might be expected,by increasing soil erosion (69). In addition to this, by 1930, there were a large number of Africans who owned little more than two or three morgen of ground, which served only to complement the income they received from wage labour (70). Drought was also a factor in the 1920's, serving to force people off the land. Effectively by the 1930's the productive capacity of the soil itself, had been severely undermined. Although various forms of tenancy on nearby farms continued after 1913 in contravention of the Lands Act, the act served also to discriminate against those who were already poor. They could seldom pay the rents in cash or kind, which would encourage White farmers to evade the clauses of the Act which restricted squatting or leasing. This factor combined with unequal distribution of land within the reserves, meant that:

> "Poor people were not only forced off White farms or into tenancies which more and more tended towards full-time wage labour, but they were also having a difficult time maintaining their access to land within the locations by the 1920's (71).

In addition to this, whereas the labour tenancy system was the only means by which White farmers could attract African labour in a period of labour shortage and in the face of competition for labour from the industrial sectors, increasing access to extremely cheap foreign African labour on the White farms severely undercut the bargaining power which Africans had in this regard (72). "Blantyre and Nyasaland boys" passed through these areas on their way to the mines and this 'stop-go' labour proved to be extremely exploitable (73). This of course did not apply to the farms which were owned by absentee landlords, and these farms were still available to local African tenants who could afford the rents. Emmett proved to be very aware of this and suggested that absentee landlordism should be hindered, as this would be in the interests of "segregation" as it would force Africans back into the locations, but more importantly, it would result also in the "freeing" of a large amount of labour (74).

It was these factors that throughout the 1920's contributed to growing rates of migrancy. Migrants asserted their recognition of their position and its determinants. Increasingly they reneged on their obligations to contribute to tribal levies, and to contribute thereby to the communal purchase of land (75).

> "It seems likely that, in part, the recalcitrance of migrant labourers reflected the extent to which their stake in the rural economy had diminished" (76).

Undoubtedly by the 1930's the extent of migrancy and role of migrants in the peasant economy was causing a great deal of concern, especially amongst the Chiefs. Problems of women's migrancy and of 'detribalization' characterised the entire evidence to the Native Economic Commission of 1930-32. These issues will be dealt with in the chapter which follows, however it is important here to note

that the nature of the productive base in the Western Transvaal and the relative access to the means of production, did for many, facilitate a more discriminating participation in the labour market - if only temporarily.

A brief look at the map of the Rustenburg district, shows that the tribal lands of the Fokeng,constituted a considerable piece of land, consolidated into a single entity. Despite the water shortage, the land itself was extremely fertile and most of it arable. The soil was largely made up of black turf which required only minimal manuring, and was productive for many years if ploughed properly (77). In addition to this, although it was not a universal characteristic of the region, many of the farmers were adopting modernized methods of farming, such as deep ploughing with double furrow ploughs (78). Penzhorn suggested that most of this was learned through temporary labour on White farms (79).

Indications by both missionaries interviewed by the Native Economic Commission, as well as Native Commissioner Emmett, were that agricultural production in the area was highly successful, and that almost without exception farmers were able to produce a surplus, over and above their needs. Penzhorn estimated production at 50 - 70 bags of maize per morgen:

> "Daarvan kan hul heelmaal goed leef en bestaan
> en wat hul oor het verkoop hul vir hul behoeftes
> in klere en huisraad en so voort" (80).

Emmett does however qualify this and indicates that this is not strictly the case in his area. Agricultural production was not as progressive as amongst the Fokeng in August Mokgatle's location. He suggested also

that intensive scientific methods were essential and had to be introduced (81). Also,whereas the ability of the Fokeng to sell their surplus produce profitably was facilitated by their close proximity to Rustenburg itself, and the fact that transport was generally readily available to them, this was not duplicated in the Saulspoort area, where the peasants were generally limited to trade and barter on a local basis (82).

For those peasants who had managed to acquire access to fertile lands, despite the pressure on those lands, the 1920's proved a fairly prosperous period. Some grew as much as five hundred bags of grain a year and many more between one hundred and two hundred. By 1930 even wheat and tobacco were being cultivated (83). Even for many of these people,the threat of proletarianization was merely stalled until the very productivity of their land was undermined. For others, migrant labour became the only alternative means of paying their taxes and their position in the rural economy served only to condition their participation in the labour market, rather than provide them with any alternatives. This development was very much underway during the 1920's.

2. MIGRATION AND 'DETRIBALIZATION': "NEITHER A BIRD NOR A MOUSE"

"Dr. Roberts: People live on the wages of those who go forth to work for Europeans?

Ds. Penzhorn: Yes

Dr. Roberts: So the going forth is a necessity?

Ds. Penzhorn: It is.

Dr. Roberts: Your people would perish if they did not go forth?

Ds. Penzhorn: Yes, the boys have to go out to work, but I do not think it is absolutely necessary for the girls to go out" (84).

From the above quotation it appears that by 1930 migrancy had, for many of the Fokeng, become a necessity. However, it is of some consequence to recognise that the reasons for taking up wage labour were not uniform. The most important distinction is between those who took up migrant labour to complement or enhance their capacity as agricultrual producers, and those for whom limited agricultural production was merely a supplement to their migrant earnings. In other words, wage labour for some provided an investable cash income, inevitably invested in agricultural production, whereas for others it provided a crucial contribution to their day to day subsistence. This obviously depended very closely on the stake which individuals had in the agricultural base of Fokeng society. At any rate it is apparent that almost every unmarried young man spent at least a few years in wage-labour on the Rand (85). It has already been explained that most of the Fokeng avoided wage labour on nearby farms, as the wages offered were generally much lower than those offered on the Rand and at Kimberely. Penzhorn did suggest that labour on nearby White farms was preferable for the Africans of the district, as they learned useful methods which they could then use on their own lands. He goes on however to suggest that those farmers who did not obtain

the labour they needed generally treated their labourers very badly (86). This could however merely mean that they were not earning enough. The standard rate quoted by Penzhorn was 1/6d per day with food. However, the food offered was seldom enough or of good enough quality, to meet requirements (87). Very little opportunity to earn a cash income outside of wage labour was available. Most of the agricultural surplus produced was bartered or exchanged for goods in kind, and this was usually done with the stores and mills in the immediate vicinity. There was limited sale in Rustenburg itself, where cash was paid for the produce. Penzhorn suggested that barter was their form of trade:

> "Dit is hulle geld, want hulle het nie kontant nie; of as hul iets wil koop, dan ruil hul die produkte wat hul in die mandjies dra vir die goed wat hul wil koop" (88).

He suggests also that Africans received approximately the same value for goods bartered as they might if they were sold (89). This however is extremely dubious, and most of the Chiefs complained that they were being 'forced' by local storekeepers to barter and that they received much less this way than their produce was worth (90). This was further demonstrated by the multiple demands by the Chiefs, that their peoples be provided with some easily accessible market for their agricultural produce (91).

It is,however, apparent that during the 1920's, the majority of the Fokeng families were able to subsist on their agricultural production. This, as indicated above, enabled them to participate in the wage labour market in a more discriminating fashion, and accorded those who took up such labour a certain bargaining power in the struggle against the most exploitative forms of employment. As a result very few of the Fokeng took up labour on the mines in the twentieth century,

and when they did, they preferred the Kimberley mines to those in Johannesburg (92). Breutz estimated that this proportion however was even less than 10% of those who migrated (93). It is clear that the people of the Fokeng location, preferred to work in secondary industry, where possible, or in domestic labour as 'kitchen boys', 'store boys' and the like (94).

Thus it is clear that the immediate needs of reproduction, that is : production of subsistence requirements, were met by agricultural production. However, reproduction from one generation to the next, demanded a much greater surplus product, and demanded it in a specific form - money. This was both due to the imposed taxation demands as well as the needs to develop agricultural production to meet the needs of an ever growing population. To that were added costs which were traditionally demanded, in the forms of tribute and levy as well as bridewealth costs (95). Despite the fact that Breutz has described the Fokeng as one of the wealthiest African peoples in the Union at this time (96), and despite the fact that they accrued a substantial income from mineral revenues even in the early 1920's, to meet these costs the Fokeng families depended on an income from migrant labour.

However, this very entry into the wage labour market and the specific forms which it took, significantly affected and transformed the productive process in Fokeng society. As such it fundamentally affected social relations and the structures of authority as well. As has been mentioned many migrants invested their cash earnings in agriculture, depending largely on their access to such productive means. However, in the earlier period, unmarried men were inclined to work on nearby farms for the sake of earnings in kind in the form

of cattle. This was, as evidenced, usually short term and cannot be seen as providing the White farmers with their labour requirements. Homestead heads were however able to control the stock earned by their sons, and this served to bolster the relations of exploitation in Tswana society (97). The payment of cash wages however, provided young men with an opportunity for a more independent financial existence. This was further facilitated by the move into urban areas, somewhat more distant from their homesteads, and all the concomitant 'detribalizing' influences, which cannot be ignored, and served to complement a degree of economic independence. This end was further served by the nature of the employment of these workers. They were involved, as has been mentioned, in areas of employment subject to comparatively few hardships and usually demanding a semi-permanent urban existence. It is not at all surprising that many migrants took full advantage of this situation, and for many it provided them with the opportunity to escape exploitative relationships inherent in the social relations of production of the peasant economy. This amounts very often to taking to migrancy in order to evade labour obligations as well as obligations in cash and kind, levied primarily by the Chiefs.

> "Op die lande en in die lokasies is daar
> baie werk wat hulle moet doen, in die dorpe
> en in die stede is hulle meer vry ....." (98).

Penzhorn notes this, and suggests that the tendency to migrate is even more the result of Chiefly corruption, and the 'poor administration' of Chiefs in their unequal allocation of land (99). The Chiefs themselves were aware of this trend, but needless to say, interpreted it slightly differently. Pilane recognised that "people leave" because of their "tribal dues and tributes" - yet he seemed unable to explain it:

"But these fees are just fees" (100).

Chiefs complained also about the tendencies to migrate in order to avoid 'tribal justice' (101). Mutle Mokgatle representing Chief August Mokgatle, in giving evidence to the Native Economic Commission in 1930, summed up the sentiments of the Chiefs of the area on this issue. He complained that these migrants wanted just to be free of all tribal rule and authority, whilst still having access to their tribal inheritance.

"He is neither a bird, nor a mouse - but a bat" (102).

This then, is the central feature which lies behind the often complained-about notion of 'detribalization'. Its roots and its consequences in the social relations of production in the peasant economy must be fully recognised.

The economic independence which this semi-permanent migrancy accorded wage labourers had extremely deep rooted effects on the peasant economy. It was common that migrants would return to the locations with next to nothing to show for the period spent in wage labour in the towns. This therefore not only constituted a loss in labour power for the peasant economy but a noticeable material loss as well. The income in kind, previously earned by young men was no longer forthcoming and only very limited alternative resources resulted from the period of migrant labour.

> "Maar nou maak hulle niks nie: hulle gaat nogweg om to werk; in die dorpe .....werk hulle vir 'n tydjie, maar hulle kom terug sonder iets" (103).

That was if the men returned at all. However, they did not always return home during the ploughing season, with the result that:

> "....division of labour within rural Tswana homesteads was undergoing a fundamental transformation throughout the 1920's" (104).

Thus, this process of 'detribalization' not only constituted a potential money loss for the peasant economy, but served also to necessitate the restructuring of the process of production. Increasingly women began to fill the productive roles previously occupied by young men in rural production. As a result the migrancy of women was discouraged:

> "They say 'let the boys fight their own battles; let the boys see what they can do, but we do not allow our girls to go out'. They are supporting the girls with everything they want, and generally speaking the girls are ploughing and gardening and doing everything that has to be done.... Of course, I am now referring to the more progressive class of native" (105).

This would also go a long way to explaining the tendency of women, subject to such exploitation, to take to the towns, as well as the extreme dissatisfaction at this development on the the part of the Chiefs. This is especially understandable in the light of the number of women who returned pregnant and left their illegitimate children in the locations whilst they returned to the towns, as well as those who were married 'illegally' without 'lobola' being paid for them. If one bears in mind the Chiefs' control of bridewealth, the latter must be seen also to constitute a financial loss both to the family of the women and the Chief himself (106).

The growth of private ownership of land, and the increasing polarisation of the African population in the Rustenburg district, must be closely

linked to this process of 'detribalization', as increasingly in the 1920's access to land was for many less of a security than had previously been the case. This must further be coupled with the exploitation, facilitated by traditional mechanisms of political control, in their application to new relations of production. Fundamental to this is an understanding of what 'detribalization' is. It is not a state, of which the symptom is migrancy, but rather a response, facilitated by the alternative of a semi-permanent urban existence, to increasing alienation from the means of production and the political mechanisms enhancing exploitation on this basis. As such, it is a consequence of the structural alterations inherent in the incorporation of peasant production in the capitalist mode of production.

It is crucial to take note of detribalization and its perceived dangers in the urban context. Emmett notes the full implications of this. He poses the ever present possibility of industrial unemployment, leaving a floating surplus population in the towns with minimal recourse to tribal facilities, nor any subjection to tribal control. The political threat inherent in this set of circumstances is obvious, and one which the state was very much aware of (107). In the political control of the African population, 'tribalism' proved to be an extremely effective force, both in the rural and the urban contexts. In the Western Transvaal and specifically amongst the Fokeng, the political mechanisms of control, proved to be somewhat out of phase with the predominant social relations of production, as well as the predominant ideology.

3. 'TRIBALISM' : POLITICAL CONTROL AND THE STATE

It has been demonstrated by this stage, that the partial dissolution of the pre-capitalist economy in the Western Transvaal, through land alienation and integration into the money-economy, was in large part served by the adapted functions of already established mechanisms of political control. These political mechanisms served in part to dissolve the existing ideology of communal ownership. By the 1930's the growth of unequal land distribution, over-population on available land and overstocking, had begun to threaten both the ongoing functioning of the peasant economies in the Western Transvaal, as well as the mechanisms of political and ideological control so closely related to the functioning of these economies. This process was wrought with contradictions. Whilst, the political mechanisms of Tswana society in many respects, proved functional to the changing relations of production, these new relations were to fundamentally undermine the political authority previously incorporated in these mechanisms. Thus, as increasingly more people lost access to any meaningful stake in the agricultural economy, so , they tended to question the political and legal systems which provided for their alienation in this fashion. This is largely inherent in the notion of 'detribalization' as it is used in the preceding chapter. As intimated by Comaroff, the political upheaval in these societies, or the uprooting of traditional mechanisms of political control or selection must be tied to the contradictions structurally inherent in the partial dissolution of the pre-capitalist mode of production. Stated rules therefore, which traditionally have their roots in the pre-capitalst relations of production cannot simply pertain to having the same relevance in determining the course of the political process in 'a straight forward manner in the period of capitalist penetration' (108).

The threat posed, both to capital and the state, of a large African population marginalised, both in real terms and ideologically, from the relations of production in the agricultural sector was referred to above.. As reflected by Emmett's evidence to the Native Economic Commission, government branches and officials were aware of this threat to state security, and it is with a view to this that one must regard 'tribalism' as a means of political control. Thus in the context of these political mechanisms of control, it is necessary to interpret the preservation of the 'pre-capitalist' relations of production and the political structures associated with them. The inclusion of peasant production in the capitalist mode, by its very nature, tends to an organic inclusion within capitalist relations as a whole. As such the specifically structured relations of domination and subordination in peasant society, tend to take on 'transitional and degraded' functions in the wider system. It is vital to see the advantages to capitalist society in maintaining the 'traditional' sector in this way (109). In South Africa this took the political form of 'tribalism' and was bolstered by the continued application; in the Transvaal and Natal at any rate, of 'tribal law'.

Clarke has warned against a monolithic conceptualisation of capitalism as a general mechanism which identifies its interests and how exactly to fulfill them. Rather it is through the functioning of the state in capitalist society that these criteria are met. Through the operation of the state, there are fulfilled necessary political criteria, crucial to the social reproduction of conditions facilitating the expanded reproduction of capital. Thus Clarke says:

> ".....particular forms of the state are clearly conditions for the continued existence of this type of producer" (110).

It is not possible here to fully expound on the nature and function of the state in the South African formation, yet it is important to provide some direction,which will serve to enhance understanding of the chapters which follow.

Poulantzas sees the role of the state and the state apparatus as a means of reproducing social classes in specific forms. Acknowledging that:

> "The process of production and exploitation is at the same time a process of reproduction of the relations of political and ideological domination and subordination" (111).

He goes on to say that the principle role of the state in this regard was seen as the maintenance of unity and cohesion of the social formation through the concentration and legitimization of class domination and in this way reproducing social relations. Crucial to this is the conception that political and ideological relations are materialised and embodied as material practises in the state apparatuses - at every level, from the army down to the family (112). It is also of fundamental importance to note, that the state is unable to initiate structural changes in society, as these are only possible at the level of relations of production. Rather the state responds to already apparent structural alterations. As a result, the state itself is therefore vulnerable and as the embodiment of all social relations, reflects the threats sometimes faced by capital as a result of the contradictions produced by capitalist development itself. In this regard the state has ideological functions, which although serving the interests of capital, through providing it with an appearance acceptable to the general interest (notably via such institutions as education, etc.), cannot be achieved by capital itself. Thus O'Meara says:

> "As the political form of the domination of capital over labour outside the circuit of capital, the state secures, (or attempts to secure), the political conditions for the reproduction of antagonistic social relations of production in class struggle" (113).

However, just as the development of capitalism itself is a contradictory process, so too are the developing social relations, characteristic of capitalism. The state, therefore, in securing the political conditions for the accumulation of capital:

> ".... may be called upon to secure conflicting and contradictory conditions" (114).

Thus our analysis of the state and of political control, must be centrally concerned with the :

> ".... complex organisational and ideological forms these class relations assume outside of the immediate circuit of capital.....(and) ....the dynamic processes whereby such differentiated ideological and organisational forms are constantly reproduced, develop and change, in class struggle outside its immediate circuit of capital" (115).

The functioning and operation of the state is largely translated through the various state apparatuses, and as such, political domination and control are closely bound up with the existence and functioning of the state apparatuses themselves. Yet because of the contradictory and fragmented nature of class relations these state apparatuses and even the different departments of government, themselves often operational in different and contradictory areas of socio-political relations, come to reflect these contradictions. As

such it is not surprising to see various governmental departments coming into conflict over the means by which political control is achieved. As such the state cannot be conceived of as a monolithically functional entity, but is itself subject to the contradictory and fragmentary development of capitalist class relations.

In South Africa in the late nineteenth and early twentieth centuries, this manifested itself at the level of governmental departments, in the contradictory functioning of legal mechanisms of control and racially and culturally based means of political control. In the Western Transvaal this was precisely the result of the contradictory developments in class relations resulting from the partial dissolution of independent African agricultural production. However, this will be demonstrated below, and the Zulu example used again to provide some brief basis for comparison.

In Natal in the period of colonization, under Shepstone's guidance African customary law was recognised. This was not the case in the Cape Colony where all legal power was in the hands of the magistrates and tribal law outlawed and considered contrary to the interest of civilization (116). Africans in Natal were ruled, as far as possible through their hereditary chiefs, both on the reserves and even on the farms of white landowners. The Governor of Natal was accorded the position of Supreme Chief and his powers at the head of the Kingdom's hierarchy, were supposedly those equivalent to the Zulu King (117). Whilst the hereditary passage of authority was supposedly to be upheld, the Chiefs were in fact initially nominated by the Supreme Chief. After the conquest of Zululand, the Chiefs imposed by the Wolseley settlement of 1879, were chosen tending to exclude the people with real power in Zululand from positions of authority. Many

of the thirteen Chiefs were, according to Guy, 'non-entities', some foreigners to Zululand,and amongst them was the famous white trader John Dunn (118). Marks explains that European government inevitably became involved in succession disputes and intra-tribal factionalism. She goes on to explain that this was of fundamental importance to the Colonial State in Zululand, as it was through this means that Chiefly control was utilised in bringing the Zulu population to heel. At the same time, it was a means of controlling Chiefly power and maintaining these Chiefs in a position of subordinate authority (119). Shepstone himself acknowledged this most candidly:

> "It is by the gradual and judicious extension of this system .... that I think can be found the shortest and safest means of breaking down the power of hereditary chiefs, without losing the machinery as yet indispensable to us, of tribal organization" (120).

In addition to this the supreme position of political domination, the equivalent of king - was simply entrusted to a white man, and one instrumental in colonial government. As Supreme Chief, he was not subject to the Supreme Court, or to any other court of law. His powers were considered absolute and he could appoint or depose Chiefs at will. He could even remove whole sections of people from one part of the colony to another (121). This control over the very movement of people must be seen as an ultimate form of manipulative control and total power over people's lives. It provided white government with the absolute authority necessary to remove any groups who posed a political threat, to areas where that threat would be dissipated. In addition, it provided the means to effectively moblise labour, from wherever it might be desired. As such, the power entrusted to the Supreme Chief must be seen as an utlimate political security for the

colonial state. His power largely functioned through the magistrates in every district, and these magistrates usually performed simultaneously the role of Native Commissioners for the specific districts. The dual positions of these government officials is of some significance and was a feature common to the Transvaal. The full implications of these dual roles will be examined in the context of the Transvaal Tswana below. However, their role in coordinating the functions of different branches of the state in the face of contradictory demands made on them, applies equally in the Zulu example.

The Supreme Chief's powers, were largely defined through the codification of 'tribal-customary' law effected in Natal by the Natal Codes of Native Law of 1878 and modified and expanded through Law 19 of 1891 (122). This Code laid down the law in detail on almost every aspect of African life: provisions dealt with everything from the position and powers of the Supreme Chief, laws of succession, adultery, the position of women and the labour obligations of tribesmen to the requirements of 'native good manners and respect to authorities' (123). All of these laws were subject to the condition that they were not repugnant to civilized standards. As will be seen, this definition of 'civilization' remained a somewhat arbitrary one, providing for a certain amount of expediency in interpretation of the law and its application. It is important to understand the full implications of such legal codifications:

> ".....the very codification of customary law changed its character and introduced a rigidity which had not been present originally .... this rigidity was especially unfortunate at a time when colonial society was undergoing vast changes and the influx of Africans to the towns, mines and

> white farms, was proceeding apace, and making much of the code inapplicable to their daily life" (124).

This incongruence of 'customary law' with new forms of participation in the economy and new influences on the lives of Africans, illustrates a number of the structural transactions which can be directly attributed to the development of capitalist relations of production. It reflects the degraded function of pre-capitalist political structures in the transition to capitalist relations. At the same time, it should not be lost sight of, that the interpretation of these laws rested with white 'experts' on the subject of Native law and custom. As such, the manipulation and degrading of customary law and traditional life is ultimately demonstrated by the fact that they came to depend on the white man's interpretation, and that this effectively meant that those aspects of traditional life which suited the administration were retained. This reflects further, the expediency and selective process in which this law operated - and rather than serving to recognise the rights to culturally unbiased justices, this Code of Law, served to manipulate, control and burden those who were more than willing to do without it. The drawing up, and interpretation of this Code of Law, was based on the understanding of traditional practices informed by a cultural bias or sociological chauvinism characteristic of British colonialism. The subtleties of legal application to a specific set, and conditions, of social relations in pre-capitalist Zulu society were either lost on those who formulated the Codes of Native Law, or ignored by them. The application of these sets of laws to the period after colonization had taken place, and once Zulu productive relations had been incorporated in the productive relations of the capitalist mode of production as a whole, ignored the extent to which this very development of fundamental capitalist relations, undermined the delicate

balance of duty and responsibility which was so crucial to the relationship between a Chief and his people.

This being the case, the maintenance of 'tribal' or 'customary' law, applied in a context to which it was no longer altogether applicable, must be seen to be a function of the state in preserving the pre-capitalist mode of production through an ideological tribal identity. 'Tribalism' then served specifically to undermine the political threat posed by 'detribalization'. The extent to which changing social relations undermined this tribal identity, was however not unapparent and often manifested itself at an easily perceptible level. Many of the developments in the African economy, most notably in the Western Transvaal the leasing of land, were foreign to Africans prior to colonial intrusion and the penetration of capitalist relations, and as such were simply not covered by tribal law (125). In this context one would do well to note Burmans notion of the 'symbolic dimensions of law'. Laws often symbolise conflicts in society apparently unconnected with the exact subject matter to which they refer (126). In a colonial situation, the law supposedly cognisant of the social alterations resulting from colonization is nominally to act as an agent of change, but serves rather, in fact, as an assertion of domination (127). As such the concept of the symbolic dimension of the law is of some importance in gaining an understanding of the manipulative process of change, both through officials entrusted with law enforcement, and the actions of the people on whom it is forced (128). In this regard one would do well to remember that the Supreme Chief, advised by his white ministers, was backed up by an almost entirely white army and police force. Ultimately his susceptibility to the needs and demands of Africans, tended to depend on this moral vulnerability and the sensitivity of

his conscience, as well as his fear of possible African rebellion.

The central reflection of the operation of the state in controlling the African population, lies in the application and operation of the law itself. Most important in this respect, is the recognition of the extent to which customary law is in fact disfigured in its application in the colonial context. The absolute power of the Governor in his capacity as Supreme Chief, for example, was supposedly justified as being based on the despotic portion of the Zulu king under 'tribal law' (129). According to governmental interpretation of these laws, the Zulu king was seen to hold the absolute power of life and death over his subjects. Both Marks and Guy, in their works already quoted, demonstrate at some length, the means by which Zulu kings ruled with the aid of councillors, and the extent to which they were subject to and dependent on public opinion.

Thus on the one hand, the distorted application of tribal law, served to enhance state control through, what proved effectively to be, the manifestation of repressive state power. On the other hand, these laws were to provide a more subtle form of control, that being a form of ideological mystification. This does not suggest that ideology is state 'created',but acknowedges that it remains one of the forms assumed by specific production relations, under given historical conditions. However, this is to suggest that such an ideology does come to have a dynamic of its own, even once the relations which determined its development have been fundamentally altered. The bolstering of pre-capitalist political structures, specifically the authority of the chief and application of customary law, proves to be one of the more contradictory aspects of preservation of the pre-capitalist mode.

The Chiefs, appointed by the government, effectively became servants of the state. At the same time they remained 'fathers' of their people. As minor deputies of the Supreme Chief (130) their powers were curbed and subject to the veto of white government. As the central authority within their Chiefdoms their powers were supposedly absolute. As state servants, their political security within their Chiefdoms was greatly enhanced, and clearly once entrenched in governmental favour, it proved extremely difficult if not impossible to remove them. It is therefore clear that the position of appointed Chiefs was extremely ambiguous. Justice Beaumont in giving evidence to the 1903-05 South African Native Affairs Commission throws considerable light on the ambiguity of this authoritative position:

> ".....you are undermining the authority of the Chiefs everyday. Every act dealing with Natives that is passed, more or less undermines the authority of the Chiefs, and, on the other hand, you are trying to bolster them up to retain their position. It does not do..... You are taking away the foundations of a wall and trying to prop it up and make it stand without one" (131).

The very changes taking place in society brought these ambiguities and contradictions into fine focus. In Zulu society the limited access to land undermined the most fundamental prop of Chiefly standing in the community, through denying him the power to grant his followers land and cattle. This was theoretically within his power, but in practical terms it was often impossible (132). The Chiefs limited jurisdiction in legal affairs, restricted his capacity to take independent action and served also to undermine his authority. In Natal, the very codification of customary law, served to bring many aspects of traditional life within the realm of white magesterial jurisdiction (133). At a more fundamental level, the development

of urban-rural contact, which demanded at least temporary periods in 'white towns', meant that increasingly Africans were coming into contact with, and becoming subject to, 'white laws' and a whole spectrum of discriminatory by-laws and regulations.

As will be shown, all of the above aspects of Chiefly control, the role of the Supreme Chief and the functioning of the state, had their application in the Western Transvaal. However, a very important point to note, is that in the Transvaal there was no codification of tribal law on any basis comparable to that in Natal. In fact this was called for by both Emmett and Penzhorn in their evidence to the Native Economic Commission. Emmett suggested that the best means of maintaining control over the African population was through some sort of uniformity of the judicial system. He suggested that the best means of achieving this was through the codification of native laws and customs (134). There was an attempt made to collate such a law-book for the Africans of the Transvaal. However nothing came of it :

> "Daar kan nie die minste twyfel wees nie -
> die naturel het baie goeie wette gehad.
> Maar daar is niks van gekom nie, en elke
> kaptein handel volgens sy eie opinie" (135).

However the fact that tribal law was recognised but not specifically codified did not fundamentally alter the capacity within which it functioned. Nor did it mean that its application was any less rigid or any less degraded than was the case in colonial Natal. Quite to the contrary, the lack of clarity in the extent and application of customary law allowed for a great deal more ambiguity in defining the role of Chiefs, as well as providing for a great degree of fluidity in its

application by the state. The expediency necessitated by the state in the maintenance of political control, goes a long way to explaining the reasons why a codified set of customary legislation did not appear in the Transvaal.

Comaroff, identifies the 'jural determinism' characteristic of the application of Tswana law in the Western Transvaal in the period after capitalist penetration. He suggests that these laws are interpreted on the basis that "stated rules configure the basic facts of political life" (136). In terms of the rules associated with the access to political power for example, it is assumed that these rules actually determine the recruitment and functioning of incumbents in the public arena (137). As such the application of these narrowly interpreted rules tends to preclude any competition for Chiefly power. Yet, on the basis that historically, eighty percent of Tshidi (a Tswana Chiefdom) successions constitute anomalies in terms of the expected rules (138), it is clear that the implementation of these 'customary laws', is manipulated by the state and the laws themselves disfigured. The interpretation of these laws was that the access to power, and political control of a particular Chief, was crudely dependent on hereditary factors. This, suggests Comaroff, was not at all in keeping with the realistic functioning of the Tswana political process (139).

Comaroff, talking of the Tshidi, provides a counterpoise to the view of the traditional roles and authority of Chiefs as being absolutist. He suggests that the Tshidi hold a high esteem for the position of Chief, but are at the same time extremely critical of the office holder. Although treated with considerable respect and accorded ceremonial precedence, the Chief is also seen as:

"a fallible human being who may or may
not be powerful and who may rule efficiently
or ineptly" (140).

Whilst the chief is nominally responsible for the management of every aspect of public life, in reality the extent of Chiefly power varies according to a number of criteria. Although his position is hereditary, the power of the chief depends to a large degree on his individual ability (141) and he is responsible also for the recruitment of talented office-holders with whom he works in close unison. The Chief is born into his position and rules until his death (142). Officially a Chief cannot be deposed. He can however be scolded publicly or even punished (143). It is important to recognise that high value is accorded to the process of consultation and popular participation in the affairs of the Chiefdom.

"..... a Chief who fails to seek advice, soon
becomes the object of public criticism" (144).

Of crucial importance too, is the requirement that he takes guidance from his immediate advisors who make up his council or 'lekgotla' at all times, and that he remains susceptible to views and sentiments expressed both at this more executive level, as well as at public meetings or 'pitsos' at which important matters of the Chiefdom are discussed with the broader community. As the supreme judicial body he is expected to be impartial and open minded (145). Ultimately, the Chief's decisions are expected to reflect the majority views. The rights and priveleges accorded the Chief, such as his exclusive right to summon the lekgotla, are not totally irreversible. Rather, should the Chief consistently abrogate the formal responsibilities of his office, he stands to lose those rights (196).

What is apparent from the above, is that Chiefly authority is, to a large extent, dependent on popular satisfaction. His rights are not irrevocable or immutably predetermined. As such, Comaroff sees the Chief and his subjects to be :

> "....engaged in a constant transactional process in which the former discharges his duties and, in return, is delegated the accepted right to influence policy and people" (147).

Thus, the rules of accession, incumbency and regency are seen to provide a rather fluid framework within which the process of competition for power is articulated, one which is ultimately dominated by public opinion and popular demand. Whilst all these rules, especially those of accession might appear somewhat rigid at the formal level of government, their practical application provides for a great deal of competition for political power. It is an over-simplification to merely accept biological contingencies as determining the legitimacy of some or other Chief. Thus Comaroff concludes:

> "It is clear that the factors which underline political success are extrinsic to the rule set themselves" (148).

Yet in the 1920's, in the Western Transvaal, Tswana Chiefs were increasingly acting with absolute authority and seemed increasingly to pay less heed to their councillors in general or to their Legotlas. Rule over the Chiefdoms was increasingly becoming a personal matter. Penzhorn outlined this trend:

> "Chiefs are either too autocratic or too democratic, they don't know what to do" (149).

He attributes this development to the fact that by the 1920's, Chiefs had lost and no longer recognised the original systems of their forefathers. Speaking specifically of the Fokeng he refers back to the

better system of the past, when Chiefs ruled through their Legotlas, and notes the good administration and government of August Mokgatle's grandfather Mokgatle Mokgatle (150).

> "It is no longer like that and Chiefs are more concerned with their own power. This is why the Chiefs can do nothing now - they don't rule through the old councillors or the 'Kgotla' " (151).

It is as a result of this development of personal power and personal execution of governmental functions, that Chiefs such as August Mokgatle began to lose their legitimacy in the eyes of their people. The injustice and personal, self-interest in the distribution of land already mentioned, reflects this changing role of the Chiefs, and migrancy, detribalization and a semi-permanent urban existence reflects their waning authority and legitimacy.

Just as the features of African life in the Western Transvaal, depict by the 1920's the diminishing access to a productive agricultural base, so too do they depict the diminishing functionality of political relations in their traditional forms. On the one hand this latter development must be seen as a result of the changing productive relations themselves, and both are intrinsically a part of the partial dissolution of the peasant mode of production. At the same time, the fact that the development of new political functions is within the traditional political structures, plays a crucial role in rationalizing new unequal social relations. This goes a long way to explaining the functionality of 'tribalism' in the preservation of the pre-capitalist mode of production.

The traditional authority and legitimacy of Tswana Chiefs, was

undermined in a number of ways once African society became subject to white government. The all encompassing role of the Chief, as a religious and cultural leader in society was immediately affected by the imposition of white rule, based on narrowly conceived notions of civilization centred in the ethics of Western Christendom. Chiefs in the Rustenburg district were aware of this, and complained openly about their loss of authority, blaming it on the interference of 'whites' and especially the missionaries. They also insisted that it was as a result of this that the African communities in the district were divided, and many became detribalized (152). There were strong objections to the influence of missionaries and white government in banning activities crucial to the social interaction and cohesiveness of African communities. This included the widespread ban by missionaries on dancing and circumcision rites, governmental prohibition of drinking and the ideological undermining of 'witchdoctors', especially with regard to rain making procedures (153). As a result, Chief Pilane complained that:

"....it only rains in the towns" (154).

This was obviously a factor which induced people to stay in the towns longer rather than return to their respective locations. Further the effective prohibition on polygamy critically affected the Chiefs' control over bridewealth and certainly diminished his income from this source.

Of central importance were the new limitations placed on the legal jurisdiction of Chiefs. The legal arbitration of Chiefs was severely limited and they generally remained subject to the ultimate veto of civil law practised in the magisterial courts. The Chiefs and Headmen were restricted to the settlement of disputes and petty questions of a

civil nature which depended on 'Native laws and customs' which were not recognised by civil courts. However, it appears that within this limited capacity, there was however a great deal of corruption and injustice. This was largely the result of Chiefs' dealing with legal matters without the consultation demanded of them. Penzhorn identifies this as a central reason for migration to the towns and detribalization - a means of escaping the injustice and corruption of the Chiefs (155). It is apparent that such arbitrary action on the part of Chiefs was extremely widespread as this was the very subject of a leading article in the Star (156). It is likely that this was an even more prolific trend than suggested, as the article characterized a notion that 'Tribal law and custom' was self-evident, and ignored the possibility of disputes within the law itself (157). Yet it is clear that many Chiefs were quick to take advantage of the fact that they were credited with, an absolute knowledge of the functioning of tribal law. Bribery was rife, as was the tendency for Chiefs to impose extremely severe sentences. Chiefs themselves derived a substantial income from the payment of fines, nor was this an illegal activity.

This being the case, it was in fact access to the Magistrates' Courts and to civil law, which served to contradict the authority of Chiefs in this respect. Local African inhabitants proved more than willing, and often recognised it as being to their advantage, to take up their legal quarrels in the Magistrates' Court. This provided the general population with a platform from which to challenge the decisions of the Chief, should they choose to do so. It seems that under Chief August Mokgatle, many of the Fokeng chose to do exactly this.

"U het ook gese dat die naturelle liewer
na die Kommissaris en na die Hof sal gaan

> as na hulle eie Kgotla?.... Ja, dit is
> wat hulle hier sal maak" (158).

This appears to have been the case despite the apparently racially based injustice in the civil courts, and the victimization of Africans in the dock (159), which gained some publicity as an issue in 1924-25. As will be seen, this proved to be an alternative frequently resorted to by members of the Fokeng community, especially in Phokeng itself, especially since the Chief had no jurisdiction over criminal issues. Reuben Mokgatle, another of August's representatives to the Native Economic Commission, was extremely bitter about this:

> "The government has told us that they have given the Chiefs more power. Well, we were very pleased to hear it,but we have not yet seen it. A Chief may try his followers in his Stad.... sentence a man to a fine.... but the man will leave, ... he will go to the white people, to the solicitor" (160).

In this regard it was felt by the Chiefs that they should be given wider jurisdiction in legal matters. Reuben Mokgatle suggested for example that the Chief should have control over the leave of his subjects to appeal (161).

> "I do not mean that the Chief should be able to do as he likes, but I mean that the government should support him when he is right, and he should be upheld in the manner of a Chief" (162).

Clearly, the dual operation of Civil and Tribal laws, tended to operate in a contradictory fashion. The fact that crimes were often punishable under both Civil and Tribal law tended to undermine the authority of Chiefs and resulted in Africans deserting the locations

in order to avoid the harsh treatment at the hands of the Chiefs - even at the risk of discrimination in the Magistrates' Court. This proved to be counter-productive to the object of vindication of Tribal Law as outlined above.

The State did, in a rather general way, draw an important line defining the operation of Tribal Law, which both demonstrated its degraded status and, as a result, developed another series of contradictory practices:

> ".....ek weet dit was die idee van die Regering dat so lang as die Kapteins in hul bestuur van die volk nie sou ingaan teen die wette van die wit mense nie, dan sou die Unie Regering hul ondersteun" (163).

This notion was expressed through a great deal of rhetoric which manifests itself at the highest levels of government and must be recognised as an integral aspect of colonial ideology. At the base of this ideology was the notion that the African population had for centuries been trapped in a state of 'barbarism' and that it was only with the influence of white colonialists and missionaries that they were freed and set on the passage to 'civilization'. This process was however supposedly a very slow one, and until such time as Africans reached a suitable level of sophistication and education their 'development' as a nation demanded a fundamentally different set of political and legal, not to mention economic facilities. It is this notion which provided the basis of the ideology of segregation. More specifically to this study, it manifested itself at the level of legal differentiation, with a clear perspective as to which laws were 'better' and in what direction 'development' was meant to proceed. The application of Tribal Law was subject to this notion. 'Native' law

and custom were defined and applied, only as long as they conformed to 'civilized' usage or did not come into conflict with accepted norms of 'civilized'society (164). It is important to recognise the rhetoric, which serves to outline the subserviant colonial status of the the colonised, for what it is. This is clearly apparent in the contradictions to which this notion gave rise. This contradiction was most candidly expressed by Emmett who suggested that 'detribalization' was the direct result of an over hasty passage towards 'civilized status' (165).

This was further outlined in the evidence of Stegmann:

> "The native at the present time with the white man's law alongside his own is in a period of transition, and.....he does not know where he is..... The one day a sentence is given according to the white man's law; ..... the next day he is sentenced accoridng to Native law" (166).

Yet, in terms of state ideology, the Africans of the Rustenburg district were considered to be much further advanced and progressive than most other African peoples in the Union:

> ".....ons naturelle hier is ver vooruit van wat hulle in Natal is, en dit maak 'n groot verskil wat betref naturelle gewoontes ....." (67).

In these terms Stegmann was somewhat opposed to the manner in which 'native' law was applied amongst the peoples of the Rustenburg district. He indicates that through contact and the influence of White people, the African population in that area have made great advances along the road to civilized status. As such he was extremely

critical of the extent to which they remained subject to culturally based customary law:

> ".....ons kan nie 'n kuiken wat twee dae oud is weer in die dop gaan inset" (168).

Thus the state's attempts to increase the power of Chiefs and bring all Africans under the jurisdiction of Tribal law was itself something of a contradictory process, and one which makes a farce out of the notion of 'civilized' standards. Increasingly Africans were prepared to, and saw the advantages in, the resort to civil law. Yet this was as far as possible discouraged irrespective of the education or progressive position of the African involved. Emmett reflected the state's position on this matter. He suggested to the Native Economic Commission, that most Africans simply could not reach a high level of civilization. As a result he suggested that where possible the state should bolster the 'tribal system' and especially the authoritative position of the Chiefs. At the same time, he warned, strong and careful supervision had to be maintained over the Chiefs and Headmen, ensuring that they retain only the share of authority....

> ".....which 'tribalism' originally entrusted to them" (169).

This clearly indicated that the power of Chiefs should ultimately be subject to the authority of white government, encompassed in the Governor General in his capacity as Supreme Chief. Most of the Chiefs in the Rustenburg district had by the 1920's come to recognise their personal interests as being closely tied to cooperation with the government (170). They recognised also the possible threat to their authoritative positions. Their frequent requests to the government officials for increased authority (171) was accompanied also by a resentment of state interference in the execution of their rights and duties. However, Chiefs were equally aware of their traditional roles

as 'fathers of their people' and as such tended to resent the overbearing authority of the state. Their positions were severely undermined by the humiliating infiltration of the State into the everyday lives of their people, about which they could do nothing. The role of the police in this respect is of some consequence. The contempt and disdain with which the police treated Africans in and out of the locations, was resented by the Chiefs as much as by the people themselves, especially in the enforcement of pass laws and payment of taxation (172).

The State faced the problem then, of having to maintain the Chiefs in a position of considerable power over their own people, yet, at the same time, in a position subservient to the State itself. The former, through vindicating and upholding the traditional structures of political control and legal arbitration, which came to be extensively abused. The latter, through the use, where necessary, of military might, and through the policy of segregation, inherent in which was the ideology which relegated Africans to an inferior colonial status. 'Detribalization', the decline of peasant communalism and eventually the very agricultural base of the peasant economy itself, served to contradict these developments. The penetration of capitalist relations into the rural areas of South Africa and the increasing permeation of capitalist ideology, greatly diminished the control over people which his 'traditional role' was intended to fulfill. It was a result of this that the structures of tribal politics became rigid and disfigured. Section 4 of law 4 of 1885 (in the Transvaal) effectively recognised certain Chiefs and credited them with the powers of almost absolute control within their own Chiefdoms (173). Furthermore, Chiefs and prominent Headmen, became salaried officials of the State (174).

By 1924 the contradictions outlined above, between 'Tribal Law' and Civil Law; between the realities of peasant production and traditional mechanisms of political control; and between the ideology of differential colonial status and the fact that increasingly,small groups were becoming 'progressive', westernized and determined to meet the standards of 'civilization' set for them; were recognised and expounded in some detail in the popular press:

> ".....recent incidents .... strengthen our belief that the Native people are leaning towards democracy and that the power of Chieftainship is waning ..... many of the Chiefs are unprogressive, steeped in ignorance and sloth, while the common people tire of the darkness and are struggling to get nearer to the light of civilization... Under Native custom such difficulties would be solved more readily. In the old days, if the Chief disregarded the tribal interests or displayed a notable incapacity as ruler he would have been deposed by the people. Under British control the people cannot so assert themselves, and other ways to improve the position must be found" (175).

It is clear that the operation of the State was also subject to the effects of these contradictions, and this manifested itself at the level of governmental operations. The differential focus of various government departments served further to facilitate this. The Native Affairs Department was particularly concerned with the bolstering of Chiefly power and maintaining some degree of tribal cohesion. On the other hand, the Department of Justice, increasingly undermined exactly

that through the less politically orientated functioning of Civil Law. The access which Africans had to the Magistrates' Court at Rustenburg served to bring these two legal systems into conflict, and with them, the operation of the State, became in many respects contradictory. The fact that, in the Transvaal, district Magistrates were at the same time Native Commissioners, is of some importance here. This facilitated the coordinated operation of the State departments in instances when this was necessary. As a top official in both departments of State, the Magistrate/Native Commissioner could, in the short-term at any rate, act with a certain expediency utilizing whatever departmental tools he chose, in order to meet the needs of the State at any given point.

The Minister of Justice during 1924, Tielman Roos, seems himself to be aware of these possibilities and in fact outlines their implementation:

> "No minister or government has the right to interfere with Judges or Magistrates..... Of course one can conceive of influence being exercised by the department, but it would be very wrong indeed.... This does not mean, however, that a judge or a magistrate would necessarily give precisely the same sentence to a White man as to a Native.... A month in prison may bring social ruin to a White man, but six months for a Native does not connote social ostracism to him" (176).

Tielman Roos himself,proved to be very aware of the evils of 'detribalization', 'immorality' and criminality of the African population. Similarly, he recognised the imperative need to bolster tribal authorities and gain some form of control over a sector of the

African population which may pose a threat to the State. Whilst addressing the third conference of Chiefs under the Native Administration Act of 1920, he stated this rather explicitly:

> "Many of the wiser Chiefs in this country view this evil (detribalization) very anxiously indeed, and desire that by proper control it should be lessened and stamped out" (177).

In response, the Reverend G. Dube suggested that the real source of the 'evil' was that, as subjects and servants of White government, African Chiefs had become mere figure-heads lacking any meaningful authority and therefore losing the respect of their people (178).

It remains to examine all these factors in their application to the Fokeng between 1920 and 1925. It appears, that someone spat at Chief August Mokgatle!

4. 'THE CHIEF WHO WAS SPAT UPON' (179)

> "Matters are very serious and other tribes with grievances are watching the progress of events. Two Rustenburg magistrates, the Native Commissioner and the sub-Native Commissioner have at different times been instructed by the government to hold enquiries, each being held with abortive results ..... it is no exaggeration to say that on this enquiry the thought not only of the natives of Bafokeng, but of every native within one hundred miles is set ..... Not only the authority of the Chiefs is questioned, but the authority of the Native Affairs Department of the government itself is being strained to its utmost, the loyalty of the natives to the decrees of the department is in jeopardy and it is a situation which will have to be handled with great tact and firmness" (180).

Chief August Mokgatle was amongst those Chiefs recognised by the government as having jurisdiction under Section 4 of Law 4 1885, which applied to the Chiefs in the Transvaal (181). He was supported by the government and when on occasion, one of his subjects, Khule Ramaidi complained about his judgement in a tribal matter, the complainant was simply overruled (182). It seems that August Mokgatle was in fact treated rather leniently even when he himself came to breach the law. In July 1911, he was convicted of illegally being in possession of alcohol. His sentence was however dropped in view of his generally good behaviour and 'the manner in which the Chief has discharged his duties' (183). He was considered to have considerable influence over his people and it was felt that, bearing this in mind, a severe

reprimand would be sufficient (184). It would do well to note the considered opinion of A.S. Benson a prominent lawyer in the Rustenburg district:

> "It is surely within your knowledge that the man is never sober if he can get hold of intoxicants, and a drunken braggart native holding the position of Chief can easily become a source of very grave danger to the community at large" (185).

If this was the case in 1911 however, by 1921 the Chief's influence had waned considerably and a number of complaints about his inefficient, unjust and irresponsible behaviour flooded the offices of the Rustenburg Native Commissioner. By June 1921 the Sub-Native Commissioner at Rustenburg noted that:

> "Feeling is running very high against the Chief August Mokgatle among his people" (186).

The issue about which the people of the district were coming into conflict, was centred around the purchase of the farm Kookfontein 337, which was adjoining the farm Bierfontein 432 on which lay Phokeng, the Chief's stad. The Fokeng were negotiating with the white owner of the farm, a man by the name of J. Kruger, who asked for £27,000 for the sale. The Fokeng negotiators ruled this price out of the question, and it was in turn lowered to £23,000. This price was still considered too high and certain members were prepared to offer no more than £8,000. The Chief, however, was prepared to offer £15,000, but at this point Kruger refused to negotiate any further. He went beyond this to indicate that the land would no longer be available to the Fokeng for grazing or watering their cattle or for collecting wood. He particularly warned against any trespassing on the part of the Fokeng people, and gave them eight days to remove themselves altogether

from his land. After this cattle still trespassed on Kruger's land and on two occasions cattle were impounded and were only released at a cost of £12 (187).

It was in response to this that the question arose of a possible boycott of two stores on Kruger's farm, and a mill owned by a Mr. Seichel, who appears to have had a part ownership of the farm Kookfontein. The boycott was decided on with the clear consent of the Chief, despite his defence afterwards that he had tried to discourage the move on the basis that it interfered with the liberty of others and would incur the disapproval of the Government (188). It was agreed by the lekgotla that no threshing would be done at Seichel's mill and no purchases made from the stores on Kruger's land. In addition it was agreed that anyone who broke these regulations would be subject to a fine of £5. The Chief, with the approval of his lekgotla signed a document to this effect (189). In addition to this, because of the prohibitive costs of transport for milling, a regulated transport charge was set for those with the capacity to fulfill this service. August's son, Reuben Mokgatle, was found to be overcharging. He was fined £2 and paid his fine (190). However, on the 4th of June 1921 and then again on the 11th of that month, August Mokgatle, Chief of the Fokeng, broke the boycott which he himself had signed, by threshing his grain at Seichel's mill. In addition to this he made a purchase to the value of £5 at one of the two stores also covered by the boycott (191).

The standard fine was imposed on the Chief who refused to pay it, on the basis that the law had been made by a small group at Phokeng Stad, and not by the tribe as a whole. The fine imposed on the Chief by his lekgotla was instantly raised to £50 and this was again rejected by the Chief who refused to pay. A meeting of the whole Chiefdom was

arranged by the 'rebellious' lekgotla members, and the Chief refused to attend (192). Once this sort of public meeting was called for, and the wider Fokeng community involved in the dispute, one can see the development of support groups, both loyal to the Chief and opposed to him. These groups were further polarized by the decision; (noting the Chief's refusal to stand by a law to which he himself had signed his name and further, his refusal to meet the consequences), to depose him. In this connection, a deputation was sent, on the part of the faction opposed to the Chief, and represented by four of the members of the Chief's lekgotla, to announce their decision to depose August Mokgatle (193).

On the 27th June 1921, Sub-Native Commissioner Griffith called a meeting in order to establish exactly what the feelings of the people were. All of the Headmen from the outlying districts attended and it appeared that it was only in Phokeng itself that the 'rebellious' faction was in the majority.

> "There was no need for a count to be taken as it was obvious at a glance that a large majority were in favour of the Chief retaining his seat" (194).

On this basis it was decided by the Native Affairs Department to take no action at all against the Chief (195). The fine imposed on him had soared to £500, a price which was no longer considered within reason. Officials of the Native Affairs Department were well aware that August was a rather 'weak man, incapable of exercising a firm control over the tribe' yet they saw the only way of remedying this, to be the bolstering of his power and authority, and enhancing his prestige in the eyes of his people.

It is apparent that August Mokgatle had by this stage adopted a somewhat

autocratic position, laying little or no store by the opinions of his former advisors. Further, it must be seen that, despite this his authority was not even questioned by the government official involved. His credentials were hereditary and most of the tribe outside of Phokeng recognised that and accepted it. When Mr. Ellmann, in his capacity as Magistrate went out to Phokeng, he made the position of the government particularly clear. The totally uncompromising position of the faction opposed to August, merely appeared to legitimise Ellmann's stand (196). August himself, made little attempt to hide the extent to which he felt his power to go. He boasted openly of support by the state and was accused of having personally flogged one of the opposition party (197). Certainly it is clear that he boasted the right to do so, and further he boasted the right to confiscate cattle without resorting to a court of justice, as well as the right to expel whom he so desired from Phokeng. Most importantly he boasted that these rights were granted him by Pretoria (198). Mr. A.S. Benson approached by the opposition leaders, informed them of their rights in this regard, and warned Col. Godley, Then Secretary of Native Affairs that, should August attempt to apply any of these powers which he had assumed, there was a decided threat of bloodshed (199).

On the 5th October the leaders of the two opposition groups met with Godley, the Secretary of Native Affairs. From this early stage the state's position became quite clear. Godley, unconditionally supported the Chief, accepting his reasons for breaking the boycott as sufficient. Further he suggested that should those members in opposition find it impossible to live amicably with the Chief, they should find an alternative place of abode (200). Godley's ruling was a somewhat arbitrary one, based on the recommendations of the under-officials of the Sub-Native Commissioners office. Benson,

as counsel to the section now deemed 'rebels', was extremely critical of this action without any full enquiry into the facts at issue. He noted the lack of mediation involved in the dispute and questioned the integrity of the officials involved:

> "I do not consider the descendants of a race who so recently in the history of South Africa held the natives in slavery are the most suitable persons to be held responsible for the welfare of the natives in this country....." (201).

He made it clear that he considered the honesty of many of the N.A.D. officials to be dubious and felt that however incredulous it might seem, Africans were actually forced to rely on professional legal assistance to 'combat and defeat the machinations' of officials in the department (202).

Yet there are further ingredients to the controversy which reflect these and other trends outlined in the chapters above. The division between the two sections appears to follow the lines of division which characterised a succession dispute amongst the Fokeng in the early 1890's. Chief Mokgatle Mokgatle, grandfather to August Mokgatle had two sons; Tumagole and Bloemhof. Prior to his death, the old Chief appointed his younger son, Bloemhof as his successor - largely because of his disapproval of Tumagole's affinity to strong alcohol. However, on the death of the Chief, there was considerable opposition to Bloemhof. A dispute arose between the supporters of the two sons, and eventually Tumagole was in fact instated by the Republican Government. In the interests of some sort of political stability, Bloemhof and thirty or forty of his followers were forcibly removed to the farm Styldrift 583.

Tumagole ruled as Chief of the Fokeng from 1891 until his death in the middle of 1896, when he was succeeded by August Mokgatle who was also recognised by the Republican Government. With the accession of August to power, the malcontents of his late father were permitted to return to Phokeng (203). Many of the section opposed to August were those who were opposed to his father, or descendants of them (204).

Six months after these issues came to the fore over the purchase of Kookfontein, the malcontents continued to be defiant, refusing any means of coming to a peaceable agreement other than the payment, by the Chief, of the £500 fine. This in spite of the warnings of officials in the Native Affairs Department. August complained that they were not only openly defiant, but also most insulting in their behaviour and disrespectful in conversation. He warned also that his patience could no longer endure, and he wished the seventeen ringleaders to be removed from Phokeng (205). In this latter respect, he was given considerable support by Sub-Native Commissioner Griffith who suggested his requests be complied with (206). Godley, suggested that this might be premature, but that the number of those to be deposed, be reduced to about three or four (207). The four singled out by August and Griffith were all of 'royal blood' and it is clear that three of them were associated with the group who opposed August's father. They were: (1) David Mokgatle, a cousin to the Chief and the leading voice in the opposition faction; (2) Simon Mokgatle, also a cousin to the Chief; (3) Bartolomia Monnafela Mokgatle, an uncle to the Chief, and one of the original malcontents removed from Phokeng with Bloemhof and subsequenty allowed to return; and (4) Josiah Morobe,, an ordinary subject who had come to Phokeng from Pretoria several years previously (208). There is little doubt that this succession dispute played a role in the disturbances at Phokeng between 1921 and 1925, and both

factions acknowledged their positions in this regard:

> "It is a remarkable fact that the rebel section contains several members of the 'blood royal'. As a section they claim to be the original Bafokeng, and they contend that the 'loyalist' section of the tribe is another race" (209).

This view however, blows the succession issue quite out of proportion. This was certianly not a position maintained by the opposition section. The succession issue must be seen in terms of the political mobility outlined by Comaroff above. Such succession disputes were part and parcel of the process of political competition and depended not so much on the crudely laid down rules of succession, but on the popular satisfaction provided by a specific Chief. To reduce the grievances of the opposition section in this case, to little other than a backward-looking desire for power for its own sake, is to impoverish the real criteria underlying the dispute. However, the fact that both the Chief and the state officials, exaggerated the importance of this issue is of some relevance. It provided both with a means of by-passing the more fundamental areas of confrontation. It is of some significance, that the succession dispute only reared its ugly head twenty five years after the malcontents returned to Phokeng under August's rule. Such a political dispute, cannot be viewed in isolation from the specific historical circumstances out of which it arises, the specific way in which the Chieftainship was functioning, and the material interest which it was serving. If one considers the developments in the Western Transvaal peasant economies outlined above, it is imperative to recognise the changing role of the Chief within the context of these changing relations of production. In these terms, the challenge for power within the 'tribal' system, must itself take on a new meaning, both for the African population at Phokeng, and the

state. This political conflict therefore must be seen as the means by which an autocratic and self-interested ruler was to be overthrown. His personal economic interests were not those of the Fokeng people as a whole. The cost of the farm Kookfontein was of much greater consequence to those who would be subject to the tribal levy in order to meet that cost. It was precisely for this reason that the opposition section accused August of taking the 'white man's' side over the negotiations for the farm, and suggested that he would drive the Chiefdom to bankruptcy (210). The state continued to regard the dispute as a succession issue, which meant it was basically contrary to the law as laid down in 1885, whereby only the government could nominate or depose a Chief, and as such the protagonists of the dispute were considered 'rebels'. This narrow view of the issue was maintained, despite the fact that no full enquiry into the matter took place until March 1924, almost three years after the dispute arose. State officials simply continued to pose the ultimatum that, either the rebellious section accepted August as Chief and settled down to a peaceful and idealistic co-existence, or they would be forced to leave the lands of the Fokeng Chiefdom. Thus:

> "You will remember that when you saw the two sections in Pretoria, you informed the rebel section that if they did not acknowledge the Chief's authority and show him the respect due to him, or words to that effect, they would have to be removed. I think the time has now come, it is impossible for things to continue as they are at present, without there being serious trouble sooner or later" (211).

It is interesting to note that Godley enquired on a number of occasions

as to whether he would be able to interview the two parties extensively. He wrote to the Magistrate at Rustenburg at the end of 1921, yet by October 1922 was still waiting for a reply (212).

All the while the leaders of the discontented section, many of whom were members of August's lekgotla, continued to hold meetings. These meetings were not attended by August himself and in fact he had on a number of occasions attempted to stop them. The lekgotla, under the leadership of David Mokgatle/continued to hear cases of a civil nature within the location and pass judgement on the basis of 'tribal law and custom'. In fact, by mid 1922 there were two lekgotla's operational in Phokeng stad; that of the Chief and that of the malcontents. This certainly constituted a breach of customary law, for as Comaroff noted, the Chief enjoyed the sole authority to call together a meeting of the lekgotla (213). However, this rule was also not as rigid in its application as it may have appeared. In fact, the Chief may lose this very right if he consistently abrogates the formal responsibilities of his office (214). Clearly in the eyes of the discontented section their actions could be justified. Yet, the rigid application of customary law, as it was perceived by the officials of the Native Affairs Department, served to uphold at all costs the authority of the appointed Chief. The establishment of a rival lekgotla, is possibly one of the most concrete threats to the authority of the Chief over his people. Not only did some members of the Chiefdom choose specifically to take their grievances to this rival lekgotla but, in more general terms, The Chief's interaction with this body, whether he took any note of the recommendations of its constituent members or not, was very much in the public eye. It was the central body through which the Chief derived his legitimacy as a fair and democratically concerned leader.

So serious did the existence of this 'rebel' lekgotla appear to the Native Commissioner of Rustenburg, that he wrote:

> "If it is correct, I do wish to say and to say very emphatically that the fundamental principles of Native administration throughout the Union are undermined and all attempts to exercise a system of tribal discipline or control must collapse" (215).

This set of circumstances was to be anticipated from the outset of the conflict, when the lekgotla imposed a fine on the Chief which he refused to pay. However within just one year of this incident David Mokgatle and his followers had effectively seceded from the authority of the Chief and set up an almost completely independent form of 'Tribal' administration and control. Initially, this group's resistance was relatively passive, providing very little evidence of flagrant defiance. However when it became apparent that the rival lekgotla was in fact constituted as a Court, and was adjudicating in cases without any regard for the government authorities or the Chief, it became possible to bring legal action against them. The result was that a case was brought against the members of the rival lekgotla, which held that they were not only exercising a power and jurisdiction reserved for a Chief, but that they were also adjudicating in criminal cases - a right accorded to no Chief and reserved for the state (216).

The dominant feeling amongst the N.A.D. officials remained that the malcontents should simply be removed. However, it was recognised that if convicted for the illegal holding of meetings, and the illegal functioning of the rival lekgotla, this action would be much more easily facilitated (217).

The case over which the rival lekgotla was alleged to have judged, was one of assault. The defendant in the case was found guilty and duly sentenced. His name was Mutle Diale and was a supporter of the opposition section. In his statement to the court he said:

> "I am satisfied to be tried by this lekgotla and fined by them. I would not have gone to The Chief's lekgotla if I had been summoned there" (218).

The S.N.C. Griffith in giving evidence claimed that as the Chief's lekgotla was the only body recognised by law to settle civil disputes, it was therefore clear that this 'rebel court' had absolutely no jurisdiction civil or otherwise (219). The Public Prosecutor was uncertain what, if any, offence had been committed and referred the case to the Attorney General. The latter certainly did not provide the Native Affairs Department with the convictions they were looking for.

> "As the Native in question voluntarily submitted to the judgement of the self-constituted court and was willing to pay the penalty imposed, it does not appear that any offence was committed" (220).

In fact this legal defeat for the Department served critically to undermine the prestige and respect accorded its officials. Further, not only did this fail to uphold the authority of the 'legitimate' Chief, but it served to actually undermine this authority, whilst if anything, simultaneously enhancing the position of the dissenting section.

What becomes apparent, is that at the higher levels of the civil legal systems, the Department of Justice operated in a fashion which

may well have hindered the effective functioning of the Native Affairs Department. The very fact of having to deal with the ambiguities of 'Tribal Law' in a civil law court, often allowed a great more fluidity in the application of the former, than was demanded by other branches of state.

> "If the Attorney-General's ruling is correct,.... it appears to me that under the circumstances stated, District officers of the Native Affairs Department are placed in a most invidious and untenable position and are precluded from making any recommendation, seeing that the action of the Rebel Section complained of is apparently not illegal" (221).

If officials of the Department were hoping for a conviction in order to effect the removal of the dissenting group or its leaders, then the fact that such a conviction was not forthcoming, served to severely set-back any such intention. The legal base from which the Native Affairs Department personnel were working was narrowly based on the preservation of 'traditional' law and custom as they interpreted it. They were unsighted as to the extent to which 'Native' law and custom became subject to the functioning of 'civilized' law.

This, however, was not the last time that the 'machinations' of the Native Affairs Department were to be thwarted in the 'white' courts of civil law. It was apparent by this stage that the dissenting elements were largely centred in Phokeng itself, in close proximity to the Chief. On the other hand in the outlying districts, the Headmen proved to be more supportive of August and, in fact, he had a substantial body of support in the Headmen of Luka, the next biggest settlement to Phokeng. The Native Affairs Department, in order to gauge the sentiments of the

of the general population, held meetings of the Fokeng populations on various farms, in order to canvass their views on the regime of August Mokgatle. At the same time it was intended to advise these people to remain loyal to their hereditary Chiefs. The results of this survey are contained in Appendix 1 below. According to these statistics it was only in Phokeng that the rebels had a majority, and in fact it was the only area where there were supporters of the dissenting group in any substantial numbers. It is quite likely that these figures are close to the true situation, however the poor attendance at these meetings is of some significance and, although it is extremely unlikely that the dissenting group had anything near to as much support as did the Chief, it is quite possible that some of the absence was in defiance of the Native Affairs Department.

In any case, the opinions of the Department officials were clear cut. The fact that the dissenting section was,clearly,vastly in the minority, was taken to provide the action of removing the leaders of the dissenting group,with undoubtable legitimacy. All that was required was the passing of legislation which enabled the Department to take the necessary action (223). At the same time this enabled the Department of Native Affairs to adopt an extremely bold stance:

> ".....in peaceful agricultural districts such as Rustenburg, the Government will not tolerate a disquieting, atmosphere and a menacing attitude among the Native tribes who are permitted as a matter of grace to continue to squat in Tribal conditions. Anarchy is a certain means of ensuring unpleasant consequences not only to David and his friends, but to the entire tribe" (224).

On the 7th May 1923 the necessary legislation became available in the form of the Location Orders, framed in terms of Law Number 4 of 1885 and Section 147 of the South Africa Act, 1909, for the 'better management on Native locations in the Province of the Transvaal'. (These orders with the above quotation are reprinted in Appendix 2 below). The Location Orders framed, in a totally unambiguous way, the absolute authority of a Chief over his people. At the same time under clauses nos. 2 and 13 the Chief's position as servant of the Native Affairs Department was also clarified, whilst restating the dominant position of the Department officials as representatives of the Supreme Chief. Clause 4, had direct relevance to the Fokeng dissensions as it banned any public meetings without permission of the Chief . Finally clause 12, framed extremely loosely was to be the central mechanism of control in the legislative armoury of the state. It provided for the almost completely arbitrary removal of any 'undesirables'.

The passing of this legislation seemed to have little or no effect on the behaviour of the dissenting Africans. Immediately they drew up a full letter of their grievances through their attorney Mr. Strange, which was sent to the Native Commissioner (225). Chief August Mokgatle, on the other hand, on the advice of S.N.C. Mr. Hunt, called a 'pitso' in order to formally depose the old lekgotla. This he did on 6th September 1923, and he announced the names of the members of his new lekgotla. Needless to say none of the supporters of the dissenting section were included (226).

In the period after August deposed the old lekgotla, the dissenting group were more active than ever. Only one week later, on 14 September 1923 they held a large meeting, defying the Chief's message ordering them to disperse. As a result eight of the leaders were summoned for

contravening Section 4 of the Location Regulations (227). Prosecution took place on 21 September 1923. Seven of the accused were simply discharged as the prosecution could not prove that they were responsible for convening the meeting. The eighth admitted he had summoned the meeting. This was for the sake of making a test case out of the Location Regulations. He was later found guilty and sentenced to a fine of £5 (228). However, on appeal he was acquitted and the Location Orders ruled by the Supreme Court to be ' ultra vires' (229). For the second time, the Native Affairs Department lost a crucial legal battle and had the very machinery - through which they were working- denied them. The upsetting of legislation, intended to strengthen the hand of the local officials in carrying out 'tribal administration', again had the effect of making it considerably weaker. At the same time, it was increasingly becoming apparent to the Africans of Phokeng, as well as a wider circle of Africans in the district, that recourse to civil legal battles, and the use of solicitors on their behalf, provided them with a position from which their bargaining power was greatly increased. The wider implications of this were not lost on the Department officials either. There was stong evidence of dissent in almost every tribe in the Rustenburg district, and the Department, equipped only with the antiquated legal machinery of 1885 was appearing increasingly unable to deal with them. The functioning of the courts was insensitive to the needs of the Native Affairs Department at a specific point in time, as reflected by the excerpt from the judgement of the appeal case above:

> "The fact that the government after a lapse of nearly forty years now seeks to make regulations under section 14 of the law, instead of initiating new legislation to meet the exigencies of the conditions of Native tribes, is not a matter with which the court is concerned" (230).

It was increasingly being felt that something drastic had to be done in order to salvage both the authority of the Chief and that of the Department of Native Affairs, to whom he increasingly looked for support. It was essential that the Department be seen to act on behalf of the majority amongst the Fokeng and further that the Department be seen to take some decisive action. The fact that removal had so frequently been threatened, yet never carried out, was seen to be further undermining Departmental prestige (231).

By this stage, it is clear that August's role was essentially a passive one. He was completely dependent on support from the state. His limited power had in fact left him crippled, whilst he had clearly lost all credibility with the majority of Phokeng. His 'traditional' basis of authority, and the legitimization of his position as 'father of the tribe' was also dissipated through the apparent lack of fitness to govern and his autocractic and personalised exercise of that authority. Yet he remained the Chief and as such, something of an ideological figure-head with whom the broad base of the population could identify, in a period of increasing ideological alienation. Thus, for almost three years the Native Affairs Department battled to oust the dissenting group, which challenged the authority of the 'legitimate' Chief and who, in their actions, opened the doors to a great deal more independent political action on the part of discontented Africans. The entire Rustenburg district and beyond was full of such discontented Africans, and the broad effects of the success of the dissenters at Phokeng, as well as its political implications, must not be lost sight of. Yet, it remains necessary to outline the exact basis upon which this dissent rested; the grievances of the 'rebels' at Phokeng. It is only then that one can understand the real meaning of the challenge to 'customary authority' and the growing incongruence between the

realities of peasant life and the political mechanisms which the state attempted to utilize in order to preserve the ideological social relations in Fokeng society.

On the 21 February 1924 August Mokgatle wrote a near hysterical letter, suggesting that the dissenting group was on the verge of open warfare and that his own life was being threatened (232). At this stage, the need for a thorough examination of the situation was finally recognised and on the 10th of March 1924, nearly three years after dissension had broken out at Phokeng, Col. Godley made his way to the stad of the Chief in order to carry out a departmental enquiry. However, before examining Godley's report and his perception of the validity, or lack thereof, of the grievances of the dissenting section, it would do well to examine these grievances as they were articulated by this group themselves.

The objections of these people is couched in largely political terms, yet, at its base, the demand for democratization and objections to the autocratic rule of August, reflect an underlying concern with the material interests which the exercise of authority facilitates. Yet these men, the leaders of the dissenting faction, must be seen for what they are. They appear to be a fairly well educated group (by rural African standards at any rate) and certainly seem to be somewhat advanced along the path to 'civilization' or 'westernization'. They appear to be men of some means and could certainly afford the services of prominent lawyers such as Strange and Benson. As such, it would be wrong to assume a group like this adopts patterns of resistance akin to that of people increasingly becoming subject to the process of proletarianization. However, the focus of their

attentions, the Chieftainship and its misuse, was regarded by the state as a focal point of political control. Thus whatever their motivations, they served to undermine the authority of the Chief, and as such foster the forces of 'detribalization'. However, essentially they were demanding accommodation rather than actively resisting. This is reflected by their own utterances:

> ".....our earnest wish and desire at all times to obey the law and to submit at all times to properly constituted and lawful authority, we have no desire to rebel against the laws of the land" (233).

Their objections were rather with the Chief himself and his misappropriation of power. It is a central contradiction of developing capitalist relations and the growth of capitalist ideology, that such a group should emerge out of the effective dissolution of non-capitalist forms of production, they seek accommodation within new social relations of production, yet are hindered by the preservation of the traditional pre-capitalst social-relations, largely the function of the state as outlined in the chapters above. It is largely in this regard that groups such as the dissenting faction at Phokeng came into conflict with the functioning of the state. It is also important to remember that this is conditional to a specific historical point of transition in capitalist development - one which was reached in the Western Transvaal by the 1920's. Thus it remains important to recognise that at its base, the political activity of the dissenting section at Phokeng, had a variety of material interests. It is in this context that one must interpret the grievances of David Mokgatle and his associates.

Their complaints were primarily centred around the Chief's autocractic

control of tribal affairs. One of their central objections was to the Chief's control over the buying of property:

> "At the time of the purchase of Welbekend, some of our section wished to pay money to the Chief towards the purchase price, we were denied this right and we were told that we would not be allowed to contribute nor would any of the rights to Welbekend accrue to us, that is were not to be allowed to have ploughing or grazing rights there" (234).

Yet at the same time, as members of the Chiefdom, they were liable and their own farms endangered when the Chief was sued in the Supreme Court over the bond of the same farm, Welbekend (235). They objected also to the granting of trading sites without being consulted, and the utilization of funds, collected by the people as a whole, without being informed as to what use these were being put. This amounted in some parts to accusations of embezzlement (236). In addition, they complained about his refusal to issue passes to specific people because they happen to be in 'opposition' to him. Finally they objected to their having to fulfill excessive labour obligations. All of these grievances,whilst taking on the appearance of objections to a lack of consultation at the level of government and administration, reflect to a greater or lesser degree, thwarted material aspirations. The resistance to the impositions of the Chief and the state in this regard, are reflected by the actions of defiance in 1924, at a time when they were directly threatened with removal, more so than are their actions from 1921 to 1923. Refusals to pay the money demanded of them in order to help meet the purchase costs of farms Welbekend and Diepkuil; refusals to meet similar financial demands for the fulfilling of a mineral contract; refusals to pay their taxes or meet the

obligations of any tribal levy (237); as well as the refusals to meet labour obligations such as those demanded by the destruction of locusts, thereby incurring legal prosecution under the Locust Law (238).

In addition, David and his followers complained of simple injustices, and the fact that they felt August to be unfit to govern at all. Central to this latter assertion, was the Chief's renowned propensity to imbibe great quantities of intoxicating liquor. The dissident group regarded August as simply having no real appreciation of human rights. It was complained that on a given occasion, he had placed an armed guard over the drinking water supply of the stad Boshfontein:

> "....with the result that little children who had done him no wrong were crying for water" (239).

He had also confiscated the bell, which the rival lekgotla used to summon people to meetings (240). Finally, however, an appeal was made that the autocratic rule of Chiefs should be dispensed with. The group displayed an identity with 'civilized' forms of government and demanded a more democratic form of government such as that in England, whereby:

> "His Majesty the King, the White Chief, does not rule England autocratically, but is bound to the decisions of his lekgotla or Parliament" (241).

Behind this lies the sentiment that this group felt that it was advanced far enough to benefit from the same system of government as did white South Africans and that the Native Affairs Department ought to concentrate on that direction rather than giving increased powers to the Chief, as set out in the Location Orders (242).

Col. Godley's enquiry into the dissension amongst the Fokeng could not

be said to have begun from a completely objective standpoint. From the outset he supported August. He supported unconditionally his breaking of the boycott, he rejected the legitimacy of the fine imposed on the Chief and suggested that it was contrary to African law and custom for the lekgotla to impose a fine on a Chief (243). This latter view was held despite the fact that the men in David's party could provide historical examples of this (244). Furthermore Godley accepted the Chief's appropriation of certain funds for his own personal use, to be justified. This he suggested was just a form of 'modified custom'. The old established tribal custom of paying tribute had fallen into disuse, and as it was essential that the Chief should have the wherewithal to support his position, it was acceptable for him to appropriate certain of the funds for himself (245). The labour demands he imposed on members of the tribe were also customary and therefore provided no basis for complaint (246).

In these terms, then, Godley approved the crude application of Tribal law and custom in the 1920's, failing to question for a moment the ways in which these customs manifested themselves in the modern context. In fact, Godley went even further to acknowledge that :

> "The Chief is addicted to drink and that generally speaking he is a weak and useless individual. ..." (242).

Despite this, the Chief was supported by the large majority of the Fokeng. However, Godley did accord great importance to the historical background of the succession dispute. He attributed the whole dispute to this factor, suggesting that the problems at Phokeng in the 1920's were merely a continuation of the old dissension which had always existed and merely waiting for a suitable opportunity to manifest itself. This opportunity was provided over the boycott affair.

Thus the dispute was regarded as a purely political issue, and one which ran so deep amongst the inhabitants of Phokeng that no simple peaceable solution was possible (298).

> "To this cause and to what may be termed the General Native Congress spirit, which pervades a section of the more enlightened members of the tribe, may be attributed all the trouble" (249).

On this basis Godley completely eliminated any possible compromise. He felt it the duty of the Native Affairs Department to uphold the legitimate hereditary Chief who remained the ideological figurehead for most members of the Chiefdom. As such, the 'rebels' were to be given an ultimatum to either cooperate or they would be removed. He advocated a strong line of approach by the Department, and, should it be necessary, immediate and strongly enforced action, so as to avoid the further discrediting of the Government in the eyes of the African inhabitants. To this end Godley suggested that fifty foot-police should be on standby in case it should become necessary to remove the offenders by force. He did however resist the temptation of a fly-over by the airforce, as he felt this was not yet entirely necessary (250). The removal was to take place under the authority of the Governor-General in his capacity as Supreme Chief.

Thus the under-Secretary for Native Affairs supported Chief August Mokgatle throughout. His position and that of the Native Affairs Department was based on the continued implementation of tribal law and custom in a crudely derived form. It was precisely this preservation of determinist social relations to which the 'rebels' were reacting.

All of Godley's recommendations were accepted by the Minster of Native

Affairs and were immediately carried out (251). The dissident section of the community treated the ultimatum which faced them somewhat contemptuously and although the pattern of their dissent was more passive, they continued to refuse to meet their 'tribal' obligations (252). However, removal at this point remained premature as more tangible evidence was necessary before it could be effected. The dissident section remained disruptive at public meetings (253). At the end of July 1924 however, S.N.C. Mr. Hunt was at Phokeng on his tax tour. Most of the dissenting group at Phokeng refused to pay their taxes. On the 4th of August thirty one of them were arrested, tried and convicted, being fined 10/-d or four days in hard labour. David Mokgatle was amongst them (254). Two weeks later the first blood was spilt at Phokeng when a messenger of the Chief was assaulted with a piece of wood whilst attempting to summon Lucas Mokgatle, one of the more prominent 'rebels', to the Chief's lekgotla. Lucas was duly convicted and sentenced to £25 or three months in hard labour (255). These convictions under criminal law provided the basis for action on the part of the Native Affairs Department. The shedding of blood for the first time was vastly exaggerated as a threat of a possible escalation to the proportions of Bullhoek or worse:

> "A considerable amount of blood was spilt at Bullhoek and I should not be surprised if there is not equally serious trouble in Phokeng unless the matter is taken in hand and brought to a definite conclusion by the Government" (256).

The threat which this posed to the white population at Rustenburg was also exaggerated (257). However, this is to an extent understandable, in the context of events in the recent past in other parts of the country. The nearness of Phokeng to the Rand made it particularly susceptible to the political developments which took place there. The

1920 Black mine workers strike described by Bonner (258) and the even more recent White mine workers strike of 1922 (259) were both fresh in the minds of state officials. Although the situation at Phokeng was not comparable to either of these examples on the Rand, the political atmosphere throughout the country was informed by such developments. Furthermore:

> "It is significant too that the storm-centres in this connection are locations situated at no great distance from the Rand, whereas these inter-tribal difficulties are not in evidence in the more remote locations where tribal traditions and customs still prevail" (260).

These sentiments were expressed in the popular press as well:

> "The position has existed for some time, and in the opinion of men familiar with native tribal matters in the district, it may lead to a tragedy similar to that which occurred at Bullhoek..... The nearness of the scene to the Rand illustrates the danger of the affair to the white population" (261).

and the next day:

> "The Native tribes in the Rustenburg district are known to be on the verge of disintegration because of their proximity to the Rand and the influence of democratic ideas emanating from there, and the Chiefs no longer have the influence and control necessary to carry on tribal government" (262).

It is understandable that officials were weary of outside political

influences. In 1917 the Transvaal Native Congress held its annual conference at Phokeng. The spread of the symptoms of defiance were also noticeable in other areas of the Western Transvaal in the form of a movement of non-cooperation. This was most noticeable in the refusal of Africans in many areas to destroy locusts when requested to do so. This attitude was fairly widespread and showed itself in a general disposition to treat authority with a certain amount of contempt (263). There were a variety of possible reasons for these developments, and undoubtedly the influence of developments in nearby industrial centres was one. However, the very failure of the Native Affairs Department to bring the dissidents to heel must itself be seen to have broadened the effects of the dissension at Phokeng.

Yet throughout the later part of 1924, state officials in the Rustenburg district were continually searching for organisers hidden behind the scenes especially in an era when:

> "..... proved apostles of socialism have ranged the country and have consistently worked to convince rural natives that their one hope of betterment lay in resistance to authority" (264).

In the Rustenburg district a great deal of suspicion was directed at specific missionaries. These were the missionaries of the separatist churches or the preachers of Garveyism. The political content behind these Ethiopian church movements is fully outlined by Rich (265) and the millenarian defiance of the Israelites was the predominant motivating force behind the rebellion at Bullhoek in 1921. In addition to this open defiance, these millenarian movements and separatist churches, resulted in the development of an educated class of politically conscious and articulate Africans who tended to express their beliefs in western political terms (266). It is in fact arguable that many of these missionaries aided their converts in coming

to terms with modern industrial society by breaking down many of the traditional attitudes which allowed Africans to take refuge in social formations which were bound to lose many of their positive features under the strain of white rule (267).

Amongst the Fokeng there was such a missionary, a Baptist by the name of Reverend Spooner. His role in the dissensions is extremely uncertain. What is clear though, is the fact that he was suspected of being the instigator of the opposition to the Chief, and as such, the man behind the scenes and at the bottom of the dissensions (268). There was a call to have Spooner deported (269) but this did not materialise and Spooner was to die in Rustenburg in 1936 (270). It seems extremely unlikely that the spread of discontent in the Rustenburg district was due to any underground movements or, the like. Rather, the developing contradictions between political and economic relations were by the 1920's becoming apparent. The fact also that the state failed to assert itself in Phokeng,was a critical factor in the spreading of discontent. Incidents and disputes similar to those at Phokeng, occurred also at Mabieskraal and Motsatsi Stad as early as the end of 1923, and in fact in almost every stad of the district, with the exception of Saulspoort under Chief Isang Pilane (270).

It is however necessary to moderate these views somewhat. The developments in the Rustenburg district seem to have relatively little to do with underground movements. The 'Congress spirit' referred to above was in fact a particularly peaceful one at this stage, and the only interest that the Transvaal Native Congress expressed in the affair was by way of an appeal to the Government for moderation in the form of a letter to the S.N.A., which was duly ignored (271).

The fact was however, that dissension went on and further threatened both the authority of the Chief and his life. It was on this basis that the decision was finally taken to remove the leaders of the 'rebellious' section. However, as the Location Orders had been declared ultra vires, it was not possible to deport the nine selected 'rebels' under clause 12 of those regulations. This meant that under civil law there was actually no law which justified the removals. The response of the state to this, reflects more than any previous example the expendiency with which 'tribal law' was applied, in this case in the interests of the state's political security. Concerted and coordinated state action characterised this offensive, unlike the earlier attempts to prosecute the 'rebels'.

The Deportation Order was issued in the name of the Supreme Chief, who under tribal law and custom was considered to have absolute authority and the right to remove any 'recalcitrant natives', from tribal land.

> "This right of removal we think should be supported, though as the Department of Native Affairs admits, the evidence available at present to maintain its validity is not conclusive. Law Officers left the validity under Native Law of the removal order as an open matter to be established by evidence" (272).

In keeping with this a variety of white officials were called upon to give evidence, the vast bulk of them supporting the Suprem Chief's right in this context. After all, if this was acceptable under Sepedi Laws, Mashona Laws, Pondomisi Laws, the Natal Code of Native Law and many others, then surely it applied also to the Fokenp (273). Furthermore this law was simply deemed to be consistent with the

principles of civilization recognised in the civilized world (274). Finally, it was declared that the Supreme Chief in his executive capacity, need not necessarily go to the courts in order to carry out the order:

> "It is submitted that the order once obtained is in the nature of a final judgement" (275).

In keeping with the nature of this repressive measure, the police were notified and put on standby and on the 13th October 1924, the removal Order was served on the nine 'rebels' (276).

The malcontents appealed against the Order on the basis that it was beyond the powers of the Supreme Chief to remove them. They claimed that as members of the Fokeng Chiefdom the land belonging to the Chiefdom was inalienable and they therefore could not be removed. In addition to this, under 'tribal law' the Supreme Chief could only administer civil justice and the Deportation Order was rather a case of criminal jurisdiction. Furthermore it was claimed that the Deportation Order was in conflict with the general principles of civilization (277).

The Native Affairs Department summoned together all the might of its officialdom and supplied a string of witnesses who testified to the legality of the deportation. Most notable amongst these witnesses was Chief Isang Pilane who offered his support to the Department (278).

The arbitrary nature in which the case was dealt with, even at the level of the Supreme Court explains the lack of discussion of the proceedings themselves and is reflected in the final judgement:

> "There can be only one uniform mode of enforcing native law and custom. It is no injustice or hardship to the natives to be permitted to live

> under their own tribal government according to Native usages; and unless a clear case of injustice and illegality has been made out in a particular instance, the decision of the Supreme Chief according to Native law and custom cannot be disturbed by the Court" (279).

Within seven days, the nine 'rebels' and a number of supporters, 'removed' themselves from Phokeng stad (without necessitating the use of police force), in a very 'civilized' fashion. August Mokgatle the 'Chief who was spat upon' was now secure in his claim that:

> "A Chief I was born and a Chief I will die" (280).

5. CONCLUSION

In fact, in Phokeng the leaders of the dissent were particularly concerned with achieving their aims through legitimate channels - the law courts. The views they were expressing and the logic behind their opposition to the 'tribal' system, were characteristic of a 'westernized ' ideology. This did not at any stage take on the form of a violent threat to white society as suggested, although it is apparent that threats to the Chief were frequent. Even these, however, were largely verbalised and directed very specifically at a personal level. The threat which this dissent posed was a very much more subtle one. The influence of the dissidents was largely in the generalised challenge to tribal authority which they posed,and the political consequences of this were of some importance to the state. The effect which such questioning might have on the African population on a broad base, both in the locations and in industrial areas throughout the country was perceived as being a potential threat to the political security of the state. The questioning of the legitimacy of tribal authority and tribal law in modern industrial based society, was serving to demystify the ideology at the base of 'tribalism'. It served to transfer the focus of political aspirations, from one within the confines of 'Tribes' and 'Tribal government' to one within the capitalist state as a whole. This at a time when the state ideology of 'segregation' was in its formative stages.

At a more concrete level it posed the threat of alienating people from what were supposed to be their own laws and customs. In the towns and cities of South Africa, as well as working on the land of white farmers, there were large numbers of Africans who had effectively lost their access to any productive base in their particular 'tribal' reserves.

The undermining of the ideological structures of political control and legitimacy would serve to allocate the focus of political concern within the capitalist sector,as opposed to one within the carefully preserved 'non-capitalist' mode of production. The supreme irony of this, was that it was the development of capitalism itself, which inevitably penetrated the pre-capitalist mode and thereby tended to incorporate it within the ambit of capitalist relations as a whole. This was one of the fundamental processes in the dissolution of the pre-capitalist mode of production, and the state, in recognition of the political consequences of such a development, attempted to preserve the political identity and mechanisms of control which characterised pre-capitalist society. The fact that these social formations could not any longer really be called pre-capitalist, served to seriously hinder this function of the state, and goes a long way to explaining the disfigured and degraded forms which Tribal law and custom came to take on, as well as the expendiency of the state in its implementation of these laws amongst the Fokeng people of the Western Transvaal in the early 1920's.

> "The predikant in South Africa preaches that, 'we are all members of one body and that body Christ'. The labour leaders preach the doctrines of equality, freedom and fraternity for all workers irrespective of colour. The politician preaches - well, any sort of tripe that will catch votes, and we are regularly told ex cathedra that the law in South Africa is the same for the black man as for the white.
>
> It is not difficult to understand why South Africa has not yet produced a statesman who has made any

serious attempt to solve the native problem. It is not an easy matter to convince a nation, scarcely yet emerged from the traditions of native slavery, of its national hypocrisy, but the longer we remain in our Micawber-like apathy the more tragic will be our awakening" (281).

NOTES

(1) Relly, G., 'Social and Economic Change amongst the Tswana in the Western Transvaal 1900-1930', unpublished M.A. thesis, School of African and Oriental Studies, University of London, 1978, p.1.

(2) Marx, K., quoted in: Clarke, J., 'Some problems in the Conceptualization of Non-Capitalist Relations of Production', Critique of Anthropology, Vol. 2, No. 8 (Spring 1977), p.59.

(3) Foster-Carter, A., 'The Modes of Production Controversy', New Left Review, Vol. 107 (January/February 1978), p.50. The contemporary debate centred around modes of production was, to all intents and purposes, initiated by Laclau, E., 'Feudalism and Capitalism in Latin America', New Left Review, Vol. 67 (May 1971).

(4) Ibid., p.50

(5) Ibid., p.51

(6) Clarke, J., op. cit., makes a similar point on p.62.

(7) Roseberry, W., 'Peasants as Proletarians', Critique of Anthropology, No. 11 (Spring 1978), p.3.

(8) Ibid., p.4

(9) Marx, K., quoted in: O'Laughlin, B., 'Production and Reproduction; Meillassoux's Femmes, Greniers et Capitaux', Critique of Anthropology, Vol. 2, No. 8 (Spring 1977), p.6.

(10) O'Laughlin, B., Ibid., p.6

(11) Banaji, J., 'Modes of Production in a Materialist Conception of History', Capital and Class, Vol. 3 (Autumn 1977), p.30.

(12) Ibid., p.30

(13) Meillassoux, C., 'Kinship Relations and Relations of Production' in: Seddon, D., (ed.) Relations of Production: Marxist Approaches in Economic Anthropology London: Frank Cass 1973.

(14) O'Meara, D., 'Class, Capital and Ideology in the Development of Afrikaner Nationalism, 1934-1948', unpublished Ph.D. thesis, University of Sussex, 1979, p.333.

(15) Meillassoux, C., op.cit.

(16) Ibid., p.325.

(17) Ibid., p.326.

(18) Ibid., p.326

(19) Ibid., p.327

(20) Ibid., p.327

(21) The exact location of August Mokgatle's Location and Phokeng, the Chiefs Stad can be seen on the map reproduced herein.

(22) Breutz, P.L., The Tribes of the Rustenburg and Pilansberg Districts, Ethnological Publications No. 28, Pretoria: Department of Native Affairs (1953), p.56.

(23) Ibid., p.64

(24) Ibid., p.16. Although Breutz's figure seems extremely high, no other statistics were available which contradicted this.

(25) Ibid., p.16.

(26) Ibid., p.65

(27) Relly, G., Op.cit., pp. 2-3.

(28) Guy, J.J., 'The Destruction of the Precapitalist Economy and the Origins of Labour Supplies: The Zulu Case', Conference on South African Labour History, African Studies Institute, University of the Witwatersrand (April 1970). p.14.

(29) In this connection see the following: Guy, J.J., 'Ecological factors in the Rise of Shaka and the Zulu Kingdom', Workshop on Production and Reproduction in the Zulu Kingdom, University of Natal, Pietermaritzburg (October 1977). Guy, J.J., 'Production and Exchange in the Zulu Kingdom', Workshop on Precapitalist Social Formations and Colonial Penetration in South Africa, National University of Lesotho (July 1976). Wright, J., 'Women and Production in the Zulu Kingdom', History Workshop on Precolonial Nguni Societies, Rhodes University (1979).

(30) Guy, J.J., 'The destruction of the Precapitalist Economy', op.cit., p.14.

(31) Marks, S., Reluctant Rebellion. The 1906-1908 Disturbances in Natal (Oxford: Claredon Press, 1970), pp.41-42, 128-130.

(32) Relly, G., op.cit., p.5.

(33) Ibid., p.6.

(34) Marks, S., op.cit., p.123.

(35) Relly, G., op.cit., p.46.

(36) Breutz, P.L., op.cit., p.35.

(37) Evidence of J.C.E. Penzhorn to the Native Economic Commission 1930-32, S.A.B.A., K/26 (hereafter N.E.C.), p.972.

(38) Bundy, C., The Rise and Fall of the South African Peasantry (London: Heinemann, 1979), pp.202-204. See also Bundy, C., 'The Emergence and Decline of a South African Peasantry', African Affairs, Vol. 71, No. 285 (1972), p.380.

(39) Relly, G., op.cit., p.6.

(40) Ibid., p.7.

(41) It is apparent that wages were often paid in kind, especially to the young boys who worked on nearby farms. However Penzhorn does supply some statistics of farm labour wages, in his evidence to the N.E.C. p.1020. Quoted again below.

(42) Relly, G., op.cit., pp.7-8.

(43) Ibid., p.8.

(44) Ibid., p.10.

(45) Ibid., p.11.

(46) Breutz, P.L. op.cit., p.66. Initially the rights to these lands and their revenues were disputed by members of the Fokeng people, who claimed personal ownership of the land involved. The Chiefdom however won the legal decision. Secretary of Native Affairs Files (hereafter S.N.A.), Vol. 83, N.A. 884/08. Paulus Khunow versus August Mokgatle and Modisakeng Tetlele versus August Mokgatle. Ownership of farms Turffontein and Klipfontein (1908).

(47) Relly, G., op. cit., p.16.

(48) Ibid., pp.17-27.

(49) Breutz, P.L., op.cit., p.66.

(50) Relly, G., op.cit., p.28.

(51) Ibid., pp.27-8.

(52) Ibid., p.28

(53) S.N.A., Vol. 62, 424/06 Native Commissioner Griffith to Secretary of Native Affairs (hereafter S.N.A.), 22 February 1906.

(54) Evidence of J.C.E. Penzhorn to N.E.C., p-973.

(55) Relly, G., op.cit., p.29

(56) Ibid., p.30.

(57) Evidence of T.A.C. Emmett to N.E.C., p. 1073.

(58) Relly, G., op.cit., p.31.

(59) O'Meara, D., op.cit., p.336.

(60) Ibid., pp.334-5.

(61) Ibid., p.335.

(62) Ibid., p.336.

(63) Evidence of J.C.E. Penzhorn to N.E.C., p.965.

(64) Ibid., pp.993-1004.

(65) Ibid., p.983. Evidence of Chief Zibi to N.E.C., p.1126.

(66) Evidence of Mutle Mokgatle to N.E.C., p.1095

(67) Evidence of T.A.C. Emmett to N.E.C., p.1078

(68) Evidence of J.C.E. Penzhorn to N.E.C., p.966. Evidence of T.A.C. Emmett to N.E.C., pp.1067-1069

(69) Relly, G., op.cit., pp.32-33.

(70) Ibid., p.37.

(71) Ibid., p.38.

(72) Evidence of G.P. Stegmann to N.E.C., pp. 1034,1052. Evidence of Chief Sedumedi to N.E.C., pp.1117-1118.

(73) Evidence of T.A.C. Emmett to N.E.C., pp.1084-1085.

(74) Ibid., pp.1067-69.

(75) Evidence of Chiefs to N.E.C., pp.1104-1134. Secretary of Native Affairs Files (In the Transvaal Provincial Archive (T.B.P.A.) many of these files have been transferred to computer for the period after 1910. They are thereafter referred to as the N.T.S. files), Vol. 1372, 1/213(5) Tribal levies - Rustenburg (1913-1928).

(76) Relly, G., op.cit., p.39.

(77) Evidence of J.C.E. Penzhorn to N.E.C., P.981.

(78) Ibid., p.981.

(79) Ibid., pp.1018-1019.

(80) Ibid., p.965.

(81) Evidence of T.A.C.Emmett to N.E.C., pp.1071-2.

(82) Ibid., pp.1089-90.

(83) Relly, G., op.cit., pp.43-4.

(84) Evidence of J.C.E. Penzhorn to N.E.C., p.1016.

(85) Ibid., p.1016.

(86) Ibid., pp.1119-20.

(87) Ibid., p.1120.

(88) Ibid., p.982.

(89) Ibid., p.982.

(90) Evidence of Cleopas Ramokoka to N.E.C., pp.1145-6.

(91) Evidence of Chief Pilane to N.E.C., P.1126.

(92) Evidence of J.C.E. Penzhorn to N.E.C., p.1010.

(93) Breutz, P.L. op.cit., p.76.

(94) Ibid., p.76. Evidence of J.C.E.Penzhorn to N.E.C., p.1010.

(95) Relly, G., op.cit., p.40.

(96) Breutz, P.L., op.cit., p. 200.

(97) Relly, G., op. cit., p.9.

(98) Evidence of G.P. Stegmann to N.E.C., p.1033.

(99) Evidence of J.C.E. Penzhorn to N.E.C., pp.972-4.

(100) Evidence of Chief Pilane to N.E.C., p.1111.

(101) Ibid., p.1113.

(102) Evidence of Mutle Mokgatle to N.E.C., p.1103.

(103) Evidence of G.P. Stegmann to N.E.C., p.1033.

(104) Relly, G., op.cit., pp.39-40.

(105) Evidence of J.C.E. Penzhorn to N.E.C., P.1016.

(106) See' Harries, P., 'Kingship, Ideology and the Origins of Migrant Labour', Centre of International and Area Studies Conference: Class Formation, Culture and Consciousness:The Making of Modern South Africa , University of London (January 1980). Delius, P. and Beinart W., 'The Family and Early Migrancy in South Africa', Institute of Commonwealth Studies, African History Seminar, School of African and Oriental Studies, University of London (9 May 1979).

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(108) Comaroff, J.L., 'Rules and Roles: Political Processes in a Tswana Chiefdom', in Bonner, P. (ed.) Working Papers in South African Studies, African Studies Institute, University of the Witwatersrand (1977), p.281.

(109) Meillassoux, C.. op.cit.,p.327.

(110) Clarke, J., op. cit.,p.65.

(111) Poulantzas, N., Classes in Contemporary Capitalism, Verso (1978), p.21.

(112) Ibid., pp.24-5.

(113) O'Meara, D., op.cit., p.345.

(114) Ibid., p.346.

(115) Ibid., p.347.

(116). Burman, S.B., 'Symbolic Dimensions of the Enforcement of the Law'. I owe thanks to David Dyzenhaus for drawing my attention to this reference. Unfortunately he was only in possession of a photostat copy of the article and, I was unable to obtain the full reference in the Law journals.

(117) Marks, S., op.cit., p.33.

(118) Guy, J.J., op.cit., p.7.

(119) Marks, S., op.cit., p.34.

(120) Shepstone, T., quoted in : Marks, S., Ibid., p.34.

(121) Marks, S., Ibid., pp.38-9.

(122) Ibid., p.35.

(123) Ibid., p.36.

(124) Ibid., p. 37.

(125) Burman, S.B., op.cit., p.211.

(126) Ibid., p.204.

(127) Ibid., p.205.

(128) Ibid., p.205.

(129) Marks, S., op.cit., p.40.

(130) Ibid., p.41.

(131) Justice Beaumont to South African Native Affairs Commission 1903-05, quoted in : Marks, S., Ibid., p.41.

(132) Marks, S., Ibid., pp.41-2.

(133) Ibid., p.47.

(134) Evidence of T.A.C. Emmett to N.E.C., pp.1069-70.

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(137) Ibid., p.281.

(138) Ibid., p.282.

(139) Ibid., pp.282-3.

(140) Ibid., p.283.

(141) Ibid., p.284.

(142) Ibid., p.286.

(143) Ibid., p.288.

(144) Ibid., p.288.

(145) Ibid., p.288.

(146) Ibid., p.289.

(147) Ibid., p.290.

(148) Ibid., p.316.

(149) Evidence of J.C.E. Penzhorn to N.E.C., P.969.

(150) Ibid., pp.969-971.

(151) Ibid., p.971.

(152) Evidence of Chief Shongoane to N.E.C., pp.1107-1108.

(153) Evidence of Chief Pilane to N.E.C., P.1115.

(154) Ibid., p.1115.

(155) Evidence of J.C.E. Penzhorn to N.E.C., p.972.

(156) 'Sayings of Ndela', The Star, (5 December 1921), p.11.

(157) Ibid., p.11.

(158) Evidence of J.C.E. Penzhorn to N.E.C., p.1025.

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(160) Evidence of Reuben Mokgatle to N.E.C, pp.1131-1132.

(161) Ibid., p.1132.

(162) Ibid., p.1133.

(163) Evidence of J.C.E. Penzhorn to N.E.C., p.985.

(164) N.T.S., Vol. 316, 15/55 Memorandum on Powers of the Supreme Chief (2 May 1924).

(165) Evidence of T.A.C. Emmett to N.E.C., p.1072.

(166) Evidence of G.P. Stegmann to N.E.C., p.1059.

(167) Evidence of T.A.C. Emmett to N.E.C., p.1030.

(168) Evidence of G.P. Stegmann to N.E.C., p.1031.

(169) Evidence of T.A.C. Emmett to N.E.C., p.1074.

(170) Ibid., p.1049.

(171) Evidence of Chief Pilane to N.E.C., p.1111. Evidence of Reuben Mokgatle to N.E.C., pp.1131-1132. Evidence of Chief Mogale to N.E.C., pp.1104-1106.

(172) Evidence of Jacobus Khunon to N.E.C., pp.1127-8.

(173) N.T.S., Vol. 316, 15/55 Rooth and Wessels to Under-Secretary of Native Affairs (8 May 1920).

(174) S.N.A., Vol. 165, 1990/1911/F367 Transvaal Headmen, allowances to (1911-1921).

(175) 'Native Chiefs and their Powers', Umteteli Wa Bantu (26 April 1924), p.4.

(176) 'Interview with the Minister of Justice', The Star, (3 Ocotber 1924), p.11.

(177) 'Government and Natives', The Star, (27 October 1924), p.10.

(178) Ibid., p.10.

(179) This chapter heading was taken from :'The Chief Who was Spat Upon', The Star (1 November 1924), p.11.

(180) 'A Chief and his Tribe', The Star (12 March 1924), p.10.

(181) N.T.S., Vol. 316, 15/55 Rooth and Wessels to Under-Secretary of Native Affairs (8 May 1920).

(182) Ibid.

(183) N.T.S., Vol. 316, 15/55 Acting S.N.A. to Native Commissioner Rustenburg (21 July 1911).

(184) N.T.S., Vol. 316, 15/55 Acting Sub-Native Commissioner to Native Commissioner Rustenburg (14 August 1911).

(185) N.T.S., Vol. 316, 15/55 A.S. Benson to Barrett (S.N.A.) (22 Ocotber 1921), pp.57-60 (The N.T.S. volume cited here (316), is an extremely large collection of documents, from which most of my information is drawn. The page numbers will therefore be provided for the sake of closer reference, wherever these were clearly discernable).

(186) N.T.S., Vol. 316, 15/55 Sub-Native Commissioner (hereafter S.N.C.) to S.N.A. (15 June 1921).

(187) N.T.S., Vol. 316, 15/55 Minutes of Godley's departmental enquiry into Bafokeng dissensions. (10 March 1924), pp.186-198.

(188) Ibid.

(189) Ibid

(190) N.T.S., Vol. 316, 15/55 Minutes of Meeting held at Phokeng (27 June 1921).

(191) N.T.S., Vol. 316, 15/55 Letter from Bafokeng tribe and lekgotla to Native Commissioner (hereafter N.C.) Rustenburg (13 June 1921).

(192) N.T.S., Vol. 316, 15/55 S.N.C. to S.N.A. (15 June 1924).

(193) Ibid.

(194) N.T.S., Vol. 316, 15/55 Minutes of Meeting held at Phokeng (27 June 1921).

(195) N.T.S., Vol. 316. 15/55. S.N.C. to S.N.A. (15 June 1921). S.N.C. Griffith made it quite clear to the deputation which approached him, that only the Government had the power to depose the Chief.

(196) N.T.S., Vol. 316, 15/55 Ellmann (Magistrate) to S.N.A. (30 August 1921).

(197) N T.S., Vol. 316, 15/55 A.S. Benson to S.N.A. (30 August 1921).

(198) N.T.S., Vol. 316, 15/55 A.S. Benson to S.N.A. (11 October 1921).

(199) Ibid.

(200) N.T.S., Vol. 316, 15/55 S.N.A. to S.N.C. (12 October 1921),p.54.

(201) N.T.S., Vol. 316, 15/55 Benson to S.N.A. (22 October 1921), pp.57-60 .

(202) Ibid.

(203) N.T.S., Vol.316, 15/55 S.N.C. to S.N.A. (7 December 1921), pp.66-67.

(204) N.T.S., Vol. 316, 15/55 S.N.C. to S.N.A. (16 November 1921), pp.62-63.

(205) Ibid.

(206) Ibid.

(207) N.T.S., Vol. 316, 15/55 S.N.A. to S.N.C. (30 November 1921), p.65.

(208) N.T.S., Vol. 316, 15/55 S.N.C. to S.N.A. (7 December 1921), pp.66-67. Breutz P.L., op.cit., pp.64-65.

(209) 'The Bafokeng Rebels', The Star (14 October 1924), p.9.

(210) N.T.S., Vol. 316, 15/55 Minutes of meeting held at Rustenburg by Col. Godley (10 March 1924), pp.186-198.

(211) N.T.S., Vol. 316, 15/55 S.N.C. to S.N.A. (18 October 1922), P. 69.

(212) N.T.S., Vol. 316, 15/55 S.N.A. to Rustenburg Magistrate (10 December 1921), p.68. N.T.S., Vol. 316, 15/55 S.N.A. to Rustenburg Magistrate (20 October 1922), p.70.

(213) Comaroff, J.L., op.cit., p.289

(214) Ibid., p.289.

(215) N.T.S., Vol. 316, 15/55 Native Commissioner (hereafter N.C.) to S.N.A. (22 November 1922), pp. 74-75.

(216) Ibid.

(217) N.T.S., Vol. 316, 15/55 Magistrate to S.N.A. (23 October 1922), p.71.

(218) N.T.S., Vol. 316, 15/55 Sworn Statement by Mutle Diale (7 September 1922), p.72.

(219) N.T.S., Vol. 316, 15/55 S.N.C. to Public Prosecutor (7 September 1922), p.72.

(220) N.T.S., Vol. 316, 15/55 Public Prosecutor to S.N.C. (18 November 1922), p.73.

(221) N.T.S., Vol. 316, 15/55 N.C. to S.N.A. (22 November 1922), pp.74-75.

(222) N.T.S., Vol. 316, 15/55 S.N.A. to N.C. (5 December 1922), p.80.

(223) N.T.S., Vol. 316, 15/55 S.N.A. to N.C. (14 March 1923), p.83.

(224) Ibid.

(225) N.T.S., Vol. 316, 15/55 Strange, on behalf of the lekgotla of Phokeng to N.C. (26 August 1923), pp.91-95.

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(227) N.T.S., Vol. 316, 15/55 District Commandant of Rustenberg to the deputy Commissioner South African Police, Transvaal Division (18 September 1923),p.100.

(228) N.T.S., Vol. 316, 15/55 S.N.C. to S.N.A. (22 September 1923), pp. 103-104.

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(230) N.T.S., Vol. 316, 15/55 N.C. to S.N.A. (30 January 1924), pp.118-120.

(231) N.T.S., Vol. 316, 15/55 S.N.A. minute - telegram to Cape Town (29 February 1924), pp.148-150.

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(234) Ibid., p.94.

(235) Ibid.

(236) Ibid., p.93.

(237) N.T.S., Vol. 316, 15/55 S.N.C. to N.C. (26 May 1924), pp.240-241.

(238) 'Natives and Locust Killing', The Star (24 October 1924), p.11. The Locust Law referred to, was framed under Section 20, Sub-section 3, of Act 11, 1911.

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(240) Ibid., p.93.

(241) Ibid., p.92.

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(244) N.T.S., Vol. 316, 15/55 The Lekgotla of Phokeng to N.C. (26 August 1923), p.95.

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(261) 'Native Chief defied', The Star (6 October 1924), p.7.

(262) 'Rustenburg Natives', The Star (7 October 1924), p.7.

(263) 'Natives and Locust Killing', The Star (24 October 1924), p.11.

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(265) Rich, 'Ethiopianism in South Africa', Unpublished Seminar Paper.

(266) Marks, S., op.cit. p.65.

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(268) N.T.S., Vol. 316, 15/55 Confidential letter: Ernest Stubbs to Garthorne (15 October 1924), p.348.
"My Dear Garthorne,

I write you personally because of the strictly confidential nature of the information I am about to impart. It has come to my notice that there is a certain Reverend Spooner, an American Negro carrying on mission work in the Phokeng stad. There is the suspicion that he is in the employ of some revolutionary Society, possibly Red or Communist and that he is at the bottom of the Phokeng dissensions.

It has been suggested to me that, but for the machinations of this gentleman, the rebel faction would have negotiated peace with the Chief August Mokgatle. I am not in a position to say whether the suspicions are well founded but from the

surrounding circumstances, it is just possible that there may be a great deal more in this business than meets the eye.....I think the suspicions are worth investigating ..... we may quite possibly happen upon a deep laid plot, hatched and engineered by the astute, adroit Reverend gentleman in conjunction with his white brothers. One never knows!"

(269) Jus., Vol. 371, 3/1162/23 Deputy Commissioner of Police to Sub-Inspector Cilliers (30 October 1924).

(270) Mokgatle, N., Autobiography of an Unknown South African, London: Hurst and Co. (1971), p.83.

(271) N.T.S., Vol. 316, 15/55 Acting assistant Secretary of the Transvaal Native Congress to S.N.A. (11 October 1924), p.296.

(272) N.T.S., Vol. 316, 15/55 Memorandum on Powers of Supreme Chief (undated), p.232-236.

(273) Ibid.

(274) Ibid., p.233.

(275) Ibid.

(276) N.T.S., Vol. 316, 15/55 S.N.C. to N.C. (13 October 1924), pp.301-2.

(277) N.T.S., Vol. 316, 15/55 Judgement of Judge J.A. Kotze: David Mokgatle and Others versus Minister of Native Affairs (30 May 1925), pp.568-581.

(278) N.T.S., Vol. 316, 15/55 Isang Pilane to Resident Magistrate Gabarones (8 November 1924), p.390.

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(280) 'The Chief who was Spat Upon', The Star (1 November 1924), p.11.

(281) 'Are we hypocrites', A.S. Benson, letter to the editor, The Star (2 October 1924),p.8.

* No. 760.] [7th May, 1923.

It is hereby notified for general information that His Royal Highness the Governor-General has been pleased, in terms of article *fourteen* of Law No. 4 of 1885 (Transvaal), and section *one hundred and forty-seven* of the South Africa Act, 1909, to frame the following orders for the better management of native locations in the Province of the Transvaal.

LOCATION ORDERS.

1. In these orders—

"commissioner" shall have the meaning given thereto in the Rules for Courts of Native Commissioners;

"chief" shall mean a native chief appointed by the Government;

"council" shall mean the Lekgotla or advisory body appointed by the chief;

"headman" shall mean any native recognized as such by the commissioner;

"location" shall mean a Government location or any tribally-owned land used or occupied under tribal conditions.

2. The commissioner shall represent the paramount chief in matters affecting any location within his jurisdiction.

3. Residential rights in a location shall be subject to the observance of native law and custom as recognized in terms of article *two* of Law No. 4, 1885, and of such rules dealing with health and sanitation as may be prescribed by the chief and council with the concurrence of the commissioner, or such regulations as may be approved in terms of section *nine* of Act No. 27, 1913.

4. No public gathering nor assembly shall be convened or held in any location without permission of the chief and council.

5. Any non-resident native entering a location shall report his presence and state his business to the nearest headmen, who may grant such native permission to remain for a period not exceeding three days. Permission to remain in the location for a period exceeding three days must be obtained from the chief.

6. Any native found within a location may be required by the chief or any headman to show that he is an acknowledged resident or that he has permission to be within the location; upon failure to satisfy the chief or headman in this particular he may be ordered to leave the location forthwith.

7. Any location resident who, without reasonable cause, fails to attend the chief's court when summoned or a pitso or meeting convened by the chief (or the commissioner) shall be liable for breach of these orders.

8. Any location resident attending the chief's court or a pitso or meeting held by the chief (or the commissioner) who causes or attempts to cause a disturbance by shouting, or who makes use of threats or insulting language, or attends armed with sticks or other weapons, shall be liable for breach of these orders.

9. No native shall be allowed to carry on any trade in a location without the permission of the chief and council.

10. No stock other than the bona fide property of location residents shall be allowed in a location without the permission of the chief.

11. Pending further regulation in terms of section *thirty-two* (1) of Ordinance No. 19, 1906, all births and deaths shall be reported to the chief by the head of the kraal concerned, and the chief shall, when called upon, furnish the commissioner with particulars of such births and deaths.

12. The commissioner may, at the instance of the chief and council, after due inquiry, recommend the removal from a location of any resident thereof whose continued presence can be shown to be undesirable on account either of the wilful breach of these orders, trespass against recognized native law and custom, sustained contumacy to tribal discipline and control, or such conduct as is contemplated by V.R.R. Art. 1066 of the 31st August, 1895. Such recommendation, together with the proceedings on inquiry shall be submitted to the paramount chief for his decision and further order. Any native failing to comply with an order of the paramount chief in the premises shall be liable to a fine of ten head of cattle or fifty pounds sterling.

13. Chiefs and headmen shall assist the commissioner to the best of their ability, and shall obey his orders and instructions for the better administration of their tribes and locations, and to this end shall attend at such times and places as he may notify to them.

14. Any native who fails to comply with a decision or judgment of the chief's court (unless in contemplation of appeal) or who commits any contempt of such court shall be liable for breach of these orders.

15. Except as in order No. 12 is otherwise provided, any native who shall be found to have failed in observance of these orders, or to have committed a breach of these orders, shall be liable to a fine not exceeding £20.

R. S.N.C. 10/21/160/23

UNION OF SOUTH AFRICA.

DEPARTMENT OF NATIVE AFFAIRS.

P.O.Box 104.

Rustenburg, 22nd Feby 23. 191

The Secretary for Native Affairs,

Pretoria.

Complaint against Chf Aug.Mokhatle.

With reference to your minute . dated the 15th December 1922 on the above subject. As instructed I have held meetings with the residents on the various tribally owne farms and have taken a vote, for or against the present regime, the results being as follows:-

Klipfontein	Present	23	For	23	Against	0
Turffontein	"	44	"	27	"	17
Kana & Vlakftn	"	108	"	108	"	0
Tweedepoort	"	45	"	45	"	0
Rooiwal	"	25	"	25	"	0
Bierkraal	"	76	"	76	"	0
Diepkuil	"	28	"	28	"	0
Doornspruit	"	205	"	205	"	0
Styldrift	"	88	"	80	"	8
Phokeng Location) Bierfontein Goedgedacht Boschfontein	"	330	"	136	"	194
Schaapkraal	"	13	"	13	"	0
European owned on which a number of the tribe reside.						
		985	"	766	"	219.

It will be seen from these figures that the vote "for" the present regime exceeds that "against" by 547, and that the seat of the trou ble is at Phokeng stad, where the Chief has his Head-Quarters.

.N.Commissioner, Rustenburg.

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