The dynamics of power and the rule of law

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Essays on Africa and beyond,

in honour of Emile Adriaan B. van Rouveroy van Nieuwaal

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Introduction:

The dynamics of power and the rule of law in Africa and beyond

Theoretical perspectives on chiefs, the state, agency, customary law, and violence

by Wim van Binsbergen

This collection of essays is conceived as a Festschrift honouring Emile Adriaan B. van Rouveroy van Nieuwaal on the occasion of his retirement from institutional academic life. Its contributors have been drawn from the various spheres in which he has operated as a scholar in the course of his career. Our aim is to contribute to the various fields of study in which this scholar has been active:

- the study of conflict and its resolution by largely judicial means, in rural, kinship-dominated rural settings in Africa;[1]
- the study of African land tenure in the context of the post-colonial state;[2]
- the study of chieftaincy, in its local and regional dynamics but particularly in the national context of the post-colonial state, its strategies of legitimation and its policies of decentralisation;[3]
- the study of legal pluralism and the sociology of law;[4] and finally

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[1] *Cf.* van Rouveroy van Nieuwaal 1976b, 1976c, 1989b, 1989c, 1991a; van Rouveroy van Nieuwaal & Baerends 1976a, 1977b, 1981b, 1984. A full bibliography of the work of van Rouveroy van Nieuwaal is presented at the end of this book.

[2] *Cf.* van Rouveroy van Nieuwaal 1975d, 1977a, 1979a, 1994; van Rouveroy van Nieuwaal & Améga 1979.

[3] *Cf.* Brempong, Ray, & van Rouveroy van Nieuwaal, 1995; Ray & van Rouveroy van Nieuwaal 1996a; van Rouveroy van Nieuwaal 1976b, 1976c, 1980a, 1985c, 1987b, 1989a, 1992a, 1992b, 1993a, 1993b, 1993b, 2000a, 2002b; van Rouveroy van Nieuwaal, Baerends & Griffiths 1987; van Rouveroy van Nieuwaal & Reijne 1999a; van Rouveroy van Nieuwaal & van Dijk 1999; van Rouveroy van Nieuwaal & Zips 1998.

[4] *Cf.* van Rouveroy van Nieuwaal 1975a, 1979d, 1980b, 1985b, 1995, 1998a.

- ethnocinematography.[5]

Editorial policy has been to keep the personal and anecdotal element in the contributions to an absolute minimum, so that this collection can stand on its own as a scholarly text rather than forming a birthday present. However, the uniting element in the contributions is the reference to van Rouveroy van Nieuwaal's work. In many ways his career and his scholarly output reflect significant developments, and contradictions, in African Studies and in legal anthropology in the second half of the twentieth century, both in the Netherlands and internationally. It is therefore fitting to have a look at the scholar and his work, before we proceed to discuss the contributions in this book and their specific contributions to the study of the dynamics of power and the rule of law.

Emile Adriaan B. van Rouveroy van Nieuwaal: The itinerary of a legal anthropologist

Van Rouveroy van Nieuwaal was born at the beginning of World War II, and the war cast a deep shadow over his aristocratic family. His grandfather had held a prominent position at the Dutch royal court, and an element of noble distinction (with such virtues as hospitality, generosity, insistence on quality, a strong identification with the law, and an even stronger sense of independence) has been characteristic of van Rouveroy van Nieuwaal throughout his life. This also brought him closer to the African chiefs and kings on whom his research was to concentrate especially in the second half of his career. Perhaps it was the same family tradition which inspired him to earn a military decoration for valour during the final days of the Dutch presence in western New Guinea. Another distinctive characteristic he must have picked up and developed during fieldwork in Africa: his love of land and animals, and his insistence on combining an academic career with a part-time livelihood as a small farmer in

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[5] *Cf.* van Rouveroy van Nieuwaal's ethnographic films as listed at the end of this book, and: Séminaire sur le documentaire socio-scientifique en Afrique francophone, Amsterdam, the Netherlands, organised by van Rouveroy van Nieuwaal in 1980. This conference, however, never led to a publication. I regret that van Rouveroy van Nieuwaal's cinematographic side had to remain largely undiscussed in this book. This was for three interconnected reasons: lack of scholarly texts in which the cinematographer himself would bring his cinematographic product within the orbit of text-based scholarship (with van Rouveroy van Nieuwaal 1985a as the only exception – most films were accompanied by booklets setting out the film's spoken text and general background, but without discussion of method, selection, representativeness, manipulation of facts and their relative weight, the implications of the use of deliberately posed and staged scenes, etc.); lack therefore of an obvious format in which to bring these films into the present book's discussion; and finally, lack of time and competence to so do even from a non-cinematographer's perspective.

the eastern, rural part of the Netherlands, a train journey of several hours away from Leiden. Yet Leiden University was to become his *alma mater*. It is also the seat of the Netherlands' national African Studies Centre, where van Rouveroy van Nieuwaal was to be employed as a researcher, immediately after taking his master's degree in law.

Van Rouveroy van Nieuwaal joined the African Studies Centre as the one and only Ph.D. student ever of Hans Holleman,[6] an internationally renowned professor of customary law in Leiden University. Holleman was also the Centre's director for almost ten years after its upgrading, in 1958, from a documentation centre to an academic research centre. In the 1960s, Africa, African Studies, and Dutch society, were all going through a phase in which time-honoured authority and ascriptive privilege were severely questioned. Participatory power and self-determination were the slogans of the day. Holleman had been a benevolent but strict senior civil servant and magistrate in minority-ruled Southern Africa, and (although succeeding his brilliant and domineering father in the Leiden chair as a typical Leiden professor's son)[7] he had come to identify primarily with the English and Afrikaans intellectual circles of the Southern African sub-continent. Increasingly a stranger at the Leiden scene, he was succeeded as director (subsequently designated 'general secretary') of the African Studies Centre by Gerrit Grootenhuis in 1967. The latter was a professional administrator who had served as a civil servant, not in Africa but in New Guinea; he derived from this background an effective network, all over Dutch academia and the senior civil service, from which the African Studies Centre greatly benefited over a long period until his early retirement in 1990.[8] Effectively, Holleman's chair of customary law was discontinued upon its incumbent's retirement, although the Leiden University Fund instituted a parallel special chair of 'Constitutional law in Africa' which, as it worked out, could very well serve as a replacement despite the unmistakable difference in designation.

In many respects van Rouveroy van Nieuwaal's work was a continuation of themes in Holleman's work: interaction between chiefs and the state, the details of customary judicial procedure, the analysis of trouble cases, etc.[9] But there were also marked differences. Selection of Togo, West Africa, as a research site for his first research (and as van Rouveroy van Nieuwaal's main African pied-à-terre in decades to come) implied a totally different set of French colonial and constitutional practices, and of academic traditions, as compared

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[6] *Cf.* Holleman 1952, 1964, 1981.

[7] *Cf.* Holleman 1927.

[8] *Cf.* van Binsbergen 1981a.

[9] *Cf.* Holleman 1964-1965, 1969, 1973.

to those of English and Afrikaans speaking Southern Africa. The language barrier between English and French, then even deeper than today, already ensured that the academic networks of Holleman and van Rouveroy van Nieuwaal would scarcely overlap. The choice for West Africa also meant that, by contrast to the legally fairly indifferent Christianity that had been imported into Southern Africa[10] in recent centuries, Islam[11] was to enter van Rouveroy van Nieuwaal's work as the main world religion in the background of northern Togo, deploying a well developed legal tradition whose effect on customary law at the local level could not be ignored. Other major points of difference between Holleman and van Rouveroy van Nieuwaal must be mentioned. The latter came to the field as a full-time legal anthropological researcher, not as an administrator or magistrate – he was primarily a observer, not a partisan participant, and he could therefore study the judicial process on the basis of a different engagement with the local social process from Holleman's. And van Rouveroy van Nieuwaal proved a very perceptive and engaging participant. Not all of his great love and insider understanding of local village life could be accommodated in his academic writings, and he was almost forced to look for an additional mode of expressing his intercultural encounter with West Africa. This he found in ethnocinematography, where much of the beauty and the meaning of West African life could be conveyed in a direct, compelling and often moving way. In the course of the 1970s van Rouveroy van Nieuwaal was to develop his skills as an ethnocinematographer to international professional standards, which is a rare achievement for any Dutch anthropologist. The final point of difference is that throughout the first half of his academic career, van Rouveroy van Nieuwaal formed a stimulating and productive conjugal and intellectual team with his first wife, Els Baerends. Most of van Rouveroy van Nieuwaal's publications of that period were co-authored with her. A few lucky others (e.g. the von Benda-Beckmanns, both of them contributors to the present book; and the Comaroffs) have succeeded in keeping up such a vulnerable multifarious union despite the pressures from academia towards individual appointments and individual career mobility. Not so the van Rouveroy van Nieuwaal–Baerendse team, which broke up at some point in the 1980s.

By the middle of the 1970s van Rouveroy van Nieuwaal found himself in a great predicament. Having written a better legal-anthropological PhD thesis

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[10] This is not to deny that, for several centuries, Islam was a major religious expression among the Cape Malayans, the descendants of forced immigrants into South Africa hailing from the Indian Ocean or the Indonesia. Also, Islam has been a minority expression among Africans in Malawi and Zimbabwe for centuries, as it was throughout the twentieth century among Indian migrants. However, the expansion of Islam to become a truly major world religion in Southern Africa only dates from the last few decades of the twentieth century CE.

[11] *Cf.* van Rouveroy van Nieuwaal & Baerends 1975, 1986.

than any Dutch Africanist of his generation,[12] and brimming with ambition, he had ended up as the intellectual crown prince to a king without a kingdom (Holleman), and moreover as prince had exiled himself geographically and linguistically to far outside the whimsical and authoritarian king's former realm. At the time, largely as an inheritance from the Holleman period, legal research was an important focus at the African Studies Centre, with (in addition to van Rouveroy van Nieuwaal) such researchers as Barbara Bond and Jules Rijnsdorp, seconded by the methodologist Rudo Niemeijer and the linguist Vernon February, all just returned from a comprehensive research project in Sierra Leone. By the end of the 1970s the jurist Gerti Hesseling (now director of the African Studies Centre) would join their ranks, still pursuing her PhD work under Leo Prakke, with Wim van Binsbergen as external examiner. Van Leynseele and Baesjou touched on related themes elsewhere in Africa. Under van Rouveroy van Nieuwaal's leadership a Law Section was beginning to articulate itself within the loosely structured, loosely supervised African Studies Centre research, when in 1980 the Centre came under heavy public attack from the then professor of African anthropology in Leiden University, Adam Kuper.

South African born and subsequently naturalised British Kuper was the nephew of the anthropologists Leo and Hilda Kuper, keen to emulate if not to surpass their international fame, and to carry on the torch of South Africans' leadership in social anthropology which dated back to the days of Radcliffe-Brown. If he had been a Dutchman or had internalised Dutch assumptions about the exercise of institutional power, his attack on close academic colleagues in front of the representatives of their government funding agencies had been inconceivable. But more was at stake than mere cultural insensitivity – although this is a remarkable trait in an anthropologist. A foreigner like most of his predecessors in the chair (the Ghanaian Busia and the Briton Beattie), Kuper was after all a Leiden professor, and his attack revealed a structural contradiction between Leiden University and the African Studies Centre, going back to the late 1950s. While being a national research institution on whose board all universities of the Netherlands were represented, the Centre rented accommodation within the premises of Leiden University, and Leiden senior staff enjoyed considerable privileges in the Centre's administration; e.g. the chairperson of the Centre's board was stipulated to be a Leiden professor. When Adam Kuper acceded to the Leiden chair of African anthropology (1976), he found the development sociologist van Lier and later the linguist

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[12] By the logic of an asymmetrical division of reproductive and productive labour too often attending two-career marriages, nearly two decades separated van Rouveroy van Nieuwaal's PhD thesis and that of Els Baerends, based on their joint fieldwork (Baerends 1994). By the time the latter thesis was completed, their intellectual collaboration had been over for a decade.

Voorhoeve in the chair of the Centre's board. In vain, Kuper made attempts to mobilise the considerable resources of the African Studies Centre so as to add to the minimum personnel and financial resources attaching to his own chair. His denouncement of the Centre partly reflects his frustration. Admittedly, however, Kuper was also speaking out of genuine concern about the archaic state of research at the Centre at the time: the absence of long-term research planning and of intellectual leadership, the low productivity of some of the tenured researchers, and the paucity of conspicuous international publications.

The Centre responded quickly by enacting a totally new structure, with two tightly organised research departments encompassing the great majority of ongoing research on the basis of elaborate and integrated long-term research planning. Thus emerged the Department of Socio-Economic Studies, headed by the psychologist Jan Hoorweg (who had established a very promising interdisciplinary food and nutrition research project in Kenya); and the Department of Political and Historical Studies, headed by the anthropologist Wim van Binsbergen, who (having joined the Centre after acting in the Leiden chair of African anthropology) had just served as Simon Professor of Social Anthropology in the University of Manchester, United Kingdom. These two research directors, with the Centre's Librarian Koos van der Meulen, and under the continued managing directorship of Gerrit Grootenhuis, were to constitute the executive management of the Centre for the next decade. Kuper had done the Centre a great service in disguise: when within a few years it became imperative for Dutch research institutes and universities to have integrated, long-term research programmes as a precondition for government funding, the Centre was found to be exemplary in this respect.

What then followed was a social drama of the type studied by legal anthropologists with the technique of 'extended case analysis',[13] and best exemplified by Victor Turner's famous description of the vicissitudes surrounding the controversial Zambian villager Sandombu in *Schism and continuity in an African society*.[14] Perhaps the demonised insider-outsider is a

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[13] Van Velsen 1967.

[14] Turner 1957. Insiders of the Manchester School (1948-1975) claim that, under Gluckman's stimulating but highly demanding and occasionally oppressive leadership, the Sandombu role was also played by one of the senior members of this circle. Turner himself is a likely candidate for the role: he was the only one to leave his Manchester phase radically behind him and pursue a totally different approach concentrating on symbolism and ritual, which brought him world fame. But there are other candidates, such as Avner Cohen, Ronald Frankenburg, and F.G. Bailey. In many respects, Emrys Peters was the odd man out in Manchester anthropology in the 1960s-1980s, but although his insistence on the ideological and constructed nature of Arab representations of agnatic kin groups fitted in well with the transactionalist environment of Manchester, with his 1951 Oxford PhD (Peters 1951) he was not a student or client of Gluckman's. Of course, any correspondence between Leiden and Manchester is merely accidental and does not suggest that the protagonists in the scholarly dramas on either side of the Channel were of comparable stature.

necessary ingredient of any human group or community. Frazer, Freud, Girard, and in their steps Simonse, have explored the possibility that in such insider-outsidership lies the formation of kingship, even of human society in general.[15] While the social and political parameters differ, the underlying pattern of the drama is similar. If Africanists unblinkingly analyse the games of power, succession, secession, and individual independence at the African village level, without implying that the protagonists involved in these dramas are anything less or more than just human, I see no reason to be squeamish about the details of an episode that provides the key to van Rouveroy van Nieuwaal's career. However successful ultimately, in its progress that career would remain puzzling without knowledge of these details. They illustrate instructively the social anthropology of competition and reconciliation at the academic village level, show the protagonists in a revealing but not necessarily negative light, and add a dimension of reflexivity to our scholarly work which makes it more readily recognisable (and credible) as a relentless and impassive pursuit of truth.

By 1981 it was clear that the African Studies Centre's new organisational structure left no room for a separate, relatively small, Law Section. In hindsight I admit, as one of the protagonists in the evolving drama, that the new and inexperienced academic directors of the Centre were too immersed in the task of building their respective departments and in coaxing the (still somewhat anarchistic) members into a measure of compliance – in other words, were too much preoccupied with the survival of the Centre as a whole, than that they could challenge Grootenhuis' determination to push van Rouveroy van Nieuwaal to the Centre's periphery. For years a struggle (at times vicious) was waged about the Law Section's place in the organisation.

Trends in the background suggested already a particular outcome for this struggle. For in the wake of Africa's decolonisation in the 1960s, of the performance of the post-colonial states ever since (in terms of decline, one-partyism, corruption, military coups), of the continent's economic decline and of the concomitant increase in intercontinental development co-operation, the study of Africa was undergoing a shift from the legal field to political science, geography, and economics. Although anthropologists would continue to dominate African Studies for another decade, also in their field the general shift just indicated could be noticed. Paradigmatically this development was furthered by a shift from structural functionalism to transactionalism (e.g. of the Manchester School variety, of which I will say more below), and to Marxism. The times were over when the debates between legal anthropologists could captivate the whole of the Africanist profession (as had been the case in

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[15] Frazer 1957; Freud 1913; Girard 1972; Simonse 1992.

the context of the Gluckman-Bohannan debate[16] on the admissibility of established North Atlantic analytical concepts in the study of African law – an early version of the later, more general debate on *emic* and *etic*).[17] In 1974 the African Studies Centre had still been the scene of a massive 'International Seminar on New Directions in African Family Law',[18] but such an event was unlikely to be repeated in the near future. Gluckman had still gone out of his way to argue the relevance of African legal anthropology in terms understandable to USA students of current, North Atlantic positive law.[19] Soon however, John L. Comaroff and Simon Roberts[20] would clamour that Africanist legal anthropologists should move away from the study of rules (which was still much indebted to, and congenial to, the positive legal studies as pursued at North Atlantic law faculties), and towards a much more comprehensive attention for socio-legal processes, for the most part extra-judicial, involving the community and beyond. In the same time, the leading anthropologist Geertz was to raise 'serious concerns about the ability of anthropologists and legal

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[16] Gluckman 1969c; Bohannan 1969.

[17] Headland et al. 1990; Pike 1954. In a nutshell,

> '*emic* and *etic* express the distinction between an internal structuring of a cultural orientation such as is found in the consciousness of its bearers, on the one hand, and, on the other, a structuring that is imposed from the outside. *Etic* has nothing to do with ethics in the sense of the philosophy of the judgement of human action in terms of good and evil. Pike's terminology is based on a linguistic analogy. In linguistics one approaches the description of speech sounds from two complementary perspectives: that of phonetics (hence -*etic*), which furnishes a purely external description, informed by anatomical and physical parameters, revolving on the air vibrations of which the speech sounds consist; and the perspective of phonology, whose basic unit of study is the phoneme (adjective: 'phonemic', hence -*emics*): the smallest unit of speech sound that is effectively distinguished by language users competent in a particular language, basing themselves on the distinctive features of that speech sound. (...) Pike thus codified the two-stage analytical stance (both *etic* and *emic*) of the classic anthropology that had emerged in the second quarter of the twentieth century with such proponents as Malinowski, Evans-Pritchard, Fortes, Griaule and Leiris.' (van Binsbergen, in press).

[18] *Cf.* Roberts 1977. At the time, Simon Roberts was a legal anthropologist of good standing (*cf.* Roberts 1970, 1971, 1972a, 1972b), but he was only distantly connected with the African Studies Centre, and his editorship was only decided upon at the end of the conference, whereas he had not organised it. Van Rouveroy van Nieuwaal was still writing his PhD thesis and was apparently considered not yet eligible as editor of an authoritative international collection.

[19] Gluckman 1965, 1969b.

[20] Comaroff & Roberts 1981. At the time, my friend John L. Comaroff was considered one of the most promising exponents of what was left of the Manchester School after Gluckman's death (1975). Later work led him and his wife Jean Comaroff to Foucault-inspired, visionary analyses of nineteenth-century Tswana society (Comaroff & Comaroff 1991, 1997). However, the extent to which he continued to identify with legal anthropology is manifest from the memorable words he spoke – with the modesty he and I have always had in common – during a Leiden seminar in November 2002, when a question on legal anthropology was raised from the audience: 'I *am* legal anthropology'. (*'L'État, c'est moi'*, is a famous adage attributed to King Louis XIV of seventeenth-century CE France.)

thinkers to combine their approaches as part of an interdisciplinary project'.[21] The future looked bleak for Africanist legal anthropology as pursued by someone who by his pre-PhD training was primarily a positive jurist.

Also, on the personal level, in an environment then largely functioning on the basis of academic patronage and old-boys ties, van Rouveroy van Nieuwaal could not count on any patronage extended to him by his former academic supervisor, who was *persona non grata* with the African Studies Centre's managing director to boot. Moreover, van Rouveroy van Nieuwaal had concentrated on a national audience for the marketing of his earliest academic products, and on ethnographic films (however sensitive and innovative). Working (however diligently) from his distant small farm he skipped no opportunity to advertise his double role as intellectual *cum* farmer. All this scarcely added to his strategic resources in academia.

By the time when the other members of the Law Section had either left or been incorporated into the two main departments, van Rouveroy van Nieuwaal found himself utterly isolated, with the national network of legal anthropologists (the 'Folk Law Circle', established in 1976) as his only remaining strategic resource and source of intellectual inspiration. John Griffiths, Franz von Benda-Beckman, and Keebet von Benda-Beckmann *née* Drooglever-Fortuyn were among van Rouveroy van Nieuwaal's prominent fellow-members of this circle. Strongly represented on the nation-wide committee that was to appoint the new, part-time, unremunerated special professor in African constitutional law in Leiden University, the members of the 'Folk Law Circle' understandably showed their loyalty.[22] In 1984 van Rouveroy van Nieuwaal was appointed in this position.[23] It was a move that further isolated him from the Centre where he continued to enjoy full-time paid employment, – another example of the structural contradictions between Leiden University and the African Studies Centre. The great significance of this professorial appointment as a personal confirmation of authority and prestige will be obvious to most African and European readers, but it may need special mention to USA readers, used as the latter are to a situation where pecuniary remuneration is the main gauge of success, and where the great majority of academic staff boast the title of professor, instead of only a few per

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[21] *Cf.* Geertz 1983; Nixon n.d.

[22] Another display of loyalty was the allegation, by another prominent member of the 'Folk Law Circle' namely John Griffiths, to the effect that the study of law at the African Studies Centre, Leiden, had been destroyed by the recent reorganisation. *Cf.* Griffiths 1983, 1984; van Binsbergen 1984.

[23] van Rouveroy van Nieuwaal 1985c.

cent (like in the Netherlands). In some ways, a Dutch professorship is comparable to an African kingship or chieftainship.[24]

In the process, van Rouveroy van Nieuwaal largely abandoned the research on land tenure and the post-colonial state in Africa, which had earlier been formulated as the intended backbone of a Law Section under his direction. Instead, in extensive preparation for his Leiden 1985 inaugural lecture, he concentrated on the study of African chieftaincy in the colonial and post-colonial context, thus amplifying a line of research which has already been part of his PhD work and a major interest of Holleman's. With this new research endeavour, with his new, albeit part-time, responsibilities for lectures and PhD supervision, with difficult patches in his personal life, and with the conflictive relations surrounding him at the African Studies Centre, a decade was to elapse before he made another ethnographic film in Africa.[25]

Van Rouveroy van Nieuwaal's research on chiefs was an increasing success, and in time justified the credit which had been extended to him through his professorial appointment. Given the re-orientation of Africanist research sketched above, the topic initially struck the majority of his colleagues as anachronistic and irrelevant. Apparently there were so many more topical issues to be pursued by a specialist in customary law. Inevitably, also, many Africanists shared the positivist expectations of most Independence legislators to the effect that for the chiefs' ascriptive privileges there could be little or no room within a new Africa constitutionally modelled after British and French examples. The decline of African post-colonial state systems, and the resilience of African chiefs, proved these expectations wrong. Meanwhile, over the years, by means of an incessant stream of articles, special issues of journals, and ultimately also international conferences,[26] books, and films, van Rouveroy van Nieuwaal managed to establish himself, nationally and internationally, as 'Mr Chiefs'. The continued interest of high ranking international specialists, both in Africa and in the North Atlantic, was ensured, also by the diversification of the

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[24] While the two terms have vastly overlapping semantic fields and therefore are difficult to separate, in this book 'chieftaincy' is in principle used to designate the general African, and comparative historical, institution for the exercise of traditional authority, whereas 'chieftainship' is in principle reserved for a *particular instance, in time and space,* of the institution of chieftaincy. Thus we will speak of 'chieftaincy in post-colonial Africa', but of 'the late-twentieth century revival of the chieftainship of *Mwene* Shakalongo in western central Zambia' (see below).

[25] *Cf.* van Rouveroy van Nieuwaal 1981b, 1983a, 1992c; van Rouveroy van Nieuwaal & Baerends 1981a.

[26] Van Rouveroy van Nieuwaal (co-)organised the following conferences on the theme of chieftaincy in Africa: Conference on the contribution of traditional authority to development, human rights and environmental protection: Strategies for Africa, Accra, Ghana (1994); Chieftaincy in Africa, Leiden: African Studies Centre and Netherlands Ministry of Foreign Affairs (1996); and: Chefferie traditionnelle et l'État post-colonial en Afrique de l'ouest, Niamey, Niger (2002).

topic into such related fields as the role of the post-colonial state, decentralisation, and legal pluralism. In the process, van Rouveroy van Nieuwaal came to rely increasingly on English, although his latest authored book[27] is in French again.

Success was achieved despite the fact that the productive relationship with Els Baerends had shipwrecked, and that van Rouveroy van Nieuwaal, in principle, had to work single-handedly. No personnel or financial benefits attached to his Leiden chair; the personal salary and research funds from the African Studies Centre continued to form van Rouveroy van Nieuwaal's main resource. Increasingly defining African fieldwork as the making of films, and having early on adopted professional standards as far as shooting, sound recording and cutting were concerned, van Rouveroy van Nieuwaal's fieldwork became more and more expensive. Even under the warmest intra-staff relationships an institution like the African Studies Centre could not have afforded to furnish the full subsidy needed for an ethnographic film of half an hour or longer. However, already in the 1970s van Rouveroy van Nieuwaal had learned to find his way in the tricky marshlands of external funding agencies. Also, his proven talent for joint research and joint publishing (a quality rarely found among anthropologists, but one undeniably conducive to scientific productivity, intersubjectivity, objectivity, and the avoidance of personal myopia in research) now turned to other partners, both internationally and at the African Studies Centre itself, even if this meant involving anthropologists without much of a legal specialisation.

Once the conflict over the discontinuation of the Law Section had subsided, towards the end of the 1980s, van Rouveroy van Nieuwaal came to engage in productive collaboration with his colleagues in the Department of Political and Historical studies (notably Wim van Binsbergen and Piet Konings), those in the department's successor the Theme Group on Globalisation (e.g. Rijk van Dijk), and with the Centre's visiting fellows from Africa (e.g. Francis Nyamnjoh and Nicodemus Awasom). There is much reassuring irony in the fact that van Rouveroy van Nieuwaal's most productive years were the last five or six of his institutional career, when in the security and inspiration he enjoyed as a respected senior member of the Theme Group on Globalisation, he actively participated in collegial debate, greatly contributed to the Theme Group's output, and received full institutional backing in the making of two more films.[28]

Other productive relations arose from his personal link with Leiden University (e.g. Peter Skalník, Barbara Oomen), from his PhD and MA

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[27] *Cf.* van Rouveroy van Nieuwaal 2000b.

[28] *Cf.* van Rouveroy van Nieuwaal & van Rouveroy van Nieuwaal 2000, and in preparation.

supervision (e.g. Leo de Haan and M. Reijne, and from Africa Cyprian Fisiy and Athalia Molokomme, among others), and from interaction with international fellow-specialists in the study of chieftaincy: John Griffiths, Donald Ray, Chief Nana Brempong (formerly known as Kwame Arhin), and Werner Zips. From the ranks of his own family came his son Maarten van Rouveroy van Nieuwaal, who as a budding film maker collaborated with his father in the latter's two most recent ethnocinematographic projects.

When we add to these names those of international colleagues working on chieftaincy and related topics (e.g. Cathérine Baroin, Insa Nolte, Trutz von Trotha) then all contributors to the present book have been accounted for.[29] Having sketched what brought them together, in the next section we will look at their contributions, under the following headings:

- The interaction between chiefs the state in the colonial and post-colonial periods
- Is the interaction between chiefs and the post-colonial state a zero-sum game?
- Structure or agency?
- The nature of customary law, and
- The role of violence.

The interaction between chiefs and the state in the colonial and post-colonial periods

Many African chieftainships, and the collectivities (often conceived in terms of ethnic groups) ruled by them, are recognised to be colonial creations. However, the majority of African chieftainships have roots in a more distant, pre-colonial past, under very different political and economic conditions from those obtaining under the colonial and post-colonial state. Most authors in this collection agree that, as a result, fundamental transformations have taken place in African chieftaincy in the course of the twentieth century CE. Several papers describe these transformations in detail, and seek to interpret them systematically.

Thus, INSA NOLTE's article reflects van Rouveroy van Nieuwaal's research both in the choice of the topic and in the line of reasoning. It examines the encounter between nationalist and traditional politics on a local level in

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[29] I would have much preferred to include Moussa Djiré in this list, who contributed greatly to van Rouveroy van Nieuwaal's latest film project in Mali. However, due to unforeseen technical difficulties the distance between Mali and Europe, and between French and English, could not be bridged in time given the tight schedule under which this book was prepared.

colonial and post-colonial Nigeria. It concentrates on the relationship between two groups of power-holders in Ijebu-Remo, a former district in the west of Nigeria, and on the agency of Remo-born Obafemi Awolowo, leader of one of Nigeria's three national post-independence parties. Awolowo intervened in the traditional politics of the district through the cultural organisation *Egbe Omo Oduduwa* and through party politics. He was also involved in traditional politics in his hometown Ikenne, where he manipulated the installation of the *oba* (traditional ruler) against considerable opposition in 1950.

Nolte argues that Awolowo's activities and the Ikenne dispute were part of an intense struggle in which both traditional rulers and nationalist politicians attempted to gain legitimacy in each other's political arena. While this process reflects the fact that traditional rulers became increasingly embroiled in post-colonial politics – a point often made in van Rouveroy van Nieuwaal's writings – it also demonstrates that members of the newer nationalist elite desperately attempted to appropriate traditional authority. The complex reasons for this process are explored in Nolte's argument. A striking contradiction becomes apparent: in his role as modern politician, Awolowo publicly expressed a highly critical view of traditional rulers, but this did not prevent him from interference in the dispute over the district throne; he even went as far as accepting a chieftaincy title himself. Clearly, Awolowo's personal status was in itself highly involved with traditional authority, both in his home community and beyond.

Nolte's analysis yields an important conclusion:

'...in so far as traditional authority claims legitimacy and authenticity, it remains subject to grassroots criticism and demands for the representation of local interests and communal aspirations. The very rootedness of traditional authority continues to make it a significant aspect of state power in Nigeria, and van Rouveroy van Nieuwaal's description of traditional rulers as mediators between the locality and the state makes an important point.[30] On the basis of the findings from this paper, I would even suggest that traditional authority actively contributes to the negotiation and configuration of local, regional and even wider political identities, thus actively shaping Africa's political landscape below and beyond the level of state politics.'

In this way, a refrain is introduced which we will hear at many points in this collection:

- *In twentieth-century Africa, chiefs sought to obtain authority and security in the domain of the modern national state, just as the modern national state, and its prominent actors, sought to derive traditional authority from chieftaincy.*

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[30] Van Rouveroy van Nieuwaal 1999: 34f (reference in the original).

While Nolte offers the illuminating image of the modern African state as the scene of a struggle between old and new elites, PIET KONINGS in his contribution shows how between these two elites there is often a convergence of interest and action. Konings' paper is set within the wider issue of privatisation as a key instrument in the stabilisation and Structural Adjustment Programmes (SAPs) imposed on Africa by the World Bank and the International Monetary Fund. While there is now an abundance of literature on the role of chieftaincy in African post-colonial states, Konings' article is the first study to examine the role of chieftaincy in current privatisation projects. Leading specialists, including van Rouveroy van Nieuwaal, have been more interested in the role of chieftaincy in political liberalisation than in economic liberalisation. Konings focuses on the virulent opposition of Bakweri chiefs in Anglophone Cameroon to the government announcement on 15 July 1994 concerning the privatisation of the Cameroon Development Corporation (CDC), one of the oldest and largest agro-industrial parastatals in the country. These chiefs claimed Bakweri ownership of CDC lands. They felt betrayed at not having previously been consulted about the CDC privatisation, and warned the government that the corporation could not be sold to non-natives without Bakweri consent and compensation. Konings seeks to demonstrate that the current resistance of the Bakweri chiefs to CDC privatisation is part of their long-standing struggle for the return of the vast Bakweri lands that were expropriated during German colonial rule for the purpose of plantation agriculture and later, in 1946, leased by the British Trust Authority to the newly created CDC. In this endeavour, the chiefs have always been assisted by the Bakweri 'modern' elite who, like their chiefs, felt aggrieved by the dramatic loss of their ancestral lands. Following the announcement of the privatisation of the CDC, the Bakweri chiefs have received support from other sectors of the 'traditional' and 'modern' elite in Anglophone Cameroon. The latter are inclined to perceive the privatisation of the CDC as a renewed onslaught by the Francophone-dominated post-colonial state on Anglophone identity and colonial heritage. This alliance of the 'traditional' and 'modern' elites forms a mighty force to ensure that justice will prevail on the issue of the Bakweri lands. It has forced the government to repeatedly postpone the actual privatisation of the CDC, and to finally enter into negotiations with the landowners.

It is interesting to see how a new phase in the large-scale, capitalist expropriation of land (notably, the privatisation of plantations) lends the chiefs the opportunity to revive, after half a century, the time-honoured notions of collective land tenure and of the chief as custodian of the land on behalf of his people. But this apparent re-sourcing from a pre-colonial world-view goes not

without a profound transformation, for, in the ensuing conflict, the chiefs primarily appear under the guise of landowners in a modern capitalist sense!

Konings' argument adds substantially to our understanding of Bakweri chiefs in Cameroon:

> 'Geschiere has pointed out two reasons for the integration of chieftaincy, which was more or less a colonial creation, into Bakweri society: (1) chieftaincy was strengthened during British indirect rule and, even more significantly, (2) it became a potential rallying point against the 'strangers' who invaded the Bakweri territory in large numbers, attracted by the plantation economy created by the Germans.[31] My study suggests that (3) the persistent struggle of the Bakweri chiefs since the 1940s for justice with regard to the expropriated Bakweri lands may have been an even more important factor for rooting chieftaincy in local society. While chiefs in Anglophone Cameroon have been officially transformed into 'auxiliaries' of the state in the aftermath of independence and reunification and most chiefs maintain close links with the ruling party,[32] my case study proves that *Bakweri chiefs cannot be characterised as mere puppets of the regime.*'[33]

Three further important themes emerge here that will return in other chapters:

- *The African chief has his own, considerable power base which is in principle independent from the modern national state and cannot be reduced to the latter.*
- *Transformations during the colonial and post-colonial period have given chiefs the opportunity to pose as the true and obvious representatives of their people, thus bridging any cleavages of class, exploitation and violence which in all likelihood characterised the relations between the population and today's chiefs' pre-colonial predecessors, in the eighteenth and nineteenth centuries CE.*
- *Increasingly, the interaction between African chiefs and the outside world, especially the post-colonial state, takes place indirectly, via the medium (or interface) of non-governmental formal organisations (particularly: ethnic and regional associations,[34] political parties, and North Atlantic dominated NGOs[35]), whose formal constitutional*

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[31] Geschiere 1993: 165-166 (reference in the original).

[32] Geschiere 1993: 166-169; Fisiy 1995: 57-59 (reference in the original).

[33] Van Rouveroy van Nieuwaal 1996: 39 (reference in the original); italics added, WvB.

[34] This aspect is also stressed in Nyamnjoh's contribution to the present book. For a detailed recent study of the interaction between African chiefs and non-governmental ethnic and religious organisation, see also: van Binsbergen 1999, 2003.

[35] *Cf.* the settlement of the Nanumba/Konkomba conflict in northern Ghana by the intercession of international non-governmental organisations, as described in the Peter Skalník's contribution to the present book.

> *structure and logic makes them workable in the modern world, while their membership, implied ideology, and informal actual functioning can still accommodate time-honoured particularities of ethnic and chiefly allegiance.*

I shall come back to the last point below, under the heading of agency; there I shall offer a theoretical explanation why formal organisations should play this particular role.

These themes also reverberate in the contribution by NICODEMUS AWASOM. He examines the vacillating fortunes of twentieth century Mankon *fons* (kings) in Cameroon vis-à-vis the colonial and post-colonial state. He does this from the converging perspectives of power relations, legitimacy and legality. The traditional rulers of Mankon derive their legitimacy and authority from pre-colonial roots, while the modern nation state is a creation of, and the successor of, the imposed colonial state. Van Rouveroy van Nieuwaal has examined the hybrid role of African chieftaincy and the judicial poverty or void to which the institution is exposed. He has perceived the evolution of power relations between African chiefs and the modern state as 'a zero-sum game', in that the expansion of state power mostly seems to take place at the expense of that of the chiefs. This view implies the progressive erosion of traditional authority, their only condition of survival being their ability to adapt to the changing reality, both inwardly towards their own people, and outwardly towards the state. Traditional rulers are thus regarded as units that are continuously in the process of satisfying both the state and their subjects, and that attempt to strike a balance between the two for their own survival.

Awasom examines how the twentieth-century *fons* of Mankon have demonstrated extraordinary resilience, by continuously adopting to new forces that often threatened to marginalise or obliterate the *fons'* existence. In the colonial era, the relationship between the *fons* of Mankon and the state quickly evolved from symmetrical to asymmetrical, as a result of the rise of new forces that emanated from rapid globalisation, and the deliberate violation of colonial statutes in favour of *Realpolitik* or pragmatic administration.

Awasom's paper has interesting cross-linkages. The author's namesake (Stephen Anye Awasom: presumably his father, uncle or grandfather) features as one of the modern educated elite mediated, in the 1950s, between two members of the traditional elite. And the Mankon *fons* also return in another contribution to this book, by Francis Nyamnjoh.

Awasom particularly reveals the dangers of the African chiefs' common entry into national modern politics:

'Since the introduction of the new multiparty culture in the 1990s, however, the *fons'* sacred position has been subjected to aggressive demystification. This has been the direct result of their open involvement in the new multi-party politics on the side of the government party, which was highly contested by the overwhelming majority of the people. As the *fons* have been unable to please both their subjects and the government simultaneously, they have thus found themselves caught between Scylla and Charybdis. Ultimately, neither the people of Mankon nor the modern state could reliably and fully guarantee the traditional integrity of the *fons*. The *fons* on the other hand had to depend upon both to legitimise their position, but due to the fact that they often tended to favour the state, they ultimately became labelled as puppets.'

Another theme emerges from Awasom's paper:

- *While it is an accepted view in the study of African chieftaincy that chiefs and the state are engaged in a battle over each other's legitimacy, we should not overlook another struggle for legitimacy: that among the chiefs themselves.*

The colonial state made no secret of the fact th[36]at it was a repressive conquest state with adequate military backing. It was less interested in legitimating itself in the eyes of the African subjects (as distinct from citizens), than in controlling – through a policy of divide and rule – the chiefs as potentially dangerous sources of a local, parochial power. Succession disputes and disputes over areas of jurisdiction and competence received ample attention from the part of the colonial administration and thus found their way into the archives. Among twentieth-century African national states, the Republic of South Africa has persisted longer than any other in maintaining the repressive features just outlined, and it can be no accident that Barbara Oomen in her contribution to this book signals the following trend:

'The existence of two rival chiefs forces both to gain the support of the populace, through decisions that the public opinion can perceive as wise, and through policies that the public opinion can perceive as acceptable. If support is not found, people can, and will, change sides. *In these subtle processes, the [South African] state, for all its heterogeneity, generally supports the candidate whose reign is disputed by his subjects.*[37]

Is the interaction between chiefs and the post-colonial state a zero-sum game?

Like Nolte, Awasom makes reference to a cherished idea of van Rouveroy van Nieuwaal: the conception of the interaction between chiefs and the post-

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[36] Van Rouveroy van Nieuwaal 1999c: 24-26.

[37] Italics added, WvB.

colonial state as a zero-sum game, which apparently leaves the chiefs no option but to adapt virtually unconditionally to the state. Awasom confirms the zero-sum-game interpretation but his own findings meanwhile suggests a rather more complex picture:

> 'The *fons* survived, not through direct confrontation with the colonial state, but by persistently asserting their claims to traditional legitimacy. They did so by seeking legal redress through petitions and by falling back on their subjects for defence, while avoiding any direct confrontation with the state. In the post-colonial era, the *fons* of Mankon successfully blended modernity and traditionalism by compromising with the constitutional and legislative instruments of the modern state while still adorning themselves with the traditional support structures of their power.'

This is clearly not the description of a zero-sum game, because it implies not one stake (e.g. 'the overall amount of legitimated power within society'), but at least two different stakes (on the one hand constitutional legal authority, on the other hand traditional authority), in a game whose outcome and rules are not entirely defined by the state but are subject to change, negotiation and initiative from both sides as the game evolves.

The point is of considerable importance, for the assumption of a straight-forward, simple zero-sum game immediately implies that we are at a loss to understand the remarkable survival and resilience of chiefs in twentieth-century Africa, and after. For surely, if it were so simple, *why does the state not once for all annihilate the chiefs and impose, one-sidedly, and on the basis of its rationalistic logic, its own compelling conditions on the national political and ideological process?*

Figure 1 is a schematic rendering of a zero-sum game. Two parties A and B are in competition over a limited resource, C. Out of the entire range of possible outcomes, the figure singles out three: (1) A wins nearly all of C, at B's expense; (2) A and B take equal shares of C; (3) B wins nearly all of C, at A's expense.
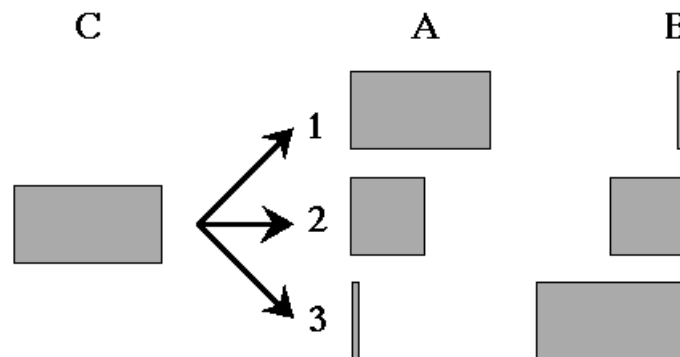

Figure 1. Minimum representation of a zero-sum game.

Applied to the specific case of twentieth-century African chieftaincy, Figure 1 can be said to present a simple zero-sum game model for the interaction between

- A: the post-colonial state and
- B: the chiefs, over
- C: the overall amount of legitimated power within society.

Three outcomes are envisaged:

1. Virtually all legitimated power within society goes to the post-colonial state;
2. post-colonial state and chiefs have each an equal share of legitimated power within society;
3. virtually all legitimated power within society goes to the chiefs.

Underlying such a zero-sum model is a highly mechanical, aggregate conception of the process of legitimate power in any society, without taking into account the complex and contradictory nature of ideological and legitimation processes. Why should the state seek legitimation? Mainly,

- in order to constrain open conflict within its territory to manageable proportions, and
- in order to secure for its senior personnel (on the basis of their being perceived as empowered by 'the will of the people') recognition by and access to international bodies which judge a state's acceptability by criteria of constitutional performance, observance of human rights, democratic exercise of power, rightful exercise of justice, etc.

Without such legitimation, no rule of law can be claimed to exist. Such legitimation, in terms of what Weber[38] defined as legal authority, is of a very different nature from that which the chiefs claim as basis of their own position. The chiefs' exercise of power and justice amounts to traditional authority, in other words it is legitimated because their position (provided the proper procedures of selection, enthronement, and subsequent protocol were observed) is seen as the embodiment of the fundamental structure of society and of the world. The chief is considered to be at the hub of a cosmology that regulates the dispensation and circulation of power among humans and in the world at large. This cosmology sets the conditions for order, fertility, morality and

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[38] Weber 1969.

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purity, and in its turn depends on these conditions for a proper functioning. Under twentieth-century conditions of state incorporation, most African chiefs have come to depend on state recognition for their functioning at the regional and national level. However, their legitimation derives from the local level in the first place, to such an extent, that chiefs may defy state recognition and still be chiefs.

> Related examples from western central Zambia[39] may demonstrate this point. The lands of western central Zambia were incorporated in the Lozi (Barotse) state, during and after the Kololo intermezzo (1840-1864) and right into the first decades of the twentieth century, when Barotseland was a Protectorate within the then Northwestern Rhodesia. In the process, some local rulers (belonging to a dynastic cluster that was increasingly associated with the emerging ethnic name of 'Nkoya') came to be considered as senior members of the Lozi aristocracy; as a result they shared in the state subsidy stipulated by the Barotse Treaty of 1900. Other local rulers however saw their titles abolished. Their legitimacy was thus denied by both the Lozi indigenous state and by the colonial state. The most prominent of these titles was *Mwene* ('king', 'chief') Shakalongo of the Luampa valley. However, ideologically and ritually these apparently abolished chieftainships lived on, albeit that they were temporarily invested in what for the outside world were mere village headmen. In the last quarter of the twentieth century, the Nkoya went through an intensified ethnic revival. Partly through the action of the Kazanga Cultural Association (a creation of the Nkoya urban elite), the Shakalongo title was formally reinstated, after almost a century. The same Nkoya militant action brought the recognised chiefs *Mwene* Kahare and *Mwene* Mutondo, and their increasingly vocal educated and urban followers, in direct confrontation with the Lozi chieftainship of Naliele. The latter chieftainship had been provocatively created by the Lozi Paramount Chief smack in the middle of Nkoyaland in the 1930s; in the 1950s-1960s its incumbent was Chief Mwendaweli, who prior to his accession had been Gluckman's principal research assistant around 1940. The 1980s-1990s saw much violent action, the sudden death of the chief of Naliele under suspicious circumstances, mass detention of Nkoya militants, the discontinuation of the Nkoya chiefs' state subsidy, and the refusal, on the part of the Lozi Paramount Chief, to recognise the new (by local standards perfectly regular) incumbents in the thrones of Kahare and Mutondo. But regardless of such outside recognition, these chiefs continued to be considered as eminently legitimate by their people, and they have functioned as rallying points in the ethnic struggle even more than ever before.

These examples could be multiplied by the thousand, from all over twentieth-century Africa. Clearly, the interaction between chiefs and the (senior personnel of the) post-colonial state is not about one monolithic scarce good; it is not about 'the overall amount of legitimated power within society'. Both categories of actors appear to be in pursuit of a different specific mix of scarce goods such as generally recognised in their national society and far beyond (e.g. power, prestige, honour, blessing, wealth, security, health, sexual gratification, self-esteem), and one side often features as a resource for the

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[39] van Binsbergen 1992, 1999, 2003.

other side. Once again, there cannot be a zero-sum game if the players play for different (if overlapping) stakes, and play by different and changing (if overlapping) rules.

Beyond this formal point, it is important to realise that legitimation is essentially a quality of being found to be in accordance with a set of rules and meanings held collectively by a particular set of people. Which set? I have highlighted one such set as consisting of (the functionaries serving at) international bodies, but this set is largely irrelevant at the level of chieftaincy; hence the news value of the *Meru Land Case* which we shall discuss below. Senior state personnel at the level of the modern national state constitute another such set, and although they largely determine legitimation vis-à-vis the state, their relevance for local-level legitimation is slight. A Zambian chief who has not been gazetted in his country's *Government Gazette* cannot claim legitimacy from the perspective of the state; hence he cannot enjoy a state subsidy, or membership of a representative body such as the House of Chiefs, cannot claim government transport at the regional level, etc. But the legitimacy he carries in the eyes of his subjects is scarcely if at all effected by his not being gazetted. To be precise, *in the eyes of his subjects the chief's legitimacy is only negatively effected by state rejection in so far as the state's conceptual framework of legal authority has been internalised by the subjects.* The extent of such internalisation differs with education, class, profession, urban or rural residence and experience, etc. What has been true for a rural backwater like western rural Zambia throughout the twentieth century (the idea that a chief's legitimation cannot depend on state recognition), may well have been already obsolete among highly urbanised and educated sections of the population of Nigeria or Cameroon in the 1950s, as some of the studies in the present book suggest.

The reverse perspective also applies, and I suspect it to have been applicable to much of Africa during much of the twentieth century. A rural majority, and a sizeable minority of urban traditionalists, assess the state and its personnel from the same perspective of traditional authority as these people apply to their own chiefs. The consequence can only be that they deny the state all legitimacy.[40] For no coherent, time-honoured cosmology underlies the state's procedures, or the selection and performance of its incumbents. Instead, these procedures are generally known to be used for self-enrichment and other

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[40] This is not an imposed, outsider's *etic* argument from first principles. I am rendering here, in discursive text, the ideas and arguments which I have heard express by hundreds of interlocutors in the course of very close association (eventually as *Mwene* Kahare Kabambi I's adopted son, under the name of Tatashikanda) with royal and traditionalist circles in the chiefly capitals and commoner villages of Kaoma district, Zambia, throughout the 1970s, 1980s and 1990s. Also *cf.* van Binsbergen 1986b, 1995, and in press.

forms of gratification, and to be invaded by venality. And as a result (at least, this is what the traditionalist logic sees as the result), the state does not create order but chaos and bloodshed; does not enhance fertility but brings about drought, crop failure and AIDS; does not seek or establish purity but borders on sorcery; and threatens rather than enforces morality. Viewed from a traditionalist chief-centred perspective, the post-colonial state is utterly illegitimate, and devoid of cosmological meaning.

Realising that this is the perspective of many national citizens, the state can do one of two things. It has the long-term option of grooming these people to a greater internalisation of legal authority, through education and intensive participation in such formal organisations as schools, hospitals, state courts, churches, and enterprises. This solution has much to recommend it, notably the constitutional history of Western Europe over the past two centuries, when a similar itinerary was followed. There is however the risk that Africans, enlightened to the letter of legal authority, will object to its free and selfish interpretation in the hands the state personnel, and oust them from office.

Although introducing elements of hybridity and contradiction which in principle upset the modern state's rationality (but so do clientship, corruption, mismanagement, coups, civil war, warlordism, and genocide), the short-term solution for the state's lack of traditional legitimacy is much cheaper, and far less risky. It has been increasingly popular among post-colonial African states: *co-opt the chiefs as* sui generis *sources of traditional authority, and use them to prop up the state's legitimacy in the eyes of the rural and traditionalist population.*

As a result the chiefs in post-colonial Africa often yield far greater power than in fact is assigned to them according to the modern constitution of the national state.

In the light of these considerations, Figure 2 appears to be a more adequate rendering of state/chiefs relations. Not some unique scarce good conducive to a zero-sum game is at stake, but at least two irreducibly different scarce goods, one controlled by the state personnel, the other by the chiefs.

This model allows for a great variety of outcomes of chiefs/state interaction, far more complex than the zero-sum game model. For instance (see Figure 2):

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- The power domain of the post-colonial state and that of the chiefs interpenetrate to a great extent and one reinforces the other[41] – it is

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[41] Examples of this may be found in the present book. For instance in Nolte's contribution to the present book:

difficult to say whether the post-colonial state legitimates the chiefs or, alternatively, the chiefs legitimate the post-colonial state, but the effect is that both thrive and expand;

- the post-colonial state has all but eclipsed the power sphere of the chiefs, and such little power as the chiefs retain is largely accommodated to the post-colonial state;[42]
- the post-colonial state and the chiefs have each retained a rather distinct sphere of power, with little overlap and little mutual accommodation.

The African chiefs can only add extra legitimation to the state (or, reversely, can only expose the shallow legitimation of the state), to the extent to which in the eyes of all involved (i.e.the state personnel, the chiefs, the latter's subjects, and the population at large) there is a very close identification between the chiefs and their people. Such identification is, for instance, a central theme in Perrot & Fauvelle's splendid recent collection on African chieftaincy, *Le retour des rois.*[43] The point of WIM VAN BINSBERGEN'S paper is that such identification, although often taken for granted in the literature on African chieftaincy, may largely be a recent construct, notably a product of

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> 'traditional authority actively contributes to the negotiation and configuration of local, regional and even wider political identities, thus actively shaping Africa's political landscape below and beyond the level of state politics.'

and in de Haan's contribution:

> 'Later, in the first years of French colonial rule, Gourma society underwent further transformations. The French clearly realised that, although they did have a much larger physical presence in the region than the Germans had ever had, they could only rule with the aid of local chiefs. (...) The French thus actively interfered in the nomination of these chiefs and local chiefs became pillars in the collection of taxes, the recruitment of forced labourers, maintenance of roads, health control, justice and the introduction of cash crops. As a result the power of local chiefs increased: backed by the colonial administration they exploited their new tasks for their individual and family's benefit.'

Incidentally, the latter passage seems to suggest that the chiefs' power did not already change radically under German rule, to begin with. This is not very convincing, in the first place because any superimposition of an over-arching colonial state is a radical infringement on the power of pre-existing local rulers; and secondly, because the Germans, in the first decades of European colonial expansion in Africa, tended to violently interfere with local social, political and productive matters. For a Tanzanian parallel case of early German colonial rule, *cf.* Huijzendveld 1996.

[42] *Cf.* Awasom in the present book:

> 'Throughout the twentieth century the *fons* of Mankon have been entangled in a web of nation-statism inaugurated by the colonial presence. As this article has shown, the *fons* have found it extremely difficult to manage their political space. The presence of an all-encompassing modern state clearly implies the limitation of the *fons*' scope of action within new politico-legal frameworks.'

[43] Perrot & Fauvelle 2003.

twentieth-century state incorporation. It need not reflect a constant cultural feature dating back to pre-colonial times. In line with the twentieth-century transformation of African chieftainship which is generally acknowledged throughout this volume, he addresses two forms of discontinuity which often have gone unrecognised:

- discontinuity (ethnic, linguistic, cultural, ideological, symbolic) between chiefs and people, and
- discontinuity between precolonial, colonial and post-colonial chieftaincy.

Van Binsbergen demonstrates that the elaborate and seductively beautiful culture of royal courts in western central Zambia in the eighteenth and nineteenth centuries was based on exploitative and terrifying violence exerted by the courts upon the commoner villages, as the radical denial of the self-regulating, pacifist kinship order of the commoner villages.[44] This leaves him to explain how, a century later, people and chiefs have come to be identified so inseparably:
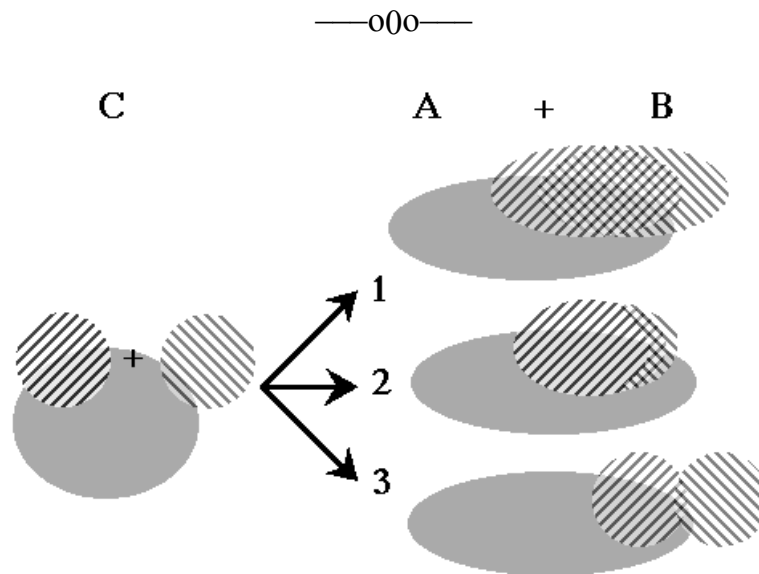
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Figure 2. The relations between chiefs and the post-colonial state conceived as the interaction between at least two irreducibly different defined, sui generis forms of legitimate power

A = the post-colonial state (///) and its legitimate power on the basis of legal authority. B = the chiefs (\\\) and their legitimate power on the basis of traditional authority. Continuous grey: various other sources of economic, media, religious, domestic, parental, etc. power in society. C = the inherently heterogeneous, perspectival, kaleidoscopic complex of power in society.

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[44] *Cf* van Binsbergen 2001.

'It is very likely that the successive incorporation, more or less at minority status, in the wider state systems of the Kololo, Luyana and British, served to blur the cultural and structural distinctions between the 'Nkoya' court and the local villages, since now the court was no longer the exploitative 'other' but, to the contrary, the instance from which the local population increasingly derived their ethnic name and identity amidst the inimical and exploiting wider world. From an exploiting and terrifying stranger, the *Mwene* had become the hallmark of local ethnic identity.'

Structure or agency?

The contributions discussed so far have sought to present a combination of historical narrative and structural explanation. In the latter respect they are indebted (directly or distantly) to the tradition of classic mid-twentieth century anthropology, associated with the names of Evans-Pritchard and Fortes, and with the model of social organisation these authors explored in their ethnographies.[45] However, that tradition scarcely outlasted the generation that produced it. Before the 1950s were over, the major works of the Manchester School had been published or at least written (in the form of PhD theses awaiting publication). In those works not enduring and anonymous social structure was stressed, but *the inchoate nature of the social and political process*. In this innovative perspective, actors were no longer considered to act out, blindly and docilely, a script dictated to them by some all-encompassing, eminently authoritative 'social structure' or 'society' (*à la* Durkheim[46]). Instead, actors were depicted as groping to find their way between the multiple and often contradictory opportunities offered to them by power relations, formal rules, economic constraints, the accumulated effects of earlier social events, and pure chance. The anonymous fiction of 'society' gave way to an image of the social process as a complex and essentially unpredictable social drama, whose protagonists had to be studied in great detail over years, paying attention to all the resources that kinship, locality, and political manoeuvring offered them; to the historicity of the shifts in these resources; and to their manyfold accumulated effects, over time. *Agency* had, *avant la lettre*, entered the anthropological study of Africa, and of African law. Abandoning the idea of a set societal script, also meant that legal rules were relegated to the status of manipulable ideological resources, and that the road was open towards a new conception of African customary law. Not the rules but the process, both in court and outside, came to occupy the centre of scholarly attention. Since rules were manipulable, any formalised statement of ideal or practicable norms and rules would have to be deconstructed and critiqued just like any other actors'

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[45] Evans-Pritchard 1967 (first published 1940); Evans-Pritchard & Fortes 1940; Fortes 1945, 1949.

[46] Durkheim 1912.

statements. Instead, the underlying structural regularities, the room for manoeuvre as well as the firm constraints, had to be detected by the researcher's own 'extended analysis'[47] of the social process, and particularly of such contradictions as come to the fore in conflicts and their settlement.

In these developments, which were at the heart of Gluckman's Manchester School,[48] Gluckman himself played a somewhat ambivalent role. As supervisor and senior colleague, he extended great theoretical and methodological inspiration as well as editorial and institutional support towards such authors as Clyde Mitchell, Victor Turner and Jaap van Velsen. Yet Gluckman's own ethnographic work, based on fieldwork in South Africa and Zambia in the 1930s and early 1940s, occasionally fell back upon an earlier, classic position and does not always offer the best illustrations of Manchester methods and insights.[49]

We shall come back to these issues below when discussing African customary law. At this point, let us signal that the shift from structure to agency, while unavoidably implied in those contributions to this book that present an historical narrative of chiefs' performance in the colonial and post-colonial period, is particularly noticeable in the contribution by LEO DE HAAN. His paper on changing livelihoods in northern Togo continues a line of work implicit in that of van Rouveroy van Nieuwaal: the general anthropological description of West African societies within a time perspective. De Haan takes exception with a popular contemporary view. He argues that merely linking up with globalisation (i.e. getting connected to the global flows of information, capital, goods etc.), is not sufficient to make people in developing countries more successful in organising a decent livelihood. The logic of the neo-liberal consensus holds that poor communities need to be opened up in order to profit from globalisation and thus to develop. However, against the background of current globalisation studies, de Haan's paper argues that successful or unsuccessful linking up with the world system is not a matter of simply opening up, but the result of a delicate articulation of external economic and political forces and local livelihoods. Repeatedly, and rather convincingly, de Haan invokes the agency of labour migrants and elders in order to explain the results detectable through historical analysis.

Yet one suspects that there is another side to this coin. It would be eminently possible (and in the light of previous work,[50] decidedly tempting) to rephrase de Haan's analysis in the structural terms of the articulation of modes

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[47] Van Velsen 1967.

[48] *Cf.* Werbner 1984.

[49] *Cf.* Brown 1979; Gulliver 1978; Kuper 1970; Macmillan 1995; van Binsbergen 1977.

[50] Meillassoux 1975; Gerold-Scheepers & van Binsbergen 1978; van Binsbergen & Geschiere 1985.

of production in Northern Togo. He seems to play with the idea himself; occasionally he cannot help himself and lapses into using the very word 'articulation'. A balanced combination of agency with structure would do justice to the complexities and internal contradictions of the situation.

Agency is even more of an explicit concern in FRANCIS NYAMNJOH's contribution on chiefs in Cameroon and Botswana. The situation of chiefs in twentieth-century Africa would become crystal-clear if we could only discard any assumption of enduring patterns of social organisation – patterns marked by inertia, in other words by the tendency to perpetuate and reproduce themselves, – and instead invoke an unbounded and apparently unstructured field of general agency, in which chiefs freely rub shoulders with national modern politicians, university graduates, journalists, members of cultural associations, etc. Such an approach would reveal the chiefs to be simply one category of actors in a vast and well-lit arena. Making the best of their resources, such chiefs could truly be said to be among the main forces to ensure, in Nyamnjoh's words, that

> 'Africans are simultaneously modernising their traditions and traditionalising their modernities'.

Following this lead we would be in a position to fully appreciate what van Rouveroy van Nieuwaal has treated under the heading of 'syncretism': the compromise between traditional local values and procedures, on the one hand, and, on the other, the forms imposed by the state. Van Rouveroy van Nieuwaal has identified such 'a synthesis between antagonistic forces stemming from different state models, bureaucracies and world views', as an important aspect of the transformation of twentieth-century chieftaincy:

> 'If we consider chiefs as agents and chieftaincy as dynamic institutions, we are likely to be more patient towards ongoing processes of negotiation, accommodation and conviviality between continuities and encounters with difference and innovation on the continent. We would be less keen on signing a death warrant for or seeking to bury chieftaincy alive. Cameroonians and Batswana, like other Africans, have been quick to recognise the merits and limitations of liberal democracy and its rhetoric of rights, because of their lack of might under global consumer capitalism and because of the sheer resilience and creativity of their cultures. With this recognition has come the quest for creative ways of marrying tradition and modernity, ethnicity and statehood, subjection and citizenship, might and right.'[51]

However, while there is considerable truth and persuasion in Nyamnjoh's analysis, one wonders whether such a radical shift of perspective, towards agency in an apparently unbounded homogeneous field, is enough to render

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[51] Nyamnjoh, contribution to the present book.

obsolete (to reduce to the status of non-issues) some of the questions that (however much Nyamnjoh dismisses North Atlantic Africanist scholarship) have occupied the intercontinental study of Africa for decades. *On the basis of what resources do the chiefs display their agency? Why is it that they appear, in their own eyes, in the eyes of their subjects, of the state, and of many others, as endowed with an independent power base which cannot be reduced to the modern national state? Why are the respect and the fear which chiefs inspire throughout Africa, able to survive in the face of state incorporation, even though all the basic assumptions of chieftaincy run counter to the modern state's rationalist logic of legal authority: ascription, inequality, cosmology, supernatural election and sanctioning, control over land and other natural resources, the responsibility to combat witchcraft, the association[52] with witchcraft at the same time?*

Only a structural analysis can answer the question as to the power base of the chiefs' agency, in so far as this does not derive from recognition by the modern national state but lies in a dextrous display of traditional authority. Such an analysis would need to recognise a few home truths:

- *The socio-political field where the chiefs' agency is being exercised, is inherently complex, heterogeneous, and wrought with contradictions;[53]*
- *while being in some respects continuous and of world-wide extension, that socio-political field is also, in other respects, compartmentalised and parochial; and*
- *in addition to the state and the forces of globalisation – and in direct response to the latter – local forces of identity and self-definition are at work; they use tradition not merely as an essentialist escape from reality (although, admittedly, any form of ethnic, regional or national consciousness tends to essentialism and needs to be analysed as such), but as a means to defy the alienating imposition of foreign form, the destruction of local meaning, and the denial of historical collective pain and humiliation.*

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[52] *Cf.* van Binsbergen 1987, 2001.

[53] 'Complex, heterogeneous, and wrought with contradictions'... While agency-centred transactional-ism, with its implications on unbounded social space, general access, and in general the irrelevance of institutionalised social boundaries (assumptions which have come back to us in today's globalisation studies) cannot theoretically accommodate these unmistakable features of chieftaincy and of so many other aspects of contemporary African societies, there is at least one elaborate theoretical model which can: that of the articulation of modes of production. *Cf.* van Binsbergen & Geschiere 1985b (which contains an extensive interpretation of a Zambian chief's court from this theoretical perspective); van Binsbergen 1981b, 1992; and for the persisting theoretical merits of this approach: van Binsbergen 1998. It is for this theoretical reason, and not for any nostalgia vis-à-vis Marxism as such, that this approach returns in this Introduction, and also informs van Binsbergen's chapter in the present book.

We need to explicitly acknowledge the contradiction between two empirical givens:

- The state on the one hand, the chiefs (and the rural society they stand for) on the other, are caused to be in constant interaction with each other (which makes for merging and blurring of boundaries in actual political and economic practice, and creates the suggestion of a continuous field of interaction merely inviting strategies of agency, *à la* Nyamnjoh),
- yet at a level of the explicit conceptualisations, by the actors involved, the constant movement back and forth between what they *construct to be a distinct traditional domain as against a distinct modern domain*, warrants the view that two fundamentally different modes of socio-political organisation are involved here.

Table 1 presents the *etic* outline of an actors' model which, from the point of view of many traditionalist African actors, would seem to sum up the structural differences between chiefs and the post-colonial state :

post-colonial state	chief
legal authority (the letter of the written word)	traditional authority
impersonal	personal
universalist	particularist
imported within living memory	considered as local
culturally alien	considered as culturally familiar, self- evident
defective legitimation	self-evident legitimation
lack of cosmological anchorage	cosmological anchorage

Table 1. A model contrasting chiefs and post-colonial state from the viewpoint of traditionalist African actors today.

This model allows us to make an important point. *At least in the traditionalists' own perception, any interaction between post-colonial states and chiefs involves bridging two fundamentally different structures.* Ethnicisation, the elaboration of ethnic identity through invented traditions and formal self-organisation, is a familiar idiom in which such bridging takes place. But why should it be able to do the trick? The answer becomes clear once we have defined more closely what such bridging consists of. It amounts to the negotiation of aporetic conceptual boundaries (i.e. boundaries that are essentially non-negotiable in terms of the formal premises at play). Such

paradoxical negotiation takes place *through concrete interaction*. In this operation, objects and people are positioned at the conceptual boundaries between two systems, where they can serve as interfaces between the two. In the dialectics of social praxis, conceptually different domains are drawn, first, within such contradictory perceptions, motivations and exchanges as each single actor is capable of; and secondly, these contradictions are to be made convergent, predictable, and persistent over time by their being imbedded in the social organisation of these individual actors.

In other words, structural bridging inevitably requires, beyond conceptualisation, effective social organisation. The structure of the extended field within which the chiefs' agency is realised, is in the first place the social organisation of modern life in terms of formal organisations. These include the formal organisation of the state, but also the formal organisation of the chief's capital, of ethnic and cultural associations, of non-governmental organisations such as churches and development agencies whose actors interact both with the state and the chiefs. The *modern formal organisation* corresponds morphologically with the organisational logic of the state; at the same time, in the fields of ideology, symbolism, and personnel, it can maintain as much continuity as is needed towards structural domains that are conceived in terms of a logic totally different from that of the state (such as chieftaincy). Therefore the mode of mobilisation which structurally bridges state and chiefs had to take the form of a formal voluntary association.

Another example, taken from contemporary North Atlantic society, may further drive home the implications of this theoretical explanation. Even under conditions of high levels of commodification of public life, where a capitalist logic has penetrated many spheres of experience such as recreational behaviour, sexual behaviour, care for the sick and the dead, yet most people have insisted on perpetuating (in fact, in actively reconstructing and protecting) domains of personal and collective self-realisation where conscious measures are taken so that the capitalist logic of commodification, however all-pervasive, cannot dominate there. Love, friendship, the nuclear and extended family, healing, prayer, scholarship, come to mind as likely examples. The amazing thing is even that the entire demographic reproduction of the public sphere (in other words, the production of its human personnel) has always taken place in such secluded domains of intimacy. At this level of abstraction, we need not be surprised any more about the survival of African chieftaincy in the face of the logic of the state: in the North Atlantic region, the survival, not only of obsolescent remnants of aristocracy, but of such a massive and vital phenomenon as the nuclear family, is essentially in the same analytical bracket. While the nuclear family is (as yet) indispensable for demographic reproduction, it interfaces with the state and the public sphere through formal

organisations such as schools, hospitals, churches, recreational associations, commercial enterprises and enterprises offering paid or voluntary employment. These formal organisations, on the one hand, emulate the organisational logic of the state and capitalism, on the other hand, in terms of contents, personnel recruitment, and their underlying ideology, can be finely tuned to the (always changing) cultural values implied in family life.

So far, in a nutshell, a possible structural analysis serving to complement an analyis of contemporary African chieftaincy in terms of agency. However, even a structural analysis would need to be brought to life by the application of such lessons concerning agency as Nyamnjoh's contribution contains.

Much of the early work of van Rouveroy van Nieuwaal was concerned with the exploration of processes of adjudication in chiefs' courts in northern Togo. This led him on the one hand to extensive and seminal studies of chieftaincy, on the other hand to reflection on the nature of law in Africa. It is to the latter topic that we now turn.

The nature of customary law

BARBARA OOMEN's paper deals with local laws that concern the power and authority of traditional leaders in Sekhukhune, in northern South Africa, and their dynamic relationship with official 'state law'. In addition to the topics discussed above, Oomen thus addresses another leading themes in van Rouveroy van Nieuwaal's oeuvre: the interaction between formal, codified state law and local living norms. Taking her cue from his ideas on 'syncretism', the paper assesses how local, customary legislation exists in relation with official state legislation. It does this by examining legislation that determines the position of traditional leaders in post-apartheid South Africa, in the area of Sekhukhune. It is argued that local, customary law is continuously negotiated. In a subtle manner she describes the complex legal scene at Sekhukhune. She provides apt, original and convincing illustrations of some of the most fundamental insights which have been gained in the field of African customary law over the past few decades, including the processual nature of local law, and the dependence of legal resources on general community resources. She manages to take some of these insights considerably further. As a window on how, at the local and regional level, law is shaped by the recent (post-apartheid) transformation of South Africa, and how law in its turn helps to shape that transformation, the article is very illuminating. It introduces a number of useful distinctions that may well find their way into the wider literature.

Oomen notes the obsolete rigidity with which the South African state and its Government Anthropologists (apparently even years after the attainment of majority rule) have, almost fetichistically, clung to the conception of customary law as the straightforward application of rules (rules which, moreover, are supposed to be highly specific and distinctive for a particular ethnic group as once defined under the apartheid state):

> 'In practice, the department's anthropologists check the candidates against the files of genealogies they possess – which are already computerised at national level – and against the relevant anthropological handbooks and customary law textbooks. If the candidate put forward does not comply with the requirements of the official customary law contained in these texts, a candidacy will generally be refused.'

In this light, a new application is found for the insight[54] that succession, in the context of South Central and Southern African chieftaincy, amounts to the selection, from among a pool of eligible candidates, of the candidate who is most suitable in terms of such contemporary concerns as personal achievement (education, experience, character etc.), while the outcome is yet pretended to be ascriptive and rule-driven. One wonders, however, whether this is really such a timeless general principle as Oomen suggests:

> 'The Sekhukhune succession disputes demonstrate how people try to couple ascription and achievement and pursue good governance by first selecting – from among a limited pool of candidates – the best candidate, and subsequently legitimising his claim in terms of customary law.'

For, given the South African state's fixation on succession rules, and its control over the recognition of chiefs, an alternative interpretation of the evidence might be the following. South African chiefs and their electors have no choice but to stress, before the state, that chiefly election, once made, was entirely determined by the traditional ascriptive rules. However, in other contexts when the state officials are not breathing down their necks, the electors might be prepared to consciously admit that an element of achievement and agency does play an important role. Would not the insistence on ascription be partly a product of the recent history of South Africa, notably its heritage of a particularly vicious, paternalistic and racialist state? In that case one would expect that the emphasis on ascription as the ultimate factor in succession is not laid to the same extent as in South Africa in other parts of the rather continuous cultural region of Southern and South Central Africa. It is my impression that such an expectation is borne out by the ethnographic evidence.

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[54] *Cf.* Gluckman 1963; Goody 1966; Holy 1986; Parson 1990; van Binsbergen 1992.

If legal syncretism includes the borrowing of cosmopolitan or colonial forms in order to revive and contest local institutional contents, than another example of this phenomenon is presented in CATHÉRINE BAROIN's paper. She describes how, on the southeastern slopes of Mt. Meru in Northern Tanzania, a small tribe of Bantu-speaking farmers, the Rwa (or Meru), became famous in 1952 for challenging the British in a legal case brought to the UNO in New York, the *Meru Land Case*. One outcome of this struggle was that the Rwa created an apparently brand-new 'traditional' form of chieftaincy of their own, in order to thwart the official colonial power operating through established but disputed local chiefs. From the start, this new form of chieftaincy was associated with a 'constitution', following an idea first suggested by the British, as they endeavoured to set up 'local governments' for each 'tribe' they were ruling in Tanzania. Baroin outlines the history of both this new format of chieftaincy and its written constitution, which still operate to this day and play a significant part in local public life.

In a context where the common African custom of deferment of bridewealth payment raises puzzled comment, one does not expect a strong historical awareness of pre-colonial local forms of authority. As a result, the alternative form of Rwa chieftaincy is depicted as a contemporary innovation which came entirely out of the blue. Also the British-inspired, formal constitutional format by which this institution is underpinned, suggests a thoroughly recent thing. Yet I believe that underneath these contemporary trappings a long-term historical process can be detected that has occurred widely in Africa. It consists in the tension between two forms of socio-political organisation which in many parts of Africa appeared in succession in the process of pre-colonial state formation:

1. Pacifist reconciliation and sanctuary based on a ritual relation with the earth – in the symbolic elaboration of this legal-political institution (usually at the sub-national, clan level) androgynous themes may be observed, as well as oath-taking, and leopard(-skin) symbolism;[55] as against,
2. A violence-based, tributary legal order in the hands of rulers – in the symbolic elaboration of this legal political institution (usually situated at the

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[55] The specific ethnographic cases include North African saints (Gellner 1969); the Nuer leopard-skin chief (Evans-Pritchard 1967); and Zambian rain shrines (Colson 1960; van Binsbergen 1981b). My projection of the Zambian Nkoya case (see my contribution to the present book) onto the Rwa situation is not without grounds. The Nkoya show continuities with northeastern Tanzanian political institutions, e.g. an early Nkoya ruler Likambi was known as 'the Mangi' (a term meaningless in the contemporary Nkoya context but the generic term for ruler among the Rwa), while the *kazanga* royal harvest festival is also reported under the same name from northeastern Tanzania (van Binsbergen 1992; Huijzendveld 1996). Under this extended royal complex I suspect South Asian influences, which are also hinted at by the name Mt. Meru itself – identical to the world mountain of South Asian mythology.

national level, above individual clans) masculine themes are emphasised, as well as formal court proceedings, and lion symbolism.[56]

Considered in this light, the legal syncretism of the Rwa case as described by Baroin appears to have a further dimension in that the modern constitutional form revives a mode of pacifist reconciliation that has existed on Tanzanian soil for hundreds if not thousands of years, until it was eclipsed by pre-colonial rulers or colonial chiefs of a more articulate royal type.

The Rwa apparently realised that, if they were to supplant the existing form of colonial-backed chieftaincy by another chiefly institution of their own preference, they would need the best possible outside patronage they could get: the state itself. I suggest that it may have been this agency-driven strategy, as much as what Baroin invokes as 'the strength of the national feeling in Tanzania, which is a prevailing attitude throughout the country', which explains the wonderful phenomenon of an older form of informal clan chieftaincy being revived through a modern constitutional format.

Not legal syncretism, but the very nature of disputes and dispute processes – which has always been at the core of legal anthropology – is the topic of KEEBET VON BENDA-BECKMANN's contribution to the present book. Over time, legal anthropologists have advanced different reasons as to why disputes should be important to them. The work of van Rouveroy van Nieuwaal is argued to reflect these shifts: starting out with his doctoral dissertation on marriage and inheritance disputes in northern Togo, his work, especially that on chieftaincy in West Africa, has reflected the more general move, away from an interest in institutions of dispute management, and towards the wider political contexts in which the validity of various normative orders are reconstituted, contested, and merged.[57] Against this background, Keebet von Benda-Beckmann traces the general development in the study of dispute behaviour in legal anthropology. She reminds us how in the more recent literature, courts of law are no longer primarily considered as institutions of conflict settlement:

> 'Rather than continuing to accept that people carry out disputes because they simply wish to settle them, it became clear that people have a variety of reasons for taking their particular dispute to a particular institution. It was pointed out that some people have for instance political motivations for going to court; others may have more personal reasons; and yet others simply wish to have their day in court and be publicly heard, whatever the outcome of the trial; and some, indeed, wish to settle their dispute. On the whole it was no

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[56] *Cf.* van Binsbergen 1981b, 1992, in press, and contribution to the present book.

[57] Van Rouveroy van Nieuwaal 1987, 1996, 1998; Ray & van Rouveroy van Nieuwaal 1996a.

longer taken for granted that the role of courts and court-like institutions was dispute settlement.'

In particular, Keebet von Benda-Beckmann highlights the increasing emphasis on the environments (social, political, legal) in which disputes evolve:

> 'Over time the environments in which disputes are carried out have been increasingly recognised to be important for the understanding of disputing behaviour. *Over the past thirty years the analysis of disputes has become increasingly sophisticated.* These environments have a temporal and a local perspective. They also have normative and cognitive aspects. The contexts in which people operate in disputes and outside them, are made up of persons, who explicitly or implicitly argue and operate in different idioms referring to normative or legal orders that often are highly fragmented. The combinations in these plural settings are often contested and are not always fully understood by the participants of disputes themselves.'[58]

Assuming a growth of sophistication, our author implies an optimistic, Popperian view of the steady and unilineal accumulation of scientific insight. Such a view has not exactly gone uncontested in recent decades.[59] Keebet von Benda-Beckmann seems to suggest that the phenomena under study (disputes in African court contexts) have remained fairly constant, while as a result of much scholarly scrutiny and reflection the true nature of these phenomena was more and more revealed to legal anthropologists. However, legal anthropologists are actors on the local, regional, national and international scene in Africa, just like the people they study in and out of court. The disputes on which legal anthropologists focus, focus less, or no longer focus, are set within a continuously changing and widening African socio-political context whose structure has undergone tremendous changes. In the course of the twentieth century it has become trapped more and more in the clutches of globalisation, with the concomitant decline of African national states and economies.

I submit that it is not only the legal anthropologists who have changed their mind, but that also the very disputes they have studied have undergone fundamental changes over the decades. Did the earlier legal anthropologists have it all wrong, or did the colonial chiefs' courts really revolve around conflict settlement to a markedly greater extent than they do today? Did the earlier legal anthropologists simply overlook forum shopping and the wider social process (in Keebet von Benda-Beckmann's terms, 'the environment of disputes') in which any particular court case would be embedded? Or was the relative autonomy of the court vis-à-vis its local social environment more of an empirical fact in colonial times (when conceptions of power and justice were

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[58] Italics added, WvB.

[59] Foucault 1969, 1970, 1980; Kuhn 1962; Lakatos & Musgrave 1970; Popper 1959.

little negotiable, backed up as they were by the colonial conquest state), than it can ever be today, with the decline of the post-colonial state, the people's greater internalisation of legal authority, the onslaught of globalisation, the effective expansion of a cash economy geared to globally circulating manufactured products, and the increasing deepening of ethnic and regional conflict, in the final quarter of the twentieth century?

The final contribution on legal anthropology is by FRANZ VON BENDA-BECKMANN. He returns to a theme that has dominated the Dutch 'Folk Law Circle' for decades and that has also played an important role in van Rouveroy van Nieuwaal's work: legal pluralism. Franz von Benda-Beckmann's paper is ethnographically rooted in Indonesia, but it takes a comparative view, and addresses a problematic that has great relevance for van Rouveroy van Nieuwaal's fieldwork area in northern Togo, and indeed for Africa as a whole. The paper looks at the role of Islamic law, and seeks to define the lessons that the study of legal pluralism could draw from the case of Islamic law. Religious law, and Islamic law in particular, has largely been neglected in discussions of legal pluralism. In Indonesia, for instance, most attention has been given to the discrepancies and struggles between, on the one hand, the local, regional and/or ethnic laws (usually called *adat* or '*adat* laws'), and, on the other hand, the law of the colonial Netherlands East Indies, and of the post-colonial state of Indonesia. That country provides interesting counterpoints to the history of Islamic law in African and Arab countries, and indicates additional variations of plural legal constellations within one state. Franz von Benda-Beckmann's paper is based on etnographic research conducted in two very different regions of Indonesia: Minangkabau in West Sumatra, and the Island of Ambon, in the Central Moluccas, Eastern Indonesia. In these two areas, Islam and Islamic law have different meanings in the daily life of villagers. At a general level of social organisation, the relationships between state law, *adat*, Islamic law, and on Ambon also Christian law, are quite different. In fact, they are counter-intuitive. For despite the strong cultural basis rooted in the common *adat* of both Islamic and Christian villages on Ambon, the relations between *adat* and the religious life differ considerably. The relation between *adat* and Islam in Minangkabau turns out to be quite different from that on Ambon, and in fact much more resembles the relation between *adat* and Christianity as found in the latter context.

From his analysis, Franz von Benda-Beckmann extracts five points that are of considerable relevance for the study of Islamic law in African contexts of legal pluralism, and that are likely to find their way into the wider comparative literature on the subject:

- 'First, in many regions of the world, Islamic law was present, and had to find an accommodation with pre-Islamic and non-Islamic laws, *before* the introduction of a state and state law of the European, colonial type. Legal pluralism usually antedates the establishment of a modern state. (...)
- Secondly, Islamic law has its own ideology of legal centralism. (...) It should therefore be taken into account that in plural legal conditions there can be a plurality of legal constructions that demarcate the respective spheres of validity of legal systems. (...)
- Thirdly, Islamic law appears to be a wide umbrella encompassing quite different constructions of what Islamic law is.'
- Fourthly, Franz von Benda-Beckmann points to a factor which we have already encountered repeatedly above under the heading of 'syncretism': 'to some extent, local traditional ideas about family relations, inheritance or contracts could be incorporated into Islamic law by creating new legal forms or fictions that gave Islamic legal validity to originally non-Islamic forms of contract. (...)
- Fifthly, Islamic law is transnational law. Hybridisation, creolisation and glocalisations of transnational law have been frequent phenomena throughout the legal histories of those societies and states in which Islamic law was present.'

With these contributions to legal anthropology in the narrower sense, the persistent core of van Rouveroy van Nieuwaal's work has been addressed interestingly and constructively. Let us now turn to a topic which is rather an implied aspect of disputes and chieftaincy in Africa: violence.

The role of violence

Violence sets the background for PETER SKALNIK's evaluation of the coexistence of the two ethnic groups, the Nanumba and the Konkomba, which have been co-residing in the territory of the Nanumba district, northern Ghana, for more than fifty years. Most of this time the coexistence was peaceful though tense, some years however were marked by armed conflicts (1981, 1994, 1995). In particular, the role of the British colonial and various Ghanaian governments vis-à-vis the relationship between the Nanumba and the Konkomba is analysed, as the quality of the coexistence turns out to have depended, at any one time, on the particular political regime at the national level.

Violence also turns out to be the limiting factor of the Tanzanian case described by Baroin, although a further analysis had to remain outside the scope of her contribution to the present book:

'However, tribal unity was greatly jeopardised in the early 1990s by a violent conflict that erupted among the Rwa over the control of the Lutheran diocese on Mt. Meru. (...) A lingering dispute followed between the authorities of the official Lutheran church on the one hand, and the 'rebels' who started a new independent church on the other hand. It resulted in so much social disruption that development projects could no longer be

implemented, and the proper working of the Rwa's political institutions was greatly hindered.'

Violence (particularly such violence as surrounds the male kings who supplanted earlier queens and clan leaders) is the central issue in Wim van Binsbergen's approach to state formation in western central Zambia from the seventeenth century CE onwards. Violence could play this role since it amounted to pursuing, at the royal courts, cultural norms and practices that constituted the most radical departure from the norms and practices governing life in the commoner villages. The many villages surrounded the few courts, and fed the latter with tribute, including food, and with much of its personnel, including slaves. The purpose of Wim van Binsbergen's paper is to present this reading of the Nkoya pre-colonial past, and to begin to explore the extent to which violence can be said to underlie any form of state formation in pre-colonial Africa. A vignette derived from a nineteenth-century travelogue (according to which the Lozi king Sipopa fed an innocent old man to the crocodiles) helps to focus on the main issues, but is only meant as an illustration. Although the juxtaposition between village life and court life is argued in detail, the substantial oral-historical, documentary and legendary data underlying the argument have been presented elsewhere.

Also our final contribution, by TRUTZ VON TROTHA, focuses on violence, and it does so in ways that are original, unexpected in a book celebrating the work of an Africanist, and potentially of world-wide relevance. Von Trotha's argument seeks to interpret no less than the world-wide evolution of large-scale violence from the end of World War II to the anonymous attack on the USA on 11 September 2001. The article fits in our collection for two reasons: it offers a theory of war as a specific form of violence, and it does so on the basis of inspiration deriving from legal anthropology, notably the work of Spittler.[60] The point von Trotha makes is that, in future, war will be shaped by 'wars of defeat', by some sort of trading-off between the thermonuclear war of extermination and the *global small war*. Spittler's theory argues that every society has a variety of forms of dispute settlement. These forms are institutionalised and legitimised to different degrees, from the private discussion within the four walls of one's house, to blood feuds, and appeals to official legal authorities. The forms of dispute settlement are connected with each other in a number of ways, of which two are of interest here:

- Every form of dispute settlement is influenced by its alternatives;
- this interdependence of the forms of dispute settlement is characterised by the supremacy of legitimate violence. In stateless

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[60] *Cf.* Spittler 1980.

societies it is violent self-help that throws this shadow; in state societies it is the institutions of the state monopoly on violence, in the first instance the police and the army.

What is held to be true for domestic dispute settlement may also be true for armed conflicts, at least since the use of the atomic bomb against Japan in World War II: forms of war are interdependent. Any war belongs to an order of wars, in which each form of war is influenced by existing alternative forms. In terms of space, today these alternatives can cover the whole world. The supreme form in this order of wars is determined by which agent has the greatest destructive potential both militarily and in terms of its technology of arms. Today this is the thermonuclear war of extermination. Hence the common retreat into the forms of *small war* and the *global small war*, phenomena with which most citizens of the world have become acquainted over the past decades, either by electronic means of by personal experience.

If legal anthropology can help us understand the most threatening and destructive events of our era, that would be the highest praise for this sub-discipline, and the best guarantee for legal anthropologists' continued livelihood.

Conclusion

This book celebrates a scholar whose complex and often difficult career has greatly helped us to focus on crucial issues in African Studies and in legal anthropology which, to judge by the contributions in this book, will continue to inspire us for decades to come. It is my hope and conviction that, even after institutional retirement, Emile Adriaan B. van Rouveroy van Nieuwaal will continue to contribute to the investigation of these topics, and (as we have moved, during our lifetime, from the book to the furtive, virtual screen image as the standard of knowledge transmission) that he will continue to feed our eyes and our hearts with his films. The African Studies Centre salutes him as a long-standing, productive and constructive colleague.

Finally, it is my pleasure to thank all those who have contributed to the genesis of this book: the contributors, whose papers show the richness and continued relevance of Emile van Rouveroy van Nieuwaal's work, and whose forbearance with my extensive and critical introduction will be a further sign of their eminence and wisdom; Riekje Pelgrim, who did part of the editing; the African Studies Centre, whose subsidy made the book a viable publishing undertaking; Emile van Rouveroy van Nieuwaal, who shared his bibliography and unknowingly inspired the book throughout; and LIT Verlag, as reliable and supportive publishers.

PART I. THE DYNAMICS OF TRADITIONAL LEADERSHIP IN MODERN AFRICA

Chapter 1

Negotiating party politics and traditional authority:

Obafemi Awolowo in Ijebu-Remo, Nigeria, 1949–1955

by Insa Nolte

Introduction

Much of van Rouveroy van Nieuwaal's research has concentrated on the conflict between Africa's new and old elites. Many of his publications have focussed on the relationship between traditional rulers and nationalist or 'modern' politicians,[1] which he considers to be engaged in a zero-sum game.[2] The present article reflects van Rouveroy van Nieuwaal's research both in the choice of the topic and in the line of reasoning. It examines the encounter between nationalist and traditional politics on a local level in colonial and post-colonial Nigeria. It does this in the shape of the relationship between two groups of power-holders in Ijebu-Remo (below: Remo),[3] a former district in western Nigeria, through the agency of Remo-born Obafemi Awolowo, leader of one of Nigeria's three national post-independence parties. Awolowo intervened in the traditional politics of the district through the cultural organisation Egbe Omo Oduduwa and through party politics. He was also involved in traditional politics in his hometown Ikenne, where he manipulated the installation of the traditional ruler (or *oba*) against considerable opposition in 1950 and became a chief himself in 1955.[4]

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[1] In this chapter, 'traditional ruler' refers to any titleholder who is legitimised through claims based on tradition (irrespective of the historical viability of these claims), and who is in a position to bestow subordinate or chieftaincy titles onto others. In the Yoruba context, a traditional ruler is usually an *oba*.

[2] Van Rouveroy van Nieuwaal 1999c: 24-26.

[3] In this chapter, the orthography of Yorùbá (henceforth: Yoruba) names and titles will follow not English but Yoruba convention, albeit without tone or diacritical marks.

[4] In this chapter, 'chief' refers to a titleholder who has received a traditional title from the *oba* (traditional ruler) of a community. In pre-colonial Yorubaland, chieftaincy titles often designated a man

The article argues that Awolowo's activities and the Ikenne dispute were part of an intense struggle in which both traditional rulers and nationalist politicians attempted to gain legitimacy in each other's political arena. While this process reflects the fact that traditional rulers became increasingly embroiled in post-colonial politics – a point often made in van Rouveroy van Nieuwaal's writings – it also demonstrates that members of the newer nationalist elite desperately attempted to appropriate traditional authority. The reasons for this process are complex.

Like many of his colleagues and Western observers, Awolowo believed that chieftaincy was an anachronism in an independent and democratic Nigeria and he therefore supported the reduction of traditional rulers' official powers. At the same time however, he realised that the inclusion of traditional politics and office-holders into party politics provided additional legitimacy: on a regional level the concept of traditional authority sanctioned Awolowo's general aspiration to further the development of Yoruba nationalism, and on a local level traditional rivalries often gave his party Action Group (AG) an entry point for political competition with the rival, the National Council of Nigeria and the Cameroons (NCNC). The control over political office in his hometown Ikenne and his acceptance of chieftaincy titles helped Awolowo to increase his status on a local, national and even international level. In the long run his politics contributed to the evolution of a post-colonial Nigerian polity in which traditional power continues to play a powerful role to this day.

Awolowo's early years: From Remo to London and back

Remo is the former most westerly district of the pre-colonial Ijebu kingdom in the Yoruba-speaking western part of Nigeria. The region, dotted by small and medium-sized rural towns, is situated between Lagos and Ibadan, two of Nigeria's largest cities. Obafemi Awolowo was born in one of Remo's smaller towns in 1909, 15 years after the formal establishment of British rule in this area. The changes brought about by colonial rule were to influence his early political orientation.

Before colonial rule, power in the Remo towns was divided between a ruler (*oba* if he was crowned king, otherwise *oloja*), civic representatives (*oloye* or chiefs) and a representative town association (*osugbo*). By the late nineteenth century, many *obas* were little more than figureheads, while the daily running of the towns was in the hands of the *oloye* and the *osugbo*. After the establishment of colonial rule, the power of the *osugbo* became gradually

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or woman with political influence in the town and access to the palace. In the 1950s, there were titles both of pre-colonial and of more recent creation.

reduced and, following the introduction of direct taxation in 1918, the authority of the *obas* generally increased. Most *obas* became responsible for the collection of taxes in their towns and many also became Native Court presidents and gained exclusive control of town land.[5]

Oloye and other powerful local representatives often resented this centralisation of power in the hands of the *obas*. As Awolowo's paternal grandfather was a member of the *iwarefa* (the inner circle of the *osugbo*), and his father a successful farmer and lumber merchant with a position of leadership among the rapidly increasing Christian population of Ikenne, Awolowo became familiar with critical attitudes towards *obaship* from an early age.

Throughout Awolowo's early years, the area of Remo was moreover influenced by another aspect of the political situation. It had become divided by a conflict that was rooted in Remo's pre-colonial history. In the early 1860s the rapidly growing nearby city-state of Ibadan had started to pose a threat to Ijebu, and the Ijebu capital Ijebu-Ode had given orders to block the weapons trade from Lagos to Ibadan, which passed through Remo. Under the leadership of the town of Ofin, the majority of the Remo settlements had accepted the capital's orders. Several of Remo's most westerly towns however had refused to give up the lucrative trade and had challenged the legitimacy of Ofin's leadership. After several political stand-offs, the rebellious towns were eventually defeated in 1864.[6]

As a result of these developments, the town of Ofin and its king, the *osugbo*, were established as the political leaders of Remo. Moreover, the defeat of the rebellious towns enabled the area of Remo to declare independence from imperial Ijebu. In 1872, the *osugbo* of Ofin led twelve Remo towns into the formation of a centralised settlement called Sagamu, which became the present-day capital of Remo.[7] Remo's *de facto* independence of Ijebu-Ode was recognised by early British administrators who included it into the Colony and Protectorate of Lagos.[8]

After the introduction of Indirect Rule in 1914, when Awolowo was five years old, Remo was re-incorporated into the Ijebu Division.[9] During subsequent years, Shagamu, the *osugbo* of Ofin, acted as spokesman and principal lobbyist for greater Remo autonomy. Awolowo's hometown Ikenne being a historical ally of Ofin, Awolowo remembers in his autobiography how

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[5] Mamdani 1996: 57-137.

[6] Johnson 1921: 356-360.

[7] Epega 1934: 18-19.

[8] Ayandele 1992: 43-44, 123-126.

[9] After 1920: Ijebu Province.

his father and his friends referred to this administrative reorganisation as *Mashai-Lo* (i.e. a local rendering of the English term 'Martial Law').[10] Nevertheless, Awolowo must have been painfully aware of the fact that many Remo towns continued to resent the *osugbo*'s claims to be Remo's most senior *oba*: Awolowo's paternal family had close ties with neighbouring Ilisan, which – together with many of the towns that had challenged the *osugbo*'s leadership in the nineteenth century – continued to oppose the *osugbo*'s claims to Remo seniority.

After his father's death in 1921, Awolowo left the area of Remo to further his education in Abeokuta, and in 1934 he moved to Ibadan to work as a journalist and to try his hand at business. In many ways his migratory experience was typical for young men from Remo at that time. Due to a rapid Christianisation, which had begun in the 1890s, Remo had the highest literacy rates in western Nigeria after Lagos. However, due to the somewhat rural nature of its settlements, the area lacked serious opportunities for the educated outside the colonial administration. Many young people left for the cities of Lagos, Ibadan or Abeokuta, where they could further their careers and where many of them became engaged in nationalist politics. Awolowo was no exception and he became one of the founding members of the Nigerian Youth Movement (NYM) in 1934. Until 1941 he was the NYM secretary for the Ibadan branch.

The urban identity of the Remo migrants was not exclusive. Both Lagos and Ibadan were within easy travelling distance from Remo, and many migrants were able to stay in touch with their home communities. As a result, many Remo migrants were, for instance, involved when the *osugbo's* complaints about the re-incorporation of Remo into Ijebu were investigated by a Commission of Enquiry in 1937. Educated young men travelled home to give evidence or, more frequently, sent letters and petitions to the head of the Commission of Enquiry, Justice Martindale. As a result of the Commission's recommendations, a financially independent Remo Division with the *osugbo* as its sole Native Authority was created in 1938.[11]

In 1944, Awolowo left Nigeria to further his legal studies in London. During his stay in the United Kingdom, he completed his first book, *Path to Nigerian freedom*.[12] Based on his experience in the NYM, which had disintegrated along ethnic lines, Awolowo suggested the introduction of a federal system for Nigeri. He believed this would accommodate the different

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[10] Awolowo 1960: 17.

[11] *Cf.* Files from the National Archives Ibadan (NAI), Ijeprof. 2, C 32/1 'Ijebu Remo Claims for Independence 1922-1937', Vol. I-IV.

[12] Published in 1947.

aspirations of the country's major ethnic groups. He moreover argued that any Nigerian government would be more efficient without the incorporation of traditional rulers in national politics. In other words, the educated elites were perceived as the new natural governors of the country once it reached Independence.

However, Awolowo's book did not fully reflect the complexity of his politics. During his stay in London, he had also founded the *Egbe Omo Oduduwa* (*Egbe*),[13] a pan-Yoruba association intent on increasing the cohesion of the Yoruba nation and on defending its position in Nigeria. While this project was in line with his federal ideas, it amounted to the creation of a specific Yoruba identity and of an 'imagined community'.[14] National identities often resting upon mythical founders or heroes, Awolowo regarded Yoruba *obas* as important symbols in the creation of a modern Yoruba nation because they traced the original establishment of their kingships to the mythical founder of the Yorubas, Oduduwa. Many Yoruba *obas* in Nigeria received copies of the Egbe constitution from London in order to win them over to Awolowo's project.[15]

Awolowo's meritocratic agenda for Nigeria – to be achieved without the contribution of traditional rulers – contrasted with his plans for an emergent Yoruba nation in which the *obas* were to play an important political role. The tension between these two goals is clearly visible in the Aims and Objectives of the Nigerian chapter of the *Egbe Omo Oduduwa*, inaugurated in Ile-Ife in 1948 after Awolowo's return to Nigeria. Section A (iii) states that the *Egbe* would:

> '…recognise and maintain the monarchical and other similar institutions of Yorubaland, (…) plan for their complete enlightenment and democratisation, [and] (…) acknowledge the leadership of Yoruba *Obas*.'

The concurrent democratisation and recognition of *obaship* – not in itself a democratic institution – was an ambitious project.

Awolowo and Remo traditional politics

In 1948, Remo politics erupted in a conflict over popular criticism of the *obas*. The reason was an increase in the male tax rate per head from 10 to 15 shillings by the Native Authority, to compensate for the expected losses in revenue derived from the abolition of the flat rate tax for women.[16] The new tax policy

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[13] Translation: 'Society of Descendants of Oduduwa'.

[14] *Cf.* Anderson 1983.

[15] Arifalo 1988: 100.

[16] Ijebu Province Annual Report, NAI CSO 26, 1948.

had been introduced after the Nigerian Women's Union in Abeokuta had opposed women's taxation and forced the most senior Abeokuta *oba*, the Alake, into exile over the issue earlier in the year. Fearful of a similar humiliation, traditional rulers in Ijebu and Remo shifted the whole tax burden onto men.[17] Predictably, Ijebu men were unhappy about this change. An opposition group called *Majeobaje*[18] found supporters throughout the area and, in addition to venting its grievances with regard to the tax changes, its members soon aired other complaints against traditional authority. Some Remo kings were threatened by open rebellion, and riots ensued in the towns of Ogere and Iperu.[19] Consequently the Iperu *oba*, for instance, had to flee his town and take refuge in Sagamu.

As a result of the violent uprising, the Native Authority Councils prohibited meetings and processions of more than ten people, and declared the *Majeobaje* groups illegitimate.[20] In an alliance against what was widely perceived as autocratic oppression by the traditional rulers, the local *Majeobaje* started to strengthen its co-operation with the migrants in Lagos and Ibadan, many of whom had experience in politics and nationalist rhetorics.[21] Among these advisors was Awolowo, who had established himself as a lawyer in Ibadan after his return from the United Kingdom.

In 1949, the triennial elections for the town councils took place. Many local *Majeobaje* members, as well as migrant locals involved in nationalist politics, stood for election. The election was a success for the *Majeobaje* candidates, and it established Awolowo as a local representative in Remo. Subsequently, he was elected for the town council in Ikenne. As one of the main advisers in the *Majeobaje* campaign, Awolowo also gained a coveted elective seat in the Remo Native Authority Council in August 1949.[22]

Despite this victory for the nationalists, the radicalisation of local politics, though feared by the British administrators (who had anticipated continuing difficulties between the new politicians and the traditional rulers), never occurred.[23] One of the reasons for this was the spreading awareness that a democratisation of local government structures, modelled on the 1947 Local Government Despatch of the British Labour government, had become

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[17] 'Ijebu Youth Opposes Immediate Abolition of Women's Taxation', *The African Echo*, 27 October 1948.

[18] Translation: 'Don't let it be spoiled' (Yoruba).

[19] Ijebu Province Annual Report, NAI CSO 26, 1948.

[20] NAI Ijeprof. 4, 124, 24 December 1948.

[21] Ijebu Province Annual Report, NAI CSO 26, 1948.

[22] Ijebu Province Annual Report, NAI CSO 26, 1949.

[23] Ijebu Province Annual Report, NAI CSO 26, 1949.

imminent in Nigeria.[24] Another reason was that the perceived division between the new politicians and the traditional rulers was much more blurred than the British reports and the self-representations of both groups cared to admit; these representations were often in terms of a contrast between educated versus uneducated, modern versus backward, or a contrast between communally legitimated versus culturally alienated.

The often suggested polarity of 'education' and 'tradition' for late colonial politics in West Africa does not hold much explanatory value for Remo. Literacy rates were high, and both the British administrators and most townspeople generally preferred literate candidates for the *obaship*. The virtual disappearance of thumb-prints in *obas*' petitions and correspondence by the late 1920s illustrates that most rulers and chiefs in Remo were at least functionally literate by then. Moreover, as literacy was a valued asset for personal success in the big cities, as well as a requirement for local traditional office, traditional rulers and politically ambitious migrants often came from the same families or even combined both roles during their lives. The *osugbo* of Remo himself for instance had strong connections with the nationalist political scene, and his son Adeleke Adedoyin (a Lagos socialite and lawyer) was a long-standing member of the NYM successor organisation, the National Council of Nigeria and the Cameroons (NCNC). The juxtaposition between traditional and modern politicians was thus by no means self-evident.

In 1949, the atmosphere of anti-royal politics in Remo suddenly relaxed. The most important factor in this was Awolowo's political ambition. As Commissions of Enquiry had been set up to investigate the conduct of several *obas*, Awolowo organised an *Egbe* 'peace mission' to Ijebu and Remo, headed by the high-ranking *obas* of Ile-Ife, Oyo and Owo, who settled the disputes in Ogere and Iperu.[25] Although the rulers who mediated in Remo neither possessed the traditional right nor found themselves obliged to intervene in Remo,[26] the cases were settled peacefully, and the intervention was a success for *obaship*.

The political intervention in Remo was a personal success for Awolowo. It established him as an important mediator, a position dangerously close to that of the most powerful man in Remo, the *osugbo*. In fact, Awolowo had embarrassed the *osugbo* through the success of the *Egbe*'s royal delegates where the *osugbo* had failed, and he had thus gained the support of those that

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[24] It was to become implemented in 1951.

[25] 'Mission to Ijebu: Yoruba rulers and Egbe settle Ogere and Iperu disputes', *Nigerian Tribune*, 23 December 1949.

[26] Although the *Oni* of Ile-Ife had some claim to spiritual seniority over the Remo kings he had never intervened in Remo town politics before that date. Neither the *alafin* of Oyo nor the *olowo* of Owo had any traditional right to interfere in Remo intra-town politics.

opposed the *osugbo*'s leadership in Remo. Through the *Egbe*'s mediation, Awolowo had won the support of the *obas* of these towns and thereby established himself as the champion of their cause. Awolowo had thus translated the conflict over tax between rulers and ruled, into the regional rivalry between the Remo capital and a group of outlying towns.

To further challenge the *osugbo*'s position and to retain his more radical migrant supporters, Awolowo subsequently founded the Action Group (AG), thus devaluing the *osugbo*'s claim to be in tune with nationalist politics.[27] The creation of the Action Group challenged the NCNC's power throughout Southern Nigeria. In Remo, many of the former *Majeobaje* members joined the AG, as did the rulers of many anti-*osugbo* towns.[28] The outcome of the first stage of the Western Regional Elections in 1951 demonstrated the success of the Action Group and of Awolowo's 'translation' of local rivalry into party-political rivalry. As support for Awolowo and the AG was strongest in the towns that historically opposed the *osugbo*'s claims, the results of the elections clearly indicated the close affiliation of party politics with the conflict between historical opponents and supporters of the *osugbo*'s claim to seniority.

The close assimilation between traditional and more modern party politics implied that the new political elite relied on chiefs and *obas* for support on a local level. While traditional rulers thus legitimised party politics, the opposite process – party politics providing legitimation for traditional authorities – became also increasingly evident. The *oba* of Iperu for instance had to adjust his political orientation as a direct result of the 1951 elections. Despite his town's political tradition of opposition to the *osugbo*'s leadership, the *oba* of Iperu supported the NCNC, the *osugbo*'s party. Only 5 per cent of his townspeople agreed with him. Through the ballot, the townspeople made it clear to their king what his political orientation should be. The *oba* consequently joined the AG only days after the results were published. He publicly declared his support for AG leaders Awolowo and Sowole, who were standing for election to the Western House of Assembly, and renounced his NCNC membership.[29] Post-colonial politics thus provided a check for royal authority in that an *oba* could only lead his people if this leadership represented popular ambitions.

Similar notions of legitimacy contributed to the reconciliation between the two factions of towns in Remo in 1952, despite undue political influence by the

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[27] The Action group was formally launched in March 1951.

[28] Among them were the *obas* of Isara, Makun, Ogere, Ode Remo, and Akaka as well as the future *oba* of Ikenne, Gilbert Awomuti ('*Oba* Odemo defeats Alaperu in Remo election', *Nigerian Tribune*, 4 August 1951).

[29] 'Alaperu of Iperu Now Joins the Action Group', *Nigerian Tribune*, 23 August 1951.

AG. After the death of the *osugbo* Christopher Adedoyin, who had presided over the 'independence' of Remo from Ijebu, the Remo Divisional Council became AG-controlled. Consequently the Action Group enforced the installation of an AG politician, Moses Awolesi, as the new *osugbo* in 1952. Despite the coercion used by the AG with regard to the traditional selection process, Awolesi's enthronisation fulfilled notions of legitimacy within the region, because he personally represented the party politics of the towns over which he – in his capacity as the *osugbo* – claimed Paramountcy. After Awolesi's installation, the outlying towns no longer challenged the *osugbo*'s traditional status.

As the *ex officio* influence of traditional rulers in the Remo District Council had dramatically decreased after the local government reform of 1951, AG membership could give an *oba* preferred access to the new administrators. Therefore, most *obas* were keen to participate in the political process. The *oba* of the Remo town of Isara, a longstanding member of the nationalist movement and an AG Regional Minister without Portfolio in 1953, for instance, managed not only to maintain private control of Isara's town land throughout the 1950s and 1960s – making him a rich man – but also to expand his authority to villages in northern Remo formerly associated with the neighbouring town of Ode Remo.[30] *Osugbo* Awolesi's AG membership allowed him to strengthen his leadership position. His acceptance in the towns where his power had previously been disputed, boosted support for both himself and his party within his home community.

By 1953, Action Group candidates won more than a third of Ofin quarter's Local Council seats, and the Local Council election in 1958 showed a clear AG victory in Ofin. In these same elections in Remo, Action Group candidates won 256 out of a total of 283 wards, and they dominated all 14 town councils with at least a three-quarter majority.[31] In effect, the Action Group had united Remo and become its 'national' party. Thus, the integration of traditional and party politics during the 1950s was not just a passive process but actively contributed to a new – united – post-colonial, political identity in Remo. The representative of this post-colonial Remo identity was the *osugbo*.

The emergence of new post-colonial political identities in this form was not limited to Remo. It became generally closely associated with AG politics. While early events in Remo may have been the testing ground for Awolowo's

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[30] 'Order on Isara Trust Beneficiaries', *Nigerian Tribune*, 23 May 1969.

[31] Sklar 1963: 261. According to Sklar, the main opposition party at the time in Remo was not even the NCNC, but a local party called the Ijebu-Remo Taxpayers Association (IRTPA). Although the IRTPA claimed to be affiliated with the NCNC in 1957, it opposed self-government for Nigeria at a later stage. The IRTPA seems to have been an organisation in which all opposition to the AG, no matter how eclectic, united.

political tactics, they reflect an approach quickly adopted by the AG throughout Nigeria. Especially in western parts of Nigeria, the AG (often helped by the Egbe) got involved in Yoruba politics through local and regional rivalry. At the same time it attempted to coerce rebellious areas such as Oyo, Benin and Ilesa into political unification by supporting traditional authorities closely affiliated with the AG. In line with Awolowo's ideas about an emerging Yoruba nation, the AG sought to establish itself as the party of western Nigeria. However, as the unification of Yorubaland under AG leadership was based on the stratification of traditional authority, this attempt also created great political resistance among those polities whose claims to traditional leadership were ignored by the party.[32]

Awolowo and the throne of Ikenne

In addition to providing an entry point and angle for party political success throughout western Nigeria and beyond, traditional politics also lead to personal legitimation. This is clearly illustrated by Awolowo's private involvement in the Ikenne chieftaincy dispute between 1949 and 1955. While Awolowo was establishing himself in Remo as a *Majeobaje* leader and politician, the *oba* of his hometown Ikenne, the Alakenne, died in June 1949. As in most Remo towns, the Ikenne crown was rotated among different families descending from the first *oba* or mythical founder of the town. Eligible candidates from the family whose turn it was to provide the *oba* would compete for the honour, and eventually one candidate would be confirmed and installed by a number of *oloye* or chiefly title-holders who were considered 'kingmakers'. Despite efforts by the British (and subsequently by post-colonial Nigerian governments) to formalise and rationalise the process of royal succession, it generally tended to be conflictual, as was the case in Ikenne.

Supporting 'his' candidate, Awolowo did not wait for the kingmakers to call a town meeting on the candidature: he did so himself even before the traditional mourning period was over.[33] He supported Gilbert Awomuti, a member of the Gbasemo family. Awomuti was a literate Lagos tailor who enjoyed the support of the local young men and migrants. Like Awolowo, Awomuti was a member of St. Saviour's Anglican Church Ikenne.[34]

When those in attendance at the town meeting supported Awomuti, Awolowo convinced the Ikenne Town Council to put Awomuti's name

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[32] This may be one of the reasons why the AG was less successful in garnering regional support than its 'rival' parties NCNC and NPC in eastern and northern Nigeria respectively.

[33] NAI Ijeprof. 1, 3734 (I), 5 August 1949.

[34] NAI Ijeprof. 1, 3734 (I), 18 July 1949.

forward. His opponents, which included many senior chiefs, were outraged at this behaviour and pledged their support to another candidate.[35] The colonial administration was irritated and conducted an enquiry into the dispute. Many attended the enquiry, and because many of those present were migrants who had been mobilised by Awolowo, the two opposing factions were found to be of similar strength and the enquiry did not result in any formal judgment. A further public inquiry was set up, but yet again no progress was made, because hundreds of migrants from Lagos and Ibadan attended in support of Awomuti.[36]

The town's factions were unable to agree, and on 5 March 1950, Awomuti was forcibly installed by Awolowo's section of the town.[37] Two days later, a large editorial article appeared in the (Awolowo-owned) *Nigerian Tribune*, in which administrative officers in Ikenne were accused of malice.[38] Other newspapers went even further and denounced them as imperialist agents.[39] On 22 April 1950, the new Acting Resident Robinson gave in to the pressure created by the press and Awolowo's urban supporters, and acknowledged Awomuti as the new Alakenne.

The rift in the town did not heal rapidly, and the first years of the new *oba's* reign in Ikenne were very difficult. In 1952, riots ensued after a former opponent of Awomuti was stabbed during a festival. When Awolowo drove to Ikenne to help solve the crisis, people threw stones at him and his car. In subsequent years the rift seemed to be patched up. In the context of both of them accepting Ikenne chieftaincy titles, Awolowo and his wife Hannah had organised generous celebrations, which many former opponents regarded as a peace offering. None the less, the division remained so deep that it re-emerged after Awolowo's and Awomuti's deaths in the 1980s,[40] and it has prevented the town from installing another Alakenne since then.

Awolowo does not mention his involvement in the Ikenne chieftaincy dispute in his second book, *Awo: the autobiography of Chief Obafemi Awolowo*.[41] It is worth investigating however why his critical view of traditional rulers did not prevent him from interference in the dispute over the throne or at least from accepting a chieftaincy title himself. Close investigation indicates that the matter was influenced by the association of traditional

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[35] NAI Ijeprof. 1, 3734 (I), 17 July 1949.

[36] NAI Ijeprof. 1, 3734 (I), 17 August, 19 September 1949.

[37] NAI Ijeprof. 1, 3734 (II), 5 March 1950.

[38] 'Justice Versus Spite', *Nigerian Tribune*, 7 March 1950.

[39] *Cf.* 'What A Revelation!', *Southern Nigeria Defender*, 4 March 1950.

[40] Soriyan 1991: 298.

[41] This autobiography was published in 1960.

authority with Awolowo's personal status, both in his home community and beyond.

Awomuti's opponent, Gabriel Onafowokan, was, like most royal candidates in Remo, a literate Christian. He held one of the most highly paid administrative posts available to locals within the province: outside the traditional sphere he worked as the Provincial Treasurer for the Native Administration in Ijebu-Ode.[42] After being implicated in an attempted political coup in Ijebu-Ode, he returned to Remo and he retired on the considerable salary of £20 per month from the Remo Native Authority in 1949.

Unlike the candidate supported by Awolowo, Onafowokan was a member of the Moko family. It thus seemed that Ikenne was not only divided over the issue who should be the next *oba*, but, more importantly, over the question which family was eligible to provide a candidate for the throne. In fact, different opinions about the actual status of the Moko family prevailed: while it had always been closely associated with the town's foundation, it had not presented a royal candidate for at least a century. One of Onafowokan's political projects was the reinsertion of his family into the Ikenne *obaship*. As one of the town's wealthy intellectuals, he had lobbied on behalf of himself and the Moko family for years, and he had in fact already been offered the throne after the death of the previous Alakenne in 1930. At the time he had declined the honour,[43] most probably because he would have earned very little as the *oba* of a rural town. The Alakenne Okunuga (1931-49), who was elected instead of Onafowokan, remained indebted to him.[44] He also confirmed the Moko family's right to participate in the annual meetings of Ikenne royal families and to receive a share of royal dues.

As one of Ikenne's leading citizens, Onafowokan had also represented the case against Ikenne's leading royal family, Obara, over a plot of land called Ite during the late 1930s. In a case characteristic of local colonial politics, the Obara family considered the land to be its private property, while the group led by Onafowokan considered it to be communal land. Often, a strong *oba* could arrogate the control of such land to himself – usually with substantial financial benefits. The Ikenne *oba* however was not in a position to oppose Onafowokan. Looking for a representative willing to oppose Onafowokan, the Obara family turned to Awolowo, then very much a struggling young man recovering from failed investments into the cocoa market.[45] Awolowo accepted the challenge and with moderate success presented the Obara case before several courts,

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[42] Soriyan 1991: 351-353.

[43] NAI Ijeprof. 1, 3734 (I), 8 July 1949.

[44] Soriyan 1991: 238-240.

[45] Akinyeye 1988: 80-81.

including, in 1940, the West African Court of Appeal (WACA). While the WACA did not grant the Obara family the exclusive ownership of the land, it regarded them as the main caretakers of the land on behalf of the town and ordered Onafowokan's party to pay 60 Guineas to cover their expenses. As a result of this defeat, the Moko family punished Awolowo: the house he had built on Ikenne, which has been constructed on land acquired from another family, was sold in auction for £40. Although Awolowo was able to buy it back two years later, the enmity between himself and Onafowokan – as well as the continuing conflict over ownership of the land in question – certainly contributed to the intensity of the later chieftaincy debate.[46]

While it may be argued that Awolowo's desire to settle an old score with Onafowokan was simply intended on showing his townspeople he had the longer breath, his intervention also acknowledged that during the early 1950s, the *obaship* was still an important institution in town politics. Although the case of Iperu illustrates that *obas* could not completely control the insertion of their towns into the logic of emerging party politics, Remo *obas* still maintained legislative and minor administrative powers. The exercise of these powers was often intertwined with local systems of coercion that had been established during earlier years. *Obas* often exercised their power with the help of local clients like Onafowokan in Ikenne, but as the British regarded these power structures to be legitimated through tradition, local power-holders could not control them on their own. Thus, if Onafowokan had become the next Alakenne, he would quite likely have done all he could to undermine the WACA's ruling with regard to the Ite land.

With a view to the future, Awolowo's interventions encouraged a political culture that included the traditional. His victory in Ikenne's sphere of traditional politics not only demonstrated to his colleagues and followers in the Action Group that he was a leader in his home community, but also that he considered it important to be recognised as such. This aspect of his involvement in Ikenne became much more prominent in 1955, when both Obafemi and his wife Hannah Awolowo received chieftaincy titles from Alakenne Awomuti.

As his political influence increased, Awolowo also took chieftaincy titles from other communities. Thus, he became *inter alia* the *asiwaju* of Remo, the *lisa* of Ijeun (Abeokuta), the *odole* of Ile-Ife, the *ajagunla* of Ado-Ekiti, and the *obong ikpa isong* of Ibibioland. These towns and communities overwhelmingly voted for the AG, and thus Awolowo's titles reflected his geographical areas of support. As these areas were associated with traditional legitimacy, they complemented his democratically legitimated successes in the elections. The

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[46] NAI Ijeprof. 1, 3734 (I), 16 Sept 1949.

private acquisition of traditional titles by Awolowo and other politicians complemented the inclusion of traditional title-holders into the AG.[47] In 1958, this assimilation of elites was clearly visible in the Western Region Executive Council, whose twelve members included two traditional rulers and seven members with chieftaincy titles.[48]

The role of traditional authority in Nigerian state politics

As this paper has illustrated, Awolowo's attitude towards traditional authority was contradictory throughout Nigeria's late colonial years, and there is considerable evidence to argue that it was to remain so in his later career.[49] Awolowo and his party supported the reduction of *obas'* official representative and *ex officio* powers throughout the 1950s, while at the same time encouraging the assimilation of traditional and party politics both on the political and personal level. To a large extent, this reflected his twofold agenda of Nigerian democratisation on the one hand and the building of the Yoruba nation – based on its traditional elite – on the other. However, the particular shape and success of this agenda was influenced by local, regional and national circumstances and developments.

One reason Awolowo's relationship with traditional authority was contradictory, was that nationalist politicians in western Nigeria found themselves in a contradictory set-up. The state they aspired to take over was of a dual nature, as British rule, particularly in western and northern Nigeria, was based on modified forms of traditional authority at the grassroots. The day-to-day experiences and politics in their home and host towns must have taught many nationalists that *obas* held much unofficial power. However, apart from short-term, localised agitations against individual rulers, the AG did not develop a policy consistently preventing traditional authority from political influence.

In addition to the above-discussed local considerations, wider political considerations and relations with the still powerful colonial power also influenced this decision. A quest for the abolition and replacement of *obaship* with democratically elected officials in western Nigeria would have allowed opposition parties to enlist conservative sections of society against the AG. In the national context, such a programme would have seemed a distinctive threat to the northern Nigerian aristocratic families. As these families were not only strongly backed by British interests but also in control of Nigeria's biggest

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[47] Sklar 1963: 234.

[48] Osuntokun 1984: 266.

[49] *Cf.* Awolowo 1981.

party, the Northern People's Congress (NPC), this might have been an unwise choice even when local opposition to the *obas* – as in the *Majeobaje* movement – was strong. An effort to replace only some *obas* with elected representatives would have been interpreted as discriminatory due to the association of traditional authority with local rivalries. Also, like many observers at the time, Awolowo and his followers believed that traditional authority was an anachronism and would disappear of its own accord as its official role was reduced.

The attempts by Awolowo and others to gain traditional legitimacy through personally held chieftaincy titles, also illustrate the complexity of the political and social terrain negotiated at the time. Oloko has suggested that the appropriation of chieftaincy titles by Awolowo and other leaders of the nationalist movement in western Nigeria was a result of the experiences of the rural-urban migrants that made up the core of the early nationalist movement in the big cities.[50] In many Yoruba communities, origin from a less urbanised area continues to be a source of low prestige, and migrants from such areas are considered to be less civilised or 'farm people' by the urban citizens. For the nationalist leaders originating from villages or rural towns, chieftaincy titles demonstrated that they originated from a real town, because only *obas* were in the position to give out such titles. In this context, Yoruba chieftaincy was associated with urbanity and civilisation, and not with tradition. Chieftaincy titles thus enabled leaders of rural-urban origin, such as Awolowo, to assert their status as urbanised people within western Nigeria.

Moreover, traditional authority had had a long association with state power. Especially during the years of Indirect Rule, the British had made access to the Nigerian state for their colonial subjects dependent on what they recognised as traditional status. In the process, they frequently – as happened in Remo – gave traditional rulers powers they had not enjoyed previously. Thus, traditional status had become a political asset in colonial Nigeria, and in many communities, political competition over access to structures of local control was fought over as a contest for traditional status. The fact that the northern Nigerian aristocracy was visibly in control of the powerful NPC defined the colonial association of traditional status and state power as a post-colonial reality. While the official functioning of the soon-to-be independent Nigerian state was free from the need for traditional status, the two were so closely associated in the popular imagination that elected politicians found it useful to claim and display it. Thus, in the national context chieftaincy titles gave AG leaders a status comparable to that of northern Nigerian leaders while

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[50] Oloko 1984: 23.

simultaneously challenging the (implicit) claim that the distinguished pre-colonial history of the North justified its political hegemony in the present.

Finally, increased contact with British colonial officers through political agitation as well as exposure to European and North American societies, contributed to the appreciation of the traditional by Awolowo and other Nigerian nationalists. During his stay in London, Awolowo is likely to have been confronted by racist attitudes, and colonial arrogance was a recurrent theme in the more radical print media of the time. It would not have been an unusual reaction for anyone confronted with such attitudes to stress their home society's distinctions – including chieftaincy. Moreover, conservative Western opinion at the time sympathised with traditional rulers as having grassroots legitimacy while it generally considered those politicians demanding Independence as unrepresentative. In this sense, chieftaincy titles provided African leaders with status and legitimacy on an international level – well expressed perhaps in Awolowo's decision to call his 1960 autobiography, published in Cambridge, United Kingdom, *Awo: The autobiography of* C h i e f *Obafemi Awolowo*.[51]

Thus, for Awolowo and other western Nigerian politicians, traditional authority was not only an important institution with implications for party politics and the nature of the post-independence state, but also a signifier of personal and group ambitions in the local, national and international context. While the party politicians reduced the official powers of traditional rulers, they expanded the cultural and symbolic meaning of traditional authority through accepting the idea that it signified authenticity and legitimate representation of a geographically defined group. As the British had found, this could be very useful: it allowed the state to not only ignore local malcontents, but to denounce them as illegitimate and unauthentic wherever the traditional rulers supported state policy.

The association of traditional authority with authenticity and legitimacy also made it possible to justify political opposition to the state as politics of resistance under the leadership of a traditional authority. However, as Awolowo's early concerns regarding the Yoruba nation illustrate, such movements were usually negotiated through very contemporary political concerns and interests. The failure of the AG, and its successor parties based in western Nigeria, to participate in federal government is closely associated with Yoruba political nationalism; the latter has particularly increased in importance since the annulled election of a Yoruba-supported president in 1993. Thus the integration of traditional and state authority has contributed to the terminology of Nigeria's political discourse, as it allows Nigerian politicians to recast the

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[51] Emphasis added.

complex relations between Nigerian interest groups as conflicts between authenticity, accountability and identity, on the one hand, and state bureaucracy, rationality and federal equity, on the other hand – often with fluid and contested patterns of ascription. Meanwhile, the entrenchment of the categories of tradition versus state rationality in the political discourse detracts from an investigation of the historicity of different forms of traditional authority themselves. This obscures the very modern concerns of traditional power in political projects that are revolving on politics of resistance or local and religious identity.

In a similar manner, the historicity of the African post-colonial state remains superficial and easily denounced as a Western import. While this may or may not explain the crises in Africa's so-called failed states, it contributes little to the understanding of its surviving and 'strong' ones. Today, traditional rulers in all states of the Nigerian federation – even those whose populations rebelled against the imposition of neo-tradition under colonial rule – have official responsibilities at least at the level of the local administration, and receive a state salary.[52] The successful integration of traditional and state politics in Nigeria suggests that traditional authority does not necessarily impose a threat on the state's political and administrative process,[53] but makes up an important part of the political discourse. Today, Nigeria's politics are shaped by the vigorous competition of different constituent groups over access to the country's resources. While this competition may potentially threaten political stability, the ascriptions of state rationality, on the one hand, and traditional legitimacy, on the other, are instrumentalised by all sides, thus constituting a shared discourse which reflects both elite assimilation and competition.

However, in so far as traditional authority claims legitimacy and authenticity, it remains subject to grassroots criticism and demands for the representation of local interests and communal aspirations. The very rootedness of traditional authority continues to make it a significant aspect of state power in Nigeria, and van Rouveroy van Nieuwaal's description of traditional rulers as mediators between the locality and the state makes an important point.[54] On the basis of the findings from this paper, I would even suggest that traditional authority actively contributes to the negotiation and configuration of local, regional and even wider political identities, thus shaping Africa's political landscape below and beyond the level of state politics.

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[52] *Cf.* Harneit-Sievers 1998.

[53] *Cf.* van Rouveroy van Nieuwaal 1999: 21-47.

[54] Van Rouveroy van Nieuwaal 1999c: 34f.

Chapter 2

Nanumba versus Konkomba:

An assessment of a troubled coexistence

by Peter Skalník

Introduction

In Northern Ghana, the Nanumba and the Konkomba, two co-residing ethnic groups in the Nanung region, have a long history of conflict, much of which I have sought to describe and analyse in my work over the years. The Nanung region is roughly coterminous with the Nanumba District of the Northern Region of Ghana and the Nanumba Traditional Area. The present paper is written at a moment when, following the conclusion of the Kumasi[1] Accord, I have a feeling for the first time that a general assessment of the troubled coexistence of the Nanumba and the Konkomba is possible.

As Africa enters the 21st century, so does anthropology try to live up to the challenges of the epoch. I am taking up the challenge even though I am well aware that scholarly objectivity is hardly an attainable ideal and might possibly be even quite a risky business for the writer. The exercise is nevertheless worthwhile because of the seriousness of the subject. The oft-mentioned instabilities of Africa caused by various factors, such as economic under-development and corruption of the leaders, are often explained by attaching facilely the labels of ethnic enmity and deeply ingrained, almost predestined, oppositions. This paper rejects labelling and calls for open analysis and discussion, which should enhance understanding in both the scholarly and applied sense. My analysis of the vicissitudes of the fifty years or so of coexistence of the Nanumba and the Konkomba in Nanung is meant as a scholarly contribution destined for Ghana specialists, but also, and more in general, as a contribution to the better understanding of what is behind such labels as ethnicity or culture. I believe that through the prism of the notorious

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[1] Kumasi, in western Ghana, is the seat of the highest Ashanti traditional authority, the Asantahene, and therefore a likely place to settle conflicts of chieftaincy.

'ethnic war' between the Nanumba and the Konkomba, anthropologists, politicians and lay persons will be able to see beyond superficialities. By wrong labelling and superficial quasi-analyses one only postpones the recognition of facts, and thereby also any possible resolution of conflicts. In the Nanung case, this has been happening for more than fifty years. It is time to look truth in the face.

In this endeavour we shall be guided by an insight which van Rouveroy van Nieuwaal has pointed out many times in his writings: the imported European-type state, and the values accompanying it, have contributed more to the 'ethnic' conflicts in Ghana and Africa in general, then the deemed and real differences among various types of original African political institutions.

Nanumba and Konkomba development of identity

Both the Nanumba and the Konkomba have gradually developed an awareness of their respective historical, cultural and ethnolinguistic identities. This development has taken place in view of three types of stimuli:

- the introduction of the modern state, first colonial, later independent;
- the internalisation of the experience of difference of Nanung vis-à-vis the outsiders within the Gold Coast/Ghana;
- the evaluation of the experience of coexistence of the Nanumba and the Konkomba in the area of Nanung.

The first factor, the introduction of the modern state, brought about common citizenship, the right to settle wherever desired within the state's boundaries, rule of law, and the state's monopoly of the use, or threat, of physical force. However, it also brought about the introduction of the policy of Indirect Rule, which somewhat simplistically classified the people in the north of the Gold Coast/Ghana into either those with chiefs or those that were acephalous. This dichotomous and (virtually) mutually exclusivist classifica-tion – first offered by the colonial administrators and later corroborated by anthropologists – has been internalised by both African intellectuals and the general public.

Through the introduction of the modern state people started relying on government for protection, while they were searching for better lives outside their native areas. They were however confronted with legal pluralism instead, which allowed for the rule of local law. The law of the polities labelled as chiefly or centralised was preferred to the law of those labelled 'acephalous' or headless, as they were generally more clear-cut and transparant. It meant that, regardless of a person's background, he was able to settle wherever he wished,

as long as he paid respect, allegiance and various material manifestations of these elements, to the indigenous landowners. A person's position as a citizen of the state was *de facto* secondary to his position as a tenant. Obviously the contrast between landowners and settlers must have contributed to the formation and strengthening of exclusive identities.

The modern colonial and post-colonial situation intensified social and economic life. During the precolonial and colonial periods the difference between a third local ethnic identity, namely the Dagbamba, and the Nanumba had been reduced to the coexistence of the related *naam* (i.e. chieftaincies, sing. *naa*). The linguistic difference had been negligible; indeed many Nanumba referred to themselves as Dagbamba, especially when facing a stranger, or when outside of their respective traditional areas. Modern conditions however introduced economic capitalism, and later conscious development policies. The stress on the development of one area inevitably created a feeling of frustration and deprivation of development in another area. The historical differences between the Ghanaian South and North thus became almost palpable realities. The relative development in Tamale and Yendi, i.e. in the Dagbong region, made the Nanumba aware of similarities between their own situation and that of the subjects of the Bimbilla Naa – not only in the traditional sense, but also in demanding their own administrative district (finally granted in 1984) with its own development budget. The non-involvement of the Dagbamba in the 1981 clash between the Nanumba and the Konkomba within the Nanumba district pushed the two identities even further apart.

Alternatively, it may be argued that the 1994 conflict between the 'acephalous' Konkomba, Bassare, Nchumuru and Nawuri, on the one hand, and the three northern chiefly polities of Dagbong, Nanung and Gonja, on the other, again contributed to the forging of a shared super-identity of the 'centralised' and certainly also of the 'stateless'. This is, for instance, reflected through various Konkomba statements[2] made during more recent years, in which the wish for the removal of the classification into 'acephalous' and 'chiefly' is clearly expressed. The Konkomba also vehemently strive for the creation of their own Paramountcy and its recognition by both the modern state of Ghana and the pre-existing Paramountcies.

The arrival of the Konkomba refugees into Nanung following the 1940 armed conflict between the Konkomba and the Dagbamba was considered a blessing by the Nanumba *naanima* (chiefs) as the authority of a *naa* was determined by the number of subjects. The Nanumba, both chiefs and commoners alike, regarded the Konkomba settlers as subservient in a number of traditional and modern matters. The Konkomba were for example made to

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[2] *Cf.* Skalník 1996.

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pay in kind the annual allegiance to the local village chief and conjointly to the Paramount Chief, the Bimbilla Naa. They moreover had to contribute in kind when they organised ritual funerals and when they presented their judicial cases to the court of the Nanumba chief.

The subservient position of the Konkomba originated from an original pact made between the leaders of the Konkomba and the Nanumba chiefs. The Konkomba, traditionally industrious farmers, more or less voluntarily submitted themselves to the Nanumba yam trade system. In practice this meant that the immediate producer – a Konkomba farmer – sold his produce to a Nanumba purchaser who in turn, using a mediator network, supplied the large markets in Kumasi and especially Accra with the renowned Nanumba yams. As a result the Islam-oriented Nanumba came to despise the Konkomba: they regarded them as primitive heathens because they accumulated their wealth in an unintelligent manner and used their wealth either for paying for endless marital court cases or for buying numerous expensive cloths which they did not use.

These ethnic stereotypes did not disappear through the forced coexistence of the Nanumba and the Konkomba, in fact they became stronger. Communication between the Nanumba and the Konkomba was fairly weak, each group having its own field of reference. The Nanumba orientation was focused on the modern state, which they considered a friend and protector of 'chiefly' polities; the Konkomba orientation was on its educated youth organised through the Konkomba Youth Association with educational and moral support of the Christian churches. To a lesser extent the Nanumba referred to Islamic clergy and to such bodies as National and Regional Houses of Chiefs.

There is hardly any evidence that the Konkomba looked for resources, of whatever kind, in the neighbouring Togo which also had a Konkomba population. The historical links between the Konkomba of Togo and the Konkomba of Ghana were used by some ideologues of conflict to argue the alienness of the Konkomba in Ghana, and the need of their expulsion in the same way that other foreigners were from time to time expelled from Ghana. Hence it was imperative for Ghanaian Konkomba to ignore their international connections and to stress their being Ghanian first and for all.

The Nanumba and Konkomba clashes: A lack of state involvement

In April and June 1981 a double clash took place between the Nanumba and the Konkomba?. The clashes had not been predicted by the state officials and the

state did not manage to prevent them until the first carnage was over. Whereas the district capital Bimbilla was saved by the army during the last minutes before certain massacre, earlier on Damanko and Wulensi, Dakpam and Chichagi had been left to their destiny.

A serious shortcoming of the Ghanaian government was that it never concluded its inquiry into the roots of the conflict. The Commission of Inquiry headed by Justice George Lamptey was not allowed to complete its work, and with the coming of the new regime on the eve of 1982, the blame for weakness was solely put on the previous civilian regime. Thus the self-assured arrogance of the new PNDC[3] regime underestimated the seriousness of the conflict and its deep-seated character. The Ghanaian public was satisfied with the media's and government's stereotypical labeling of the Nanumba as the 'feudal' exploiters of the Konkomba. The Nanumba in fact confirmed their hatred of the Konkomba and all the stereotypes which it contained. Instead of communication and search for reconciliation, a long period of intransigence and mutual accusations ensued. As a result, the problems that had brought about the 1981 clashes remained unaddressed and lay dormant for the next ten years. It was not until the next civilian regime arrived that unintentionally conditions were created for the next round of conflict. This time the whole of the Northern Region became involved and the ultimate dichotomy between the 'chiefly' and the 'acephalous' was created.

In 1994, the 'Guinea-Fowl War' took place. As it involved seven districts of the Northern Region of Ghana – as opposed to the relatively small area of Nanung during the 1981 clashes – this war cost many more lives, ruin of dwellings and destruction of other material wealth.

The conflict finally became a national issue which was recognised by the state as a threat to the integrity of Ghana. The establishment of the Permanent Negotiating Team headed by Nana Dr. Obiri Yeboah II, member of the Council of the State, was the result of the conclusion of a 'Peace Pact' on 9th June 1994. The team's task was to collect the arguments of all parties involved in the conflict and present parliament and President Rawlings with its recommendations on how to resolve the conflict once and for all. The team has not presented its findings as yet.

Meanwhile, another series of armed clashes has taken place. In March 1995, 109 victims were counted in Nanung, mostly Nanumba.

For the third time the Ghanaian state failed to react swiftly. The army only managed to save Bimbilla from destruction in the last minutes before the Konkomba onslaught. This was probably the last straw for the Ghanaian state and public opinion. This time the Konkomba were labelled as wild and

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[3] Provisional National Defence Council, led by Flt. Lt. J.J. Rawlings.

bellicose strangers and a permanent small army garrison was established at Bimbilla.

The Kumasi Accord

Eventually, it took a non-governmental initiative to find a way towards a permanent solution for the Nanumba/Konkomba conflict. Together with the Nairobi Peace Initiative (NPI), the Inter-NGO Consortium organised a meeting in a Kumasi hotel to discuss the conflict. Delegations from all parties involved in the conflict were invited to present their standpoint. Later, subsequent meetings took place at the headquarters of each individual party.

The process of peace consultations lasted for almost a year between May 1995 and April 1996. The main spirit behind the whole exercise was Professor Hizkias Assefa of the NPI, who acted as the Lead Facilitator/Mediator.[4] According to the participants, the procedure involved free and unhindered expression of opinion, grievance and demands in separate meetings with the organisers. Multilateral negotiation meetings were also organised and finally, after the communities involved discussed the draft document, the *Kumasi Accord on Peace and Reconciliation Between the Various Ethnic Groups in the Northern Region of Ghana*, henceforth to be called the Kumasi Accord, was signed by three representatives from each of the seven groups.

The document is divided into sections, each dealing with a segment of the conflict. The following reflects the main agreements reached between the Nanumba and the Konkomba.

Details of the Kumasi Accord

The Kumasi Accord recognises the Nanumba as the sole owners of the land in Nanung. At the same time it recognises the Konkomba as an important non-Nanumba community and 'brothers in development who seek the well-being of the district'. The Konkomba are subjected to the Nanung customary law and usage, which defines their status, rights, duties and obligations within tradition. It is essential that the main accusation of the Nanumba, i.e. that the Konkomba seek to take their land (both agricultural fields and territory in general) from them, was declared as invalid and untrue by the Accord. This in turn allowed the Nanumba to embrace the Konkomba as co-residents in the district, not as alien tenants without rights. However, within the realm of tradition, the Konkomba must obey the Nanumba customary regulations.

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[4] See Assefa 1996 for the NPI peace-making philosophy.

The Accord tactically does not comment upon the state legal system as it apparently considers both the Nanumba and the Konkomba equal before the law of the state. The Accord also tacitly admits that the state law is supreme in matters which can be referred to state courts of justice.

The Kumasi Accord agrees that the Konkomba may 'freely choose their headmen to be blessed by the Bimbilla Naa or his delegated divisional authority'. However, this must not be in conflict with the interests of the Bimbilla Naa and/or Princes of Nanung. Here, the Konkomba are from now onwards to have their own leaders incorporated in the Nanumba system. This is an important modification of the earlier rule according to which each alien group within Nanung may have one representative only. It is at the same time a retreat of the Konkomba from their previous position which called for the recognition of their own chiefs within the regional House of Chiefs system. Irrespective of whether a Konkomba Paramountcy emerges in the east of Dagbong, the Konkomba of Nanung may choose their 'headmen', i.e. not chiefs within the Nanung's (neo-) traditional political system. It is up to the Bimbilla Naa and other Nanumba chiefs to decide whether or not they extend their blessing to each particular headman.[5]

The Accord does not stipulate what happens if the Konkomba in Nanung choose a headman who is not acceptable to the Bimbilla Naa or his divisional chiefs.

The Kumasi Accord determines that representation at the administrative and political decision-making process will be by merit and according to the due process. It does not develop this idea which evidently involves the running of the Nanumba District. The apparent meaning of this stipulation is that the Konkomba, if qualified, should be eligible for administrative and political offices in the district and concerning the district.

Actually this stipulation was applied in its political part during the 1986 parliamentary elections. During these elections neither of the two competing Nanumba candidates were elected for the New Patriotic Party; instead a Konkomba candidate was. This reminded the Nanumba that they were not a majority in the district and that the candidates' political programme was more important than their ethnic identity.[6]

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[5] The Accord envisages that the Ya Naa of Dagbong confers 'Paramountcy on Dagomba, Konkomba, Bassare etc. chiefs', which suggests that there is a difference between the overall Paramountcy of Dagbong and the subservient 'Paramountcies' of divisional chiefs, Konkomba and Bassare included.

[6] It remains to be seen whether the new MP will be a true representative of his constituency. It is not easy to expect brotherly co-operation between the two former enemies so soon after open conflict. However, Konkomba employees of the Nanumba District Council are welcome in Bimbilla and they already work along with the Nanumba even though they still only represent a tiny minority.

Both parties declare that they will co-operate in order to reconcile 'in accordance with the tenets and practices of our traditions'. The restriction of movement is mentioned in particular. During a recent visit to Nanung (1997) I established that the Nanumba returned to their villages and that the Konkomba attended the Bimbilla and other markets in the district. Bimbilla however is still not inhabited by any Konkomba inhabitants. To overcome mistrust and fear is a question of time; if the Accord holds and its stipulations are fully implemented, the freedom of movement and settlement may be expected to be fully restored eventually.

The Accord states explicitly that Nanung land ownership is not the subject of any dispute between the Nanumba and the Konkomba because the latter accept the Bimbilla Naa as the Paramount Chief and allodial owner of all land in Nanung. Paramountcy as such is the prerogative of eligible Nanumba.

This stipulation is very important in the sense that the Konkomba of Nanung dropped the overall Konkomba claim that they were original inhabitants of Nanung before the followers of Ngmantambu, i.e. the Nanumba, arrived and conquered the territory which is Nanung today. The Accord also specifically allocates the Nanung Paramountcy to the eligibles who are the members of the two chiefly houses, i.e. Gbugmayili and Bangyili. The Konkomba have thus renounced their putative claim of Nanumba Paramountcy. Of one Konkomba leader in the 1981 clash it was believed by some Nanumba that he was planning to let have himself be installed as the Bimbilla Naa.

The Accord suggests that the Nanumba Traditional Council includes Konkomba representation. Its regulations on land use, land tenure and settlement patterns worked out with the assistance of ecological experts, in order to preserved the ecology for future generations. This is a very important passage of the Accord because it is directed against the overexploitation of land which so far, especially around larger settlements and in those portions of Nanung inhabited by larger numbers of the Konkomba, continued uncontrolled.

The Kumasi Accord mentions that customary pacification of gods residing in rivers, land or groves should be performed by the recognised 'land and fetish priests or *tindanima* of Nanung' only. The connotation of this section is that the Konkomba, who until then alleged that they used to be the original inhabitants of Nanung, recognise that they are not the recognised custodians of the earth cult and thus do not represent the autochtonous population which was Nawuri-speaking.

The Accord obliges both parties to refrain from 'the practice of ethnicising individual criminal behaviour'. This is a statement rejecting the idea of collective guilt. It is stiputaled that no Nanumba or Konkomba should be incriminated merely on the grounds of him being a member of a particular ethnic group.

The Accord proposes to create joint committees which would identify people in Nanung who 'foment and incite ethnic animosity and violence'; and to ensure that legal action is taken against them. Moreover, these committees would travel to troublesome areas where they would educate people about peaceful coexistence and help them to resolve their local conflicts. Thereby inter-communal violence could be prevented from erupting.[7]

The Konkomba delegation undertook to co-operate with the Nanumba delegation on the verification of the '365 self-styled chiefs and separatists', assessing their real status and, together with the Nanumba, seeking 'a solution that will be satisfactory to both sides'. This has been a bone of contention till now as the Bimbilla Naa and many other Nanumba see these people as ringleaders of the Konkomba in Nanung and instigators of violence. It is probably inevitable that these Konkomba leaders will be involved as headmen within the Nanumba traditional system as suggested by the Kumasi Accord. The Nanumba Youth Association and other opinion leaders in Nanung have already tried to make this point to the Bimbilla Naa and other members of the Nanumba Traditional Council.

Finally the Kumasi Accord decries the general build-up of arms and ammunition in the Northern Region and obliges the parties to the Accord to 'stem their [the weapons'] flow into the region'.

Conclusion

Although some criticism has been aired with regard to the Kumasi Accord,[8] the overall opinion has been quite positive, and on the whole both the Nanumba and the Konkomba consider it to be a success. This success stands in rather sharp contrast with the work of the state-appointed Permanent Negotiating Team which, after three years, never actually make any recommendations. The organisations of civil society, in this case the NGOs and the Nairobi Peace Initiative, came through where government failed. Although the Kumasi Accord is only the first step towards permanent peace, it should be praised for its boldness and originality. It gives the (neo-)traditional authorities new credibility in that they can be useful in democratic decision-making in Africa. Moreover, it indirectly reminds the modern state of its obligations towards its citizens.

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[7] As far as I could find out in the field, no such joint committees had thus far been formed. One can only admit that the more concrete a measure is, the more difficult its implementation.

[8] The Kumasi Accord, for instance, does not express a specific opinion with regard to the implementation of customary law, in particular litigation involving the Konkomba. In a personal interview with me, the Bimbilla Naa expressed bitterness, because the Konkomba have so far failed to bring before him the cases in which both Nanumba and Konkomba are involved.

When I visited Bimbilla in 1997 I had the privilege of an audience with Bimbilla Naa Abarika Attah[9] of the Bangyili House who, though pleased with the Kumasi Accord, was not satisfied with its implementation. He spoke with bitterness about cases of infringement of the Accord by the local Konkomba, and was not very optimistic about the future. Although the Rawlings civilian regime (1993-2000) came to an end without any further bloodshed, the new Kufuor Presidency has had to deal with new serious tensions. The election for the vacated MP seat in Bimbilla for instance (held by Rawlings' National Democratic Congress) attracted national attention due to its stakes: for the taking was one single seat, but enough to ensure majority for the Kufuor's ruling New Patriotic Party. The latter's candidate won by a margin of about 7000 votes, deemed to be the votes of the Konkomba. The point was that since national political life first arrived in Nanung in the 1950s, it had always been the candidate of the Nkrumahists who would win the MP's seat in the Nanumba constituency.

Tension has been intensified by the murder of Dagbong's *Ya Naa* (Paramount Chief or king), allegedly by the other chiefly faction which has been competing for the Naam of Dagbong since the 1950s.[10] As Kirby[11] rightly remarks 'the main issues of succession and chieftaincy have still not been dealt with'. The understanding between the chiefly and acephalous groups remains problematic. One can argue however that the actual difference between the two political types is not as great as some anthropologists have attempted to depict it. I am of the opinion that the Konkomba and the Nanumba in Nanung have actually been closer to each other that they have been to the Ghanaian state, which was treating them both with condescension. The Nanumba, in the illusion of alliance with the state, underestimated the seemingly weaker Konkomba. 'Tribal', ethnic hostilities flared for a while. Eventually, however, both parties in the conflict had to recognise their vested interests in (neo-)traditional institutions.[12] Using the same line of reasoning, Kirby has called for 'a less oppositional culture of interaction between chiefly and non-chiefly groups that can provide a better basis for peace-building'.[13] The fact that after years of conflict, the Konkomba and the Nanumba did reach some sort of compromise, corroborates this view.

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[9] Deceased in 2001.

[10] *Cf.* Skalník 1975; Staniland 1975.

[11] Kirby 2002: 4.

[12] Skalník 1989: 166.

[13] Kirby 2002: 2.

Chapter 3

Chieftaincy and privatisation in Anglophone Cameroon

by Piet Konings

Introduction

Privatisation has become a key instrument in the stabilisation and Structural Adjustment Programmes (SAPs) imposed on Africa by the Bretton Woods institutions, in other words the World Bank and the International Monetary Fund. It is an essential part of an overall strategy to open up African economies to market forces and promote private-sector development. Since public enterprises are regarded to have performed dismally, African governments are under considerable pressure from international donors to sell these enterprises to domestic and foreign private capital. Given their troubled economic condition and acute dependence on foreign financial flows, African governments have officially accepted privatisation so as not to forfeit the international support crucial for their political survival.

Several authors, however, have observed that the actual number of privatisations in Africa has remained modest.[1] They point to various technical and financial constraints as well as to socio-political factors to explain this curious finding. Interestingly, some factors reflect the same political concerns that led to the creation of so many public enterprises in the years after independence: an inability to attract foreign investment to politically and economically unstable African nations, the absence of a well-developed domestic entrepreneurial class, and the pursuit of patron-client relationships by African 'patrimonial' states.[2] Some authors also highlight the resistance to privatisation by civil society, in particular by professional bodies, student organisations and trade unions, since privatisation often involves the sale of

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[1] Grosh & Makandala 1994: 162-163; Mkandawire 1994: 196-200; Tangri 1999: 39-68.

[2] Sandbrook 1985: 13-41; Tangri 1999: 19-37.

public property to well-placed nationals or to foreign enterprises, and generally results in massive lay-offs of workers.[3]

While there is now an abundance in literature on the role of chieftaincy in African post-colonial states,[4] I have not yet come across any publication that examines the role of chieftaincy in current privatisation projects. Leading specialists, including van Rouveroy van Nieuwaal, appear to be more interested in the role of chieftaincy in *political* liberalisation than in *economic* liberalisation.

In the present paper I focus on the virulent opposition of Bakweri chiefs in Anglophone[5] Cameroon to the government announcement on 15 July 1994 of the privatisation of the Cameroon Development Corporation (CDC), one of the oldest and largest agro-industrial parastatals in the country. These chiefs claimed Bakweri ownership of CDC lands. They felt betrayed at not having previously been consulted about the CDC privatisation, and warned the Cameroonian government that the corporation could not be sold to non-natives without Bakweri consent and compensation.

This chapter intends to demonstrate that the current resistance of the Bakweri chiefs to CDC privatisation is part of their long-standing struggle for the return of the vast Bakweri lands that were expropriated during German colonial rule for the purpose of plantation agriculture and later, in 1946, leased by the British Trust Authority to the newly-created CDC. In this endeavour, they have always been assisted by the Bakweri 'modern' elite who, like their chiefs, felt aggrieved by the dramatic loss of their ancestral lands. Following the announcement of the privatisation of the CDC, the Bakweri chiefs have received support from other sectors of the 'traditional' and 'modern' elite in Anglophone Cameroon that are inclined to perceive the privatisation of the CDC as a renewed onslaught by the Francophone-dominated post-colonial state on Anglophone identity and on the colonial heritage. This alliance of the 'traditional' and 'modern' elites forms a mighty force to ensure that justice will prevail in the issue of the Bakweri lands. It has forced the government to postpone repeatedly the actual privatisation of the CDC and to enter, finally, into negotiations with the original landowners.

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[3] Olukoshi 1998: 35-37; Konings 2002: 327-329.

[4] *Cf.* Ray & van Rouveroy van Nieuwaal 1996a; van Rouveroy van Nieuwaal & van Dijk 1999.

[5] In post-colonial Cameroon, 'Anglophone' and 'Francophone' are not merely adjectives designating regional majorities of speakers of a particular Indo-European language imported from Europe in colonial times. These regional majorities have developed into the country's two main ethnic and administrative divisions, in a way comparable to Canada (anglophone and francophone) and Belgium (neerlandophone, francophone and germanophone). It is therefore that the two terms are capitalised in the present chapter and elsewhere in this book.

Bakweri chiefs and the retrieval of CDC lands

The Bakweri are a small ethnic group that live on the slopes of Mount Cameroon in the present Fako Division of the South West Province of Anglophone Cameroon.[6] Compared to the highly-centralised states in the North West Province of Anglophone Cameroon ruled by powerful, even sacred, chiefs,[7] the social organisation of the Bakweri, like that of most other ethnic groups in the South West Province, was segmentary. Chieftaincy tended to be a weak institution in the various autonomous Bakweri villages, and often a colonial creation. It was only during British indirect rule that chieftaincy became rooted in the local communities and that two Paramount Chiefs were installed to act as the district heads of Buea and Victoria.[8]

When Cameroon became a German protectorate in 1884, the Germans characterised the Bakweri as an aggressive and savage people who could well be expected to create problems for the opening up of the hinterland. In 1891, the Bakweri of Buea, under the leadership of the legendary chief Kuva Likenye (the only Bakweri chief who had established a measure of military control over some of the surrounding villages)[9] defeated a German expedition. It was not until 1895 that their area was truly 'pacified'. The fertile, volcanic soils around Mount Cameroon proved suitable for large-scale plantation agriculture. More than 100,000 hectares of Bakweri land were expropriated by the German colonial state and the original occupants were expelled and sent to restrictive native reserves.[10] German companies rushed to the area in a frenzied bid to get the best tracts of land.[11] In protest, the Bakweri showed little enthusiasm for work on the plantations, certainly not for the menial jobs there. They were no longer branded by the Germans as aggressive and savage, but rather as apathetic or even downright lazy – a stereotype that has persisted until today.[12] To solve the serious labour problem in the area, German planters were compelled to recruit labour from other areas in Cameroon. While initially most migrant workers returned to their region of origin after short spells of work on the estates, an increasing number gradually decided to settle in the area near the

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[6] *Cf.* Ardener 1956: 22-32, 1996: 45; Matute 1990: 8-31.

[7] *Cf.* Fisiy 1992: 188-210; 1995: 54-55; Konings 1999a: 189-190.

[8] Mbake 1975: 66-73; Geschiere 1993: 159-163; Takougang 1996: 17-19.

[9] Ardener 1996: 76-78.

[10] Konings 1993a: 37; Clarence-Smith 1993: 197.

[11] Epale 1985: 23-34.

[12] Courade 1982: 357-388.

plantations after retiring, thus aggravating the land problem.[13] This often resulted in extensive squatting by Bakweri and migrants alike on plantation lands which were only partly cultivated. Due to extreme overcrowding of the reserves, intruders frequently tried to ignore or resist eviction notices. The planters were sometimes obliged to surrender some of their land, while government purchased certain areas for the benefit of native communities.[14]

Following British occupation of the area during the World War I, the property of the German planters was confiscated and turned over to the Custodian of Enemy Property. When, shortly afterwards, the British took over the administration of the area,[15] the plantations were merged and a government department was formed to manage them. By 1922, however, the British Mandate Authority had already decided to dispose of them, as the administrative costs of maintenance were said to be excessive. It seriously considered returning the plantation lands to the original owners, but eventually abandoned the idea and instead concluded that it would be in the best interests of the territory and its inhabitants to return the plantations to the foreign private enterprises. According to Eyongetah and Brain,[16] one of the principal reasons for the British Mandate Authority handing over the plantations to foreign planters was:

> '…that it would have been impracticable to split the plantations into small plots for Cameroonian owners – since without capital backing, the buildings and machinery would fall into ruins. Moreover, it feared that the natives' lack of experience would mean that disease would be spreading among the crops and the cocoa plots would be destroyed.'

Consequently, in 1922, the estates were put up for auction with a restriction on bidding by ex-enemy nationals. But little interest was shown in the plantations and very few were sold because of divergent reasons: the considerable capital resources needed to put the plantations that had been neglected since British occupation back into operation; the problem of recruiting and controlling labour; the low commodity prices then prevailing on the world market; and

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[13] Konings 1993a: 58-63; 2001: 171-177.

[14] Epale 1985: 94-95.

[15] The erstwhile German 'Kamerun Protectorate' was partitioned after the World War I between the British and the French. They functioned first as 'mandates' under the League of Nations and later, after World War II, as 'trusts' under the United Nations. The southern part of the British Mandate/Trust Territory, which became the Southern Cameroons, was initially attached to the Eastern Provinces of Nigeria until 1954, when it achieved a quasi-regional status and a limited degree of self-government within the Federation of Nigeria. It attained full regional status in 1958. In a United Nations-organised plebiscite in 1961, the Southern Cameroons opted for reunification with Francophone Cameroon. See, for instance, Le Vine 1964, and Konings & Nyamnjoh 1997.

[16] Eyongetah & Brain 1974: 103.

uncertainty at the time about the future of the mandated territories.[17] Another auction was held in London in November 1924, this time without restrictions on German bids, and almost all the estates were bought by their former German owners.

At the beginning of the World War II, the German estates were expropriated again by the Custodian of Enemy Property, and after the war a decision had to be reached, once again, on how to dispose of the properties. Meanwhile, the young, educated Bakweri elite had founded several nationalist and ethnic associations such as the Cameroon Youth League (CYL) led by P.M. Kale and Dr. E.M.L. Endeley, and the Bakweri Improvement Union under the leadership of J.A. Kale and D.M.L. Endeley.[18] This made a considerable contribution towards a growing awareness of colonial injustices regarding the Anglophone population in general and the Bakweri in particular, notably the large-scale expropriation of Bakweri lands by the Germans and the subsequent lack of land among the Bakweri people. As soon as they got wind of the ongoing British deliberations about the future of the ex-German plantations, they approached their chiefs for common action in defence of Bakweri interests. This eventually led to the formation of the Bakweri Land Committee (BLC).[19] The BLC's original membership consisted of 48 men, including 25 chiefs. Members of the Buea chiefly family played a prominent role in the organisation. Paramount Chief G.M. Endeley was its president, his cousin, D.M.L. Endeley, was its secretary, and the latter's brother, E.M.L. Endeley, was one of the driving forces behind it.[20] On 8 June 1946, chief Endeley informed the Resident in Buea of the formation of the BLC. Its major objective, he stated, was 'to take charge of all the land in Victoria Division which virtually belongs to the natives'. It was his fervent wish that the committee would continue to exist 'as long as the Bakweri people live'.[21]

Upon its formation, the BLC sent several petitions to the British administration and, since Britain had assumed responsibility for the territory, the so-called Southern Cameroons, under United Nations Trusteeship after World War II, to the United Nations. On 24 August 1946 in a petition addressed to the Secretary of State for the Colonies, the BLC demanded that:

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[17] Epale 1985: 79-80.

[18] Ebune 1992: 101-138.

[19] *Cf.* Molua 1985.

[20] Matute 1990: 125-128.

[21] BNA, file Qf/e, 8 June 1946, letter by chief G.M. Endeley to the Resident in charge, Buea, ref. BLC/2/1, Bakweri Land Committee.

- the ex-enemy plantations be handed back to the people of the Southern Cameroons;
- part of the plantations originally belonging to the Bakweri people be handed over to the Bakweri administration; and
- the profits made on the plantations by the Custodian during the last five years be paid to the Native Administration concerned as compensation for the loss of land expropriated from the Bakweri by the German government.[22]

After considerable deliberations, however, the British Trusteeship Authority declined once again to surrender the former German plantation lands to their original owners. The British administration had little faith in the Bakweri peasantry's ability to raise agricultural output. They therefore advocated a continuation of plantation production in the Trust Territory, all the more so because substantial investments had already been made in, and considerable profits been derived from, this form of production by the ex-German planters. Nevertheless, it was more reluctant this time to hand over the plantations to foreign, private enterprise, being well aware that such a transfer would badly hurt the rising expectations of the Bakweri and would certainly lead to vehement opposition by the BLC. Instead, it announced in November 1946 that the former German plantation lands would be leased to a newly-established statutory corporation, the Cameroon Development Corporation (CDC). It hoped that the foundation of a public corporation, which would run the ex-German plantations for the benefit of the people of the territory, would reduce the expected Bakweri opposition.

The proposed public corporation, the CDC, eventually came about with the passage of two ordinances during a special session of the Nigerian Legislative Council from 9-12 December 1946. The first ordinance, the Ex-Enemy Lands (Cameroons) Ordinance no. 38 (1946), provided for the acquisition of the ex-German plantation lands which had been vested in the Custodian of Enemy Property for the duration of World War II. Under the terms of this ordinance, the Governor of Nigeria, upon acquisition of the lands, was to declare them 'native lands' and to hold them in trust for the common benefit of all the inhabitants of the territory. This final acknowledgement by the British administration that the ex-German plantation lands were Bakweri property, was subsequently endorsed in a special resolution on Bakweri lands adopted at the Sixth Meeting of the United Nations Trusteeship Council in March 1950. The second ordinance, the Cameroons Development Corporation Ordinance no. 39

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[22] BNA, file Qf/e, 24 August 1946, Petition of the Bakweri Land Committee to the Right Honourable S.A. Creech Jones MP, Secretary of State for the Colonies.

(1946), provided for the foundation of the proposed corporation, the CDC. All the lands acquired by the governor under the first ordinance would be leased to this corporation, whose main objective was to develop and manage the lands in the interests of the people of the trust territory.

Following the passing of these two ordinances, the Governor of Nigeria[23] immediately bought the plantation lands from the Custodian of Enemy Property for a sum of £850,000 and leased them to the newly-established corporation for a period of sixty years, renewable for an equivalent term at the corporation's discretion.[24] The CDC, in turn, was supposed to pay monthly ground rents to the treasury but they were never transmitted to the Bakweri.

Although the first ordinance recognised Bakweri title to the CDC lands, the Bakweri Land Committee was not satisfied. It complained bitterly that it was not even treated with the courtesy of being informed of what the government intended to do with these lands. It had lodged several petitions in 1946 and continued to demand the return of these lands to the Bakweri people.

Unwilling to give up the struggle, the BLC decided to send a representative to the United Nations which had granted it a hearing after the receipt of its petition. E.M.L. Endeley was chosen to present its case. This move, however, was hindered by the British administration: while it had given the impression of financing Endeley's trip to New York, it actually paid only his passage to Lagos, thus forcing Endeley to return to Cameroon.[25]

In reaction to the ongoing Bakweri protest, the British administration asked Bridges, a senior district officer in the Southern Cameroons who was well acquainted with Bakweri society,[26] to carry out an investigation into Bakweri land complaints and to recommend appropriate solutions. Bridges set off his investigation in 1948 on the assumption that 15 acres (6 hectares) of land would be more than adequate for each Bakweri household. He eventually concluded that a surrender of 25,000 acres of CDC land would satisfy Bakweri land requirements. He proposed that the land be used for the cultivation of food crops on a controlled tenancy basis and that the CDC should provide technical advice, social welfare services, and market facilities for approved crops.[27] His report was presented by the British administration to a visiting United Nations mission with a view to countering the points and arguments advanced by the

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[23] Of course, before the reunification of the British and French Cameroons (see footnote above), the colonial state of Nigeria was the statal authority in this case.

[24] Konings 1993a: 39.

[25] Epale 1985: 153.

[26] Bridges had served as a political officer in the area for a considerable period of time and had even submitted a detailed intelligence report on the Bakweri. See BNA, file Ag 10.

[27] Konings 1993b: 159.

BLC, which continued stressing that the Bakweri were not asking for an increase in land ownership but for a return of all their lands.

Until the departure of the British from the Trust Territory in 1961, neither the Bakweri land problem nor the settlement scheme proposed by the government had been resolved. The 31 December 1959 agreements that legalised the secession of the Southern Cameroons from the newly independent Republic of Nigeria, demanded that the CDC surrender to the government of Southern Cameroons all its rights, titles and interests under the previous leases and certificates of occupancy. The government of the Southern Cameroons, in turn, agreed to lease all those lands to the CDC for a period of ninety-nine years with effect from 1 January 1960. At the end of that period the CDC lands were to be transferred to the legitimate owners, the Bakweri.

After the reunification of the British and French Cameroons in 1961, the Bakweri land problem disappeared from the national agenda as the new political leaders increasingly turned their backs on 'regional and parochial issues' in their pursuit of national unity.[28] Moreover, the post-colonial state became more interested in the expansion of the agro-industrial sector for the necessary modernisation and increase of agricultural production than in a return of plantation lands to their legitimate owners.[29] In addition, post-colonial governments adopted, and even extended, the policy of the British Trusteeship Authority of co-opting some leading members of the Bakweri 'traditional' and 'modern' elites onto the Board of Directors and management of the CDC.

On 6 July 1974 the government promulgated Law no. 74-1 that laid down the rules for governing land tenure in Cameroon.[30] This law, which made a distinction between private and national lands, would later serve as the basis for rejecting prior Bakweri claims to the CDC lands on the grounds that these lands were national lands – a clear violation of the United Nations-sanctioned 1946 ordinances creating the CDC and the 1959 agreements between the CDC and the government of the Southern Cameroons.[31] This bold refutation of previous ordinances and agreements remained largely unchallenged because by this time the autocratic rule of President Ahmadou Ahidjo had silenced all organisations that were not under government control. The BLC died a natural death, although occasional memoranda were still presented to the government by its most dedicated members.

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[28] Konings & Nyamnjoh 1997: 210.

[29] Konings 1993a: 17-34.

[30] Fisiy 1992: 34-38.

[31] According to the Bakweri, the 1974 Land Law (Ordinance No. 74-1 of 6 july 1974 to establish rules governing land tenure) does ground Bakweri rights in positive law in its classification of all land tenured into the *Grundbuch* (the case with all CDC lands) as 'land … subject to the right of private property'. See BLCC, 12 October 2000. For the 1974 land law, see Republic of Cameroon 1981.

To the Bakweri however, the land issue continued to be a matter of priority, especially since the government made full use of the powers it had been granted by the 1974 land law to confiscate increasing amounts of native land in the name of 'the imperative interest and defence of the economic policies of the nation'.[32] Exactly 20 years later, when it announced the privatisation of the CDC, the government would learn that the BLC, like the legendary phoenix, was merely lying dormant before rising again at the appropriate moment.

Bakweri chiefs and the privatisation of the CDC

Privatisation has been put forward by international donors as a magical formula capable of curing the ailing Cameroonian economy. At the start of the economic crisis in the mid 1980s,[33] there were some 175 public enterprises in the country, employing around 80,000 people.[34] These enterprises served both economic and political ends. Besides being avenues to economic modernisation and growth, they allowed the government to engage in prebendal politics and to cement a 'hegemonic alliance', incorporating the country's emerging elite into the state apparatus.[35] A 'patrimonial logic' existed in many African post-colonial states,[36] but was particularly strong in Cameroon, a country with stark ethnic and regional cleavages.[37] It is beyond doubt that this logic contributed to the poor performance of most public and para-public enterprises.[38] Prior to the economic crisis, the Cameroonian government was subsidising parastatal-sector losses to the tune of some 150 billion CFA francs a year. Though most of the oil revenues were initially kept in secret bank accounts abroad, their primary function soon became the covering of parastatal deficits.

From the very start of the economic crisis, the World Bank made parastatal reform the cornerstone of its lending conditions. Given the growing budgetary constraints, the Biya government officially agreed to co-operate. In May 1987, it appointed a national commission to recommend reform measures for the parastatal sector. One year later, the commission reported back to the president, having determined which institutions should be liquidated, sold to the private sector or revived. However, few public enterprises were effectively privatised,

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[32] Republic of Cameroon 1981: 81.

[33] For the causes and effects of this crisis, see Konings 1996a: 252-255.

[34] Tedga 1990: 125-144; van de Walle 1994: 152.

[35] Bayart 1979: 52-53.

[36] Chabal & Daloz 1999: 3-16.

[37] Nyamnjoh 1999: 105-111; Gabriel 1999: 175-180.

[38] Tedga 1990: 162-163; van de Walle 1994: 155-156.

only six between 1988 and 1994.[39] Van de Walle offered the following reasons for the slow pace of privatisation:

> 'Although the government is proceeding with care on the politically sensitive issue of lay-offs, this does not appear to be the major constraint on rapid implementation of the reform agenda. Rather, intra-elite competition and haggling over the rents freed up by privatisation, along with the lack of technical expertise within the state, served to slow down the process of institutional reform.'[40]

Dissatisfied with the government's performance, the World Bank threatened in early 1994 to suspend a $75 million credit to Cameroon if the government did not accelerate the process of privatisation. Subsequently, on 15 July of that year, the government announced the privatisation of 15 large public enterprises. Among these were five agro-industrial parastatals, including the CDC. For various reasons,[41] the announced privatisation of the CDC incited commotion in the country, particularly in the Anglophone region.

The CDC is the most important agro-industrial parastatal in the country. It is one of the few agro-industrial enterprises in the world that specialises in a variety of crops – the four major ones being rubber, palm oil, tea and bananas. With the assistance of several international financial institutions, it expanded its cultivation area from 20,000 to 42,000 hectares after Independence and reunification.[42] It is the second largest employer in Cameroon, surpassed only by the government, and formerly employed 25,000 workers. At present, it still employs about 12,500 permanent workers and a few thousand seasonal and casual workers. The CDC, in fact, has been of great significance to development in the Anglophone territory. Students of plantation agriculture, such as Beckford,[43] have blamed the persistent poverty and underdevelopment of Third-World economies on this mode of production. In the case of the CDC, however, this thesis finds little support. The corporation has been a major instrument of modernisation and is largely credited with whatever socio-economic development has occurred in Anglophone Cameroon. It has created employment for many men and women, has constructed numerous roads, supplied water and electricity, built and staffed schools, awarded a substantial number of scholarships, provided medical care for a large proportion of the local population, and has stimulated the supply of goods and services to itself and its workers. It has played a key role in the commercialisation and

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[39] Mama 1996: 175.

[40] Van de Walle 1994: 162.

[41] Konings 1996c: 211-212.

[42] Konings 1993a: 40-48.

[43] Beckford 1972: 215.

modernisation of peasant production, as an intermediary in marketing the Bakweri peasantry's banana production in the 1950s and in the establishment of regional smallholders' oil palm and rubber schemes since the early 1960s.[44] Of late, it has handed over a substantial part of its oil palm plantations to local contractors. As a result, the CDC has been called the economic lifeline of Anglophone Cameroon.

Government announcement of the privatisation of this important agro-industrial enterprise was all the more shocking to the Anglophone population since the CDC:

- had been one of the rare public enterprises in Cameroon to perform relatively well until the economic crisis;
- had been able to survive this crisis mainly because the management and workers had agreed to adopt a series of drastic adjustment measures aimed at cost reduction and productivity increase; and
- was on the way to economic recovery following the 50 per cent devaluation of the CFA franc in early 1994.[45]

That the government singled out the CDC for privatisation irrespective of its bright prospects for recovery and its immense contribution to regional development, was regarded by the Anglophone community as provocation and can only be fully grasped with reference to what has come to be called the 'Anglophone problem'.[46] The essence of this problem is that the Anglophone minority feels marginalised, exploited and assimilated by the Francophone-dominated state and even by the Francophone population as a whole in the aftermath of reunification in 1961. It was not until the political liberalisation process of the early 1990s that the Anglophones started openly organising in various associations and pressure groups to protest against their alleged subordinate position and to put forward claims for self-determination and autonomy. These newly-created Anglophone movements were inclined to perceive the privatisation of the CDC as a further step in the dismantling of the Anglophone colonial legacy by the Francophone-dominated state. They were therefore determined to form a united front to maintain control over the CDC, the pride and economic lifeline of Anglophone Cameroon, and forestall its sale to Francophone or French interests. Several protest marches were organised in the region, demanding the government revoke its decision forthwith.[47]

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[44] Ardener 1958: 10-25; Konings 1993b: 221-236.

[45] Konings 1995: 533-534.

[46] Konings 1996b: 25; Konings & Nyamnjoh 1997: 207.

[47] Konings 1996c: 212.

Not surprisingly, the most vehement opposition in Anglophone Cameroon came from the landowners. As soon as the privatisation of the CDC was announced, the Bakweri chiefs and elite mobilised to revive the moribund BLC and to adopt a common position with regard to the privatisation, which had been planned without the slightest consideration of the Bakweri land problem. Soon thereafter the BLC was renamed the Bakweri Land Claim Committee (BLCC).

On 23 July 1994, the Bakweri chiefs and elite met in Buea under the chairmanship of Paramount Chief S.M.L. Endeley of Buea and Paramount Chief F.B.M. Williams of Victoria (Limbe) to discuss the implications of the government decision. They agreed to strongly oppose the announced privatisation on the grounds that the CDC lands were Bakweri property and could therefore not be sold to non-natives without Bakweri consent. After lengthy and passionate discussions, an *ad-hoc* committee was elected by acclamation to assist the BLCC in preparing a detailed memorandum on the Bakweri position to be presented to the government and all other interested parties.[48]

On 4 August 1994, over 500 Bakweri chiefs, notables and elite gathered at the Buea Youth Cultural and Animation Centre and approved the memorandum drawn up by the *ad-hoc* committee. In the memorandum, the Bakweri agreed that, should privatisation take place at all, it had to be on the basis of:

> '…a creative and enlightened partnership between the owners of the land on which the corporation operates and the providers of finance capital without which it would not be possible to run a modern, technologically sophisticated agro-industrial complex like the CDC'.[49]

They insisted that any privatisation plan should be based on:

> '…terms which recognise the ownership of land as a distinct variable which, together with the cash, make plantation agriculture possible; consequently, landowners deserve ground rent compensation in much the same way as the CDC was liable to pay ground rents for the use of the land'.[50]

The memorandum was later presented to the Provincial Governor for onward transmission to President Biya. At the end of this historic meeting, the eminent Bakweri scholar, Professor Ndiva Kofele-Kale, secretary of the *ad-hoc* committee, was designated counsel for the Bakweri people with instructions to present their case before the United Nations and other international forums.

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[48] See *Fako International* 1995: 14-16.

[49] Memorandum of the Bakweri People on the Presidential Decree to Privatise or Sell the Cameroon Development Corporation, Buea, 27 July 1994.

[50] *Ibid*.

The Bakweri case was strongly supported by Anglophone movements. A powerfully-worded petition to the head of state, co-signed by the Anglophone movements and the Bakweri chiefs, reiterated that the Bakweri had never relinquished ownership of the CDC lands and that the corporation could not be sold without Bakweri consent. It pointed out that the Bakweri had never been paid royalties for the use of their lands since the creation of the CDC in 1946. It also stressed that the Bakweri were not inclined to renew the 60-year CDC lease, reclaiming the CDC lands after its expiry in 2007.[51]

Concerned with the mounting anger in the Anglophone region in general and the Bakweri community in particular, the Biya government decided to send a delegation of high-ranking Anglophone allies to the South West Province to appease the population. The delegation was led by Chief Ephraim Inoni, Deputy Secretary General at the Presidency and chief of Bakingili, a village located in the territory of a Bakweri subgroup. The delegation met a number of Bakweri representatives in Buea to discuss the land problem. Though speaking on behalf of the government, Chief Inoni appealed to the Bakweri representatives not to forget that he was one of them. He acknowledged that there should have been prior contact between the government and the Bakweri before the announcement of the corporation's privatisation, but he denied the widespread rumours in Anglophone Cameroon that the French and some high-ranking Francophones had masterminded the whole operation. While admitting that the financial situation of the corporation had improved after the 1994 devaluation of the CFA Franc, he argued that privatisation would enable the corporation to obtain new capital for necessary investments in production and processing. The Bakweri Paramount Chief, S.M.L. Endeley,[52] who had always been a staunch supporter of the regime until the Bakweri land issue arose, then took the floor. Amid thunderous applause he declared that he himself, as the custodian of the ancestral lands, and the Bakweri population as a whole, were against the privatisation of the CDC. He requested Chief Inoni to report this to President Biya:

> 'We are in a country where we like to cheat ourselves, where government hands decisions through dictatorship (...) We say no, no [to privatisation], go and tell Mr Biya that he cannot afford to go down in history as the man who sold the CDC.'[53]

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[51] Konings 1996c: 213.

[52] Chief S.M.L. Endeley is a brother of Dr. E.M.L. Endeley and Mr D.M.L. Endeley who were leading figures in the BLC. He is a retired Chief Justice who acted, among others, as chairman of the ruling party, the Cameroon People's Democratic Movement (CPDM), in Fako Division and chairman of the CDC before being appointed Paramount Chief of Buea in 1992. For his career, see, for instance, Gwellem 1985: 113-114.

[53] Cited in *Fako International* 1995: 16.

After the delegation returned to Yaounde, the government did not undertake any further action with regard to the CDC privatisation. This apparent victory for Anglophone resistance turned out to be short-lived however. In 1997, rumours of an imminent privatisation of the CDC became more and more persistent. In compliance with the accord that had been agreed with the IMF and the World Bank within the framework of the Enhanced Structural Adjustment Programme (ESAP) in 1997, the privatisation of the CDC was soon expected to be launched. That the government, under severe pressure from the Bretton Woods institutions, was preparing the ground for the privatisation of the CDC could be concluded from the speeches and interviews of leading government and CDC officials at the opening ceremony of the corporation's golden-jubilee celebration in Bota-Victoria on 1 December 1997. In his speech on that occasion, the newly appointed Prime Minister Peter Mafany Musonge, a Bakwerian himself who had been the CDC's general manager from 1988 to 1997, said:

> 'Since the traditional international funding agencies no longer finance corporations like CDC, the establishment should be prepared (…) to foster new business relationships to raise new money while the state plays the role of facilitator (…). Traditional rulers within CDC's areas of operation, workers and other Cameroonians must understand perfectly well and make sure that peace reigns for conclusive investment.'[54]

The CDC's chairman, Mbile, added that:

> '…privatisation should not scare us as we are confident that government will protect the interests of the Cameroonian people, the original landowners, the workers, new investors and the state itself'.[55]

Moreover, the CDC deputy general manager, Mr Richard Grey, then revealed that the highly-reputable international consultancy firm Coopers & Lybrand had already been selected by the World Bank and the government to carry out a study into the privatisation of the CDC that would be completed by 30 June 1998. The Bakweri chiefs who attended the ceremony, notably Chief S.M.L. Endeley of Buea, were frustrated by these statements and revelations and condemned any future privatisation.[56]

The CDC was finally put up for sale in January 1999. Few protests were heard from the now almost dormant Anglophone movements.[57] Their leadership's only activity was to make a strongly-worded statement on 10 April

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[54] *The Post,* 5 December 1997, pp. 1-2.

[55] *Ibid.*

[56] *Ibid.*

[57] Konings & Nyamnjoh 2000: 29-30.

1999 warning prospective CDC buyers to desist from investing in the purchase of the CDC. Bakweri chiefs and elite, however, quickly rallied again. In a meeting with southwestern members of parliament and government, they denounced the privatisation of the CDC saying that the latter's acceptance of the sale of the CDC 'was tantamount to a betrayal of their people'.[58] The BLCC officially wrote to President Biya on behalf of the Bakweri people on 3 March 1999 requesting that it be included in the privatisation negotiations and that compensation be paid for the use of Bakweri lands. When rumours spread that various multinational companies like Fruitiers/Dole, Chiquita and Del Monte were already negotiating with individual government officials about the purchase of the whole or parts of the CDC at throwaway prices, the Bakweri in the diaspora once again addressed the head of state on 1 October 1999 in support of the BLCC position.[59]

Since no reply was forthcoming from the presidency, the BLCC, strongly supported by regional organisations of chiefs and elite like the South West Chiefs' Conference (SWECC) and the South West Elite Association (SWELA),[60] decided to raise national and international awareness by starting a high-profile public relations campaign through the writing of open letters, petitions and newspaper articles and the use of the Internet. For this purpose, the BLCC was reconstituted and an interim bureau of the BLCC was established in the United States.

During a BLCC general assembly meeting on 15 April 2000, it was decided that only chiefs could occupy the positions of president and vice-president (the four vice-presidents representing each of the subdivisions in the Fako Division of the South West Province). Other traditional rulers would constitute the Chiefs' Advisory Council of the Board of Trustees. The 'modern' elite would occupy positions in the secretariat and act as technical advisors. This division of labour was meant to demonstrate that the chiefs were the leaders of the Bakweri communities and best capable of mobilising and sensitising their subjects, while the 'modern' elite had the bureaucratic and technical capabilities to operate the secretariat and provide the organisation with any necessary advice.

In May 2000, the BLCC interim bureau was set up in the United States to establish an effective, active and visible BLCC presence within the Bakweri and Cameroonian diaspora community, and to open permanent lines of communication with all potential buyers of the CDC, donor agencies, NGOs and foreign governments directly or indirectly involved in the sale of the CDC.

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[58] Isaha'a Boh, Cameroon, Bulletin no. 405.

[59] See: Letter from the Bakweri around the World to President Paul Biya of Cameroon, 1 October 1999.

[60] For these organisations, see Nyamnjoh & Rowlands 1998: 328-330; Eyoh 1998: 338-339.

The BLCC-USA became very vocal, creating its own website on the Internet.[61] Its first action was to send a memorandum to the managing director of the IMF, Köhler, on 16 June 2000. In this memorandum, it warned him about the growing unrest among the Bakweri and threatened legal action should the privatisation of the CDC be pursued without BLCC involvement:

> 'As the current impasse in Zimbabwe and Kenya demonstrates, land expropriated from African natives by European colonialists a century ago is the source of much contemporary unrest and instability. All Cameroonians of good will bear witness that the Bakweri people have over the years opted for a peaceful resolution of the CDC Bakweri land problem. However, should the privatisation of the CDC go ahead without the imput of the Bakweri on whose land most of the corporation's agro-industrial activities are located, we preserve the right to seek legal redress against the government of the Republic of Cameroon, the IMF, the World Bank as well as all lessees who derive title to the land by whatever means, in any country of the world where such bodies are located'.[62]

This was followed by massive pro-BLCC demonstrations in New York and Washington during the September 2000 United Nations Millennium Summit, which was attended by a huge Cameroonian delegation led by President Paul Biya. As a result of these demonstrations and a flurry of other pro-BLCC activities on this occasion, the embarrassed Cameroonian delegation, along with leading donor agencies, were able to gauge the high levels of support for the BLCC within the entire Cameroonian diaspora community in the United States.

In a press release on 5 August 2000, the BLCC revealed that it was going to take its campaign for land restitution and compensation 'a notch higher' by seeking consultative status within the United Nations' Economic and Social Council (ECOSOC). [63] It believed that the granting of consultative status would provide it with a global platform to proclaim its struggle for land rights,

> 'bringing it into contact with other NGOs which claim to represent the interests of indigenous groups from around the world as well as with sympathetic United Nations members who have championed the cause of dispossessed people on the floor of the General Assembly and at the numerous ECOSOC meetings over the years'.[64]

Soon thereafter, on 21 August 2000, the Counsel of the BLCC, Professor Ndiva Kofele-Kale, was invited by the United Nations to make a representation on the

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[61] Website: Bakwerilands, http://www.bakwerilands.org. Most of the documents quoted in this article can be found on this website.

[62] Letter from Dr. Lyombe Eko, Executive Director of BLCC-USA, to Mr Horst Köhler, Managing Director of the IMF, 16 June 2000.

[63] Press Release no. blc/us/05/08/00, The BLCC to seek consultative status at the United Nations Economic and Social Council (ECOSOC).

[64] *Ibid*.

Bakweri lands issue to the United Nations Human Rights Commission in Geneva.

Following the government's renewed call for tenders for the sale of the CDC in September 2000, the BLCC cautioned prospective buyers in an open letter by saying that:

> '…it is our duty to advise you to think twice before you commit the resources of your shareholders in a venture that is still mired in controversy and whose promised financial and economic rewards may prove to be illusory in the long run.'[65]

During the late 1990s, it had become increasingly evident that the BLCC was finding it hard to defend Bakweri interests at the national level. This had been particularly the case when in 1996, 'their own son', Peter Mafany Musonge, had been appointed as prime minister. Without doubt, one of the main reasons for his appointment to this position was that President Biya regarded him, being an ex-CDC general manager and a Bakweri, as the most suitable candidate to handle the delicate issue of CDC privatisation.

The appointment of Musonge had initially raised high expectations among the Bakweri. They were convinced that 'their son' would pay particular attention to the land question and take Bakweri interests into consideration during the eventual sale of the CDC. Their expectations appeared to have had solid foundations because, in his former capacity as CDC general manager, Musonge had publicly declared during a radio interview in 1994 that any privatisation of the CDC should be 'not only economically effective but also socially equitable'.[66] He expressed his belief that indigenous landowners, workers and investors would be directly involved in this endeavour. Once appointed prime minister however, he came under immense pressure from the IMF and his superior, Paul Biya, to champion the economic advantages of CDC privatisation and to forget about the payment of any compensation to Bakweri landowners. Unable to convince his ethnic group to give up its claim to what could possibly amount to tens of billions of CFA francs after more than fifty years of CDC existence, Musonge was eventually reported to have resorted to intimidation by means of the Buea Subprefect and the Fako Prefect.

In March 2000, the Buea Subprefect, Mr Aboubakar Njikam, thus banned a BLCC general assembly meeting for which he had previously given his approval. When he learnt that compensation was high on the agenda, the prime minister appears to have quickly ordered a halt to the meeting, but he failed to intimidate the committee, which eventually met on 15 April 2000. In June 2000, the Fako Prefect, Jean-Robert Mengue Meka, accused it of being an

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[65] BLCC, Open Letter to All Prospective Buyers of CDC Plantations, Buea, 12 October 2000.

[66] See *Cameroon Post,* 26 July–2 August 1994, pp. 12-13.

illegal organisation and the committee was ordered to stop its activities. Two of the newly elected BLCC executives, chief Peter Moky Efange (President) and Mola Njoh Litumbe (Secretary-General), responded by telling Mengue Meka that he was acting illegally himself by claiming that the BLCC, which had been founded as early as 1946, was an unlawful association. The prefect was reminded that the BLCC was a duly incorporated organisation that had been registered in accordance with the laws of the country and had been received by the South West Governor in 1994 and could thus not now have its legality questioned.[67]

As a result of the high profile BLCC publicity both at home and abroad, the prime minister could no longer ignore the committee and its demands. He invited it to a working session in his Yaounde office and on 4 October 2000, the BLCC leadership met with Musonge, Chief Ephraim Inoni, the Bakweri Deputy General Secretary at the Presidency and a number of other government officials. During this meeting Musonge conceded that the issues of land ownership and the payment of ground rents were legitimate demands but urged that these demands be pursued separately from the issue of privatisation. He argued that a hostile environment was being created by the BLCC protest campaign, which was scaring off potential investors.[68]

The BLCC delegation agreed with the prime minister that privatisation would be successful only in a peaceful atmosphere, but it pointed out that the Bakweri protest actions, such as the United Nations Millennium Summit demonstrations, stemmed from the lack of government response to their pleas and representations. It stressed that Bakweri protest actions would inevitably continue until 'justice, equity, and legitimate rights of the Bakweri were met'. The delegation then reiterated the main BLCC demands:[69]

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- that the government recognise that the lands occupied by the CDC were private property as defined by Part II of the 1974 Land Law and that the Bakweri were the legitimate owners of these lands;
- that the Bakweri be fully involved in the CDC privatisation negotiations to ensure that their interests were effectively protected;

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[67] BLCC, 'The BLCC refuses to stand down in the face of threats from Fako administrative authorities', Buea, 15 June 2000.

[68] Through such manoeuvres, Musonge succeeded, albeit temporarily, to divide the BLCC into two camps: on the one hand, a majority faction led by its president, Chief Efange, which stood its ground, and, on the other, a minority faction led by the Bakweri Paramount Chief, Sam Endeley, which was more sensitive to Musonge's arguments. The latter accused the new BLCC executive of being too 'radical' and opposed its ongoing Internet campaign on the CDC's privatisation compensation.

[69] Report of the Meeting of Prime Minister Mafany Musonge with BLCC Delegation, Yaounde, 4 October 2000.

- that ground rents be paid to a Bakweri land trust fund; and
- that the Bakweri, acting jointly or individually be allocated a specific percentage of shares in each of the privatised sectors of the corporation.

While the BLCC was trying to embark on a dialogue with local and national authorities, it continued to caution potential CDC buyers and the Bretton Woods institutions against any privatisation of the corporation without the involvement of the landowners. The latter, in turn, pressurised the Cameroonian government to settle the privatisation imbroglio. In the wake of the reluctance of foreign companies to invest in the CDC primarily caused by the unresolved land issue, the government was compelled to reissue the CDC bid for tenders first on 1 January 2001 and then again on 1 January 2002.

At the moment the Cameroonian government appears to have accepted a privatisation construction that closely resembles the original proposal launched by Musonge when he was still CDC general manager, involving the land-owners, the workers and the investors. It intends to sell a majority stake in each CDC sector (rubber, oil palm, tea and bananas) to foreign companies. However, CDC lands will not be sold but offered on a long-lease basis to soothe the Bakweri landowners who fear loss of their lands in the process. Other shares will be sold to the workers and Cameroonian interests, with the state maintaining a 10 per cent stake in each sector.[70]

Conclusion

In this chapter I have highlighted the powerful resistance of Bakweri chiefs to the Cameroonian government announcement of the privatisation of the CDC. It would be wrong to conclude that Bakweri chiefs are against privatisation *per se*. In fact, in their 1994 petition to the head of state they clearly stated that:

> 'In principle, the Bakweri and other Anglophones have no quarrel with the idea of privatisation or sale of companies in which government enjoys majority control since we fully understand the logic behind such an exercise, i.e. the relocation of the management of inefficiently managed parastatals in more efficient hands. We recognise that government, as the controlling shareholder in these companies, has an obligation to the majority shareholders and the Cameroonian taxpayer to ensure that their tax revenues are not wasted in failing parastatals'.[71]

I have argued that the strong opposition of Bakweri chiefs to the privatisation of the CDC derived from the following factors:

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[70] See Privatisation of the Cameroon Development Corporation (CDC): International Call for Tenders, Yaounde: Ministry of Economy and Finance, 1 January 2001.

[71] Cited in *Fako International*, 1995, 1: 14.

- They regarded the CDC privatisation as a provocation to the Anglophone community. They pointed out that the CDC had the reputation of being one of the rare parastatals in Cameroon that has both played a significant role in regional development and performed relatively well until the economic crisis.

- They claimed ownership of the CDC lands. Since the 1940s they have been engaged in a fierce and protracted struggle for the retrieval of the Bakweri lands that were expropriated by the Germans for plantation agriculture. They therefore bitterly complained that they, as the custodians of the Bakweri lands, were never consulted prior to the announcement of the corporation's privatisation and they demanded compensation for any sale or lease of CDC lands to multinational companies.

The oppositional role of Bakweri chiefs to the establishment and privatisation of the CDC has important implications for current debates on their position in the local society and in the national arena. Geschiere has pointed out two reasons for the integration of chieftaincy, which was more or less a colonial creation, into Bakweri society: (1) chieftaincy was strengthened during British indirect rule and, even more significantly, (2) it became a potential rallying point against the 'strangers' who invaded the Bakweri territory in large numbers, attracted by the plantation economy created by the Germans.[72] My study suggests that (3) the persistent struggle of the Bakweri chiefs since the 1940s for justice with regard to the expropriated Bakweri lands may have been an even more important factor for rooting chieftaincy in local society. While chiefs in Anglophone Cameroon have been officially transformed into 'auxiliaries' of the state in the aftermath of independence and reunification and most chiefs maintain close links with the ruling party,[73] my case study proves that Bakweri chiefs cannot be characterised as mere puppets of the regime.[74] As in other parts of Africa,[75] large-scale state expropriation of the local community's land has been a permanent source of conflict between the state and Bakweri chiefs.

In their long-standing struggle to retrieve ancestral lands and in vehement opposition to the current privatisation of the CDC, the Bakweri chiefs have been continuously assisted by the whole Bakweri elite at home and in the

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[72] Geschiere 1993: 165-166

[73] Geschiere 1993: 166-169; Fisiy 1995: 57-59.

[74] Van Rouveroy van Nieuwaal 1996: 39.

[75] Van Rouveroy van Nieuwaal 1998: 80-87.

diaspora, irrespective of their political affiliation. This elite has placed its bureaucratic and technical competence at the disposal of the BLCC, the legitimate representative of the Bakweri people in seeking the restoration of their ancestral land rights. It makes use of modern communication lines, including the Internet, to caution potential investors and the Bretton Woods institutions against any privatisation without Bakweri consent and compensation. While this has had the effect of scaring off foreign capital, the government has been unable to control this form of 'modern' resistance.

The Bakweri chiefs have also been supported by the newly-created Anglophone associations that are inclined to perceive the Bakweri land issue as part of their struggle to redress the marginalisation and subordination of their region within the Francophone-dominated state.

The combined force of Bakweri and Anglophone 'traditional' and 'modern' elites has compelled the government to repeatedly postpone the actual privatisation of the CDC and to take Bakweri interests into consideration in a new privatisation construction.

Chapter 4

The vicissitudes of twentieth-century Mankon *fons* in Cameroon's changing social order

by Nicodemus Fru Awasom

Introduction

The present article examines the vacillating fortunes of twentieth-century Mankon *fons* (kings) in Cameroon vis-à-vis the colonial and post-colonial state.[1] It does this from the perspective of power relations, legitimacy and legality. The traditional rulers of Mankon derive their legitimacy and authority from pre-colonial roots, while the modern nation state is a creation, and successor, of the imposed colonial state. Van Rouveroy van Nieuwaal has examined the triple facets of the hybrid role of African chieftaincy and the judicial poverty or void to which the institution is exposed. He has perceived the evolution of power relations between African chiefs and the modern state as 'a zero-sum game', in that the expansion of state power mostly takes place at the expense of that of the chiefs. This conclusion implies the progressive erosion of traditional authority, their only condition of survival being their ability to adapt to the changing reality both inwardly towards their own people, and outwardly towards the state.[2] Traditional rulers are thus regarded as units that are continuously in the process of satisfying both the state and their subjects, and attempting to strike a balance between the two for their own survival.

This paper examines how the twentieth-century *fons* of Mankon have demonstrated extraordinary resilience by continuously adopting to new forces

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[1] Skalník (2002) notes that differentiating between kingdoms and chiefdoms is problematic and he proposes 'an overarching *etic* category (…) [of] chiefdom'. In this article I have attempted to consistently use the word *fon* to refer to the traditional rulers of Mankon. In the North West Province of Cameroon all traditional rulers, regardless of the size and population of their constituencies, are referred to as *fon*. The *fon* is thus an indigenous common denominator for a traditional ruler (*Cf.* Fisiy 1995: 49-51). It is the *emic* equivalent of Skalník's proposal.

[2] *Cf.* van Rouveroy van Nieuwaal 1991, 1992, 1996, 1999.

that often threaten to marginalise or obliterate their existence. It shows how in the colonial era, the relationship between the *fons* of Mankon and the state quickly evolved from symmetrical to asymmetrical as a result of the rise of new forces that emanated from rapid cosmopolitanism, and the deliberate violation of colonial framework statutes in favour of *realpolitik* or pragmatic administration. The *fons* survived, not through direct confrontation with the colonial state, but by persistently asserting their claims to traditional legitimacy. They did so by seeking legal redress through petitions and by falling back on their subjects for defence, while avoiding any direct confrontation with the state. In the post-colonial era, the *fons* of Mankon successfully blended modernity and traditionalism by compromising with the constitutional and legislative instruments of the modern state while still adorning themselves with the traditional support structures of their power.

Since the introduction of the new multiparty culture in the 1990s, however, the *fons'* sacred position has been subjected to aggressive demystification. This has been the direct result of their open involvement in the new multi-party politics on the side of the government party, which was highly contested by the overwhelming majority of the people. As the *fons* have been unable to please both their subjects and the government simultaneously, they have thus found themselves caught between Scylla and Charybdis. Ultimately, neither the people of Mankon nor the modern state could reliably and fully guarantee the traditional integrity of the *fons*. The *fons*, on the other hand, had to depend upon both to legitimise their position, but due to the fact that they often tended to favour the state, they ultimately became labelled as puppets.

The *fon* of Mankon: The early partnership with the colonial state

When the British took over the administration of the Cameroons from the Germans during World War I,[3] it was clear that the new colonial state needed to enlist the services of African traditional rulers.[4] This entailed the development of a relationship between the two. The structure of power relations between the colonial state and the *fons* of Mankon evolved from a symmetrical – 'stable, regular and troubleless' – to an asymmetrical one –

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[3] In this article the British takeover from Germany in 1916 is regarded as the start of the colonial state of Cameroon. Germany annexed Cameroon in 1884 and was expelled from the territory by the British and French allies following the beginning of World War I. Mankon and its ally, Bafut, were subdued in a war with the Germans in 1891, followed by a succession of punitive raids in 1901, 1904-5 and 1907 (Niba 1995: 63-64).

[4] Crowder 1978: 139; Jua 1995: 39-40; Niba 1995: 63-65.

'unstable, irregular and conflictuous'.[5] Negotiations between the state and the *fons* became 'toilsome' and the state continuously called the *fons*' 'legitimacy into question'.[6]

In pursuit of their development paradigm, the British colonial administration had to make use of the indigenous African political institutions on a grass-root level. Because of its centralised socio-political organisation – at the head of the Mankon was the *fon*, assisted by his councillors and regulatory societies – the *fon*-dom (in other words, the *fon*'s kingdom) of Mankon corresponded well with colonial polities,[7] and it was easily fitted into the British Indirect-Rule system, which was aimed at administering people through their traditional political institutions.[8] Historically, the *fons* of Mankon, like their counterparts in the North West Province of Cameroon, were near-deities and containers of ancestral spirits,[9] and the loyalties of their subjects were generally unchallenged, particularly when the rulers were benevolent and projected a positive image. Mankon belonged to the Ngemba group of *fon*-doms and it was reorganised by the colonial state to become part of the composite Native Authority known as the Ngemba Native Authority. This Native Authority was also intended to serve as the Ngemba Native Court.[10]

By virtue of the size and population of his jurisdiction, the *fon* of Mankon, Angwafo II, was identified as the most important descendant of the traditional ruling dynasty of the Ngemba group of *fon*-doms. He was thus elected President of the Ngemba Native Authority and Native Court. Although as illiterate and conservative as his counterparts, he was found suitable for the job for lack of an alternative. Installing the *fon* of Mankon as the President of the Native Authority and Native court was the first step undertaken by the colonial authorities to subject the African chief 'to a process of political and administrative enclosure'.[11] By making him a chief executive and judicial authority in his jurisdiction, the British were effectively giving him 'top-down

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[5] Van Rouveroy van Nieuwaal 1999: 32.

[6] *Ibid.*

[7] Anye 1994: 30-50; Warnier 1981: 421-436.

[8] Niba 1995: 63-65; Jua 1995: 39-40; Crowder 1978: 139.

[9] Warnier 1993: 303-319.

[10] Newton, Assistant District Officer, 1936, Intelligence Report on Ngemba Area, National Archives Buea [N.A.B.] File no. B. 1933, Ab 27 (a).

[11] Van Rouveroy van Nieuwaal & van Dijk 1999: 10.

[12] *Ibid.*

support and legitimisation through the principle of devolution of responsibilities'.[12]

In his capacity as a Native Authority, the *fon* of Mankon and the minor Ngemba *fons* started collecting taxes, the amount for which was determined by the British colonial regime. A certain amount of the collected taxes reverted to the Native Treasuries for their own use. Native Authorities met in council under the supervision of a District Officer (DO) to discuss the problems facing their areas, such as road maintenance, water supplies, prisons, and a police force. In addition, they acted as legislative bodies. With regard to these tasks, the DO played the role of watchdog over the Native Authorities.[13] At the beginning of British rule, the relationship between the colonial state and the *fon* of Mankon had a symmetrical structure: the state was able to carry out a system of indirect rule and the *fon* was established as chief administrator, judge and revenue collector, for which he was periodically remunerated.

The arrival of the Hausa: The co-existence of two chiefs

Soon however, the *fon* of Mankon fell out of the scope of the law and his relationship with the colonial state became asymmetrical. Rapid urbanisation processes led 'to the formation of specific forms of urban chieftaincy',[14] with untold consequences for traditional polities. In the southwestern section of Mankon, a cosmopolitan population with booming commercial activities came into existence. This went hand in hand with the process of a great influx of Hausa immigrants, who had started settling in urban Mankon from 1918, which they renamed 'Abakpa Mankon-Bamenda', meaning 'the stranger quarters of Mankon-Bamenda'.[15]

The Hausa, who came from Nigeria,[16] initially settled at Uphill Station Bamenda.[17] However, with the consent and co-operation of the *fon* of Mankon, the British decided to resettle them in the Azire quarter of Mankon in 1918. This district was at the real origin of urban Mankon. The Hausa were thus at the roots of the urbanisation of the area: they attracted a conglomeration of

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[13] N.A.B. File no. B. 1933, Ab 27 (a). Also see Crowder (1978) for the role of British-created Native Authorities.

[14] Van Rouveroy van Nieuwaal & van Dijk 1999: 8.

[15] Awasom forthcoming: 1-4.

[16] The Hausa were regarded as outsiders, and the issue of their real status, and their claims to chieftaincy over the urban section of Mankon, was to remain disputed throughout the British colonial period.

[17] Awasom forthcoming: 1-4.

peoples of various origins. They engaged themselves for the most part in commerce and in productive activities such as construction and manufacturing. This stood in sharp contrast with rural Mankon, which was dominated by a single ethnic group and characterised by activities such as farming, fishing and hunting.

The Hausa were organised under an elected chief, the *sarikin hausawa* Mallam Muhammad Baba Gando. Gando was the first Hausa chief locally, and he led the first contingent of Hausa people to downtown Abakpa Mankon. He had been elected chief on grounds of integrity, Islamic learning, and wealth. By building a mosque and founding a Qur'anic school when the Hausa first settled in Mankon, he had earned the respect of the Hausa immigrants. The *sarikin hausawa* ('Hausa chief') was assisted in the day-to-day administration of the Hausa by a *mallam* (Islamic religious leader) and a council of elders. Although the first Hausa chief had been elected, his position eventually became hereditary, due to the integrity of his successors.

Gradually, successive waves of immigrants came to recognise the *sarikin hausawa* as the chief of urban Mankon, which became referred to as the Abakpa Mankon township. Due to the control that the *sarikin* had over the affluent Hausa community and over other twenty-five Hausa trading settlements that were scattered all over the Bamenda region,[18] the *sarikin hausawa* emerged as a powerful authority in the township.

The *fon* of Mankon was overwhelmed by these transformations. Due to its complex population and problems with regard to the collection of rent and taxes,[19] the *fon* lost control of the Hausa township. Effective administration eluded him completely, and eventually he authorised the Hausa chief to see to the control of the urbanites. The *sarikin* thus became the tax and rent collector in the Abakpa Mankon township. After each collection, the *sarikin* took the collected money to the *fon* of Mankon, who added it to the taxes of his subjects. The *fon* paid the money into the state treasury and he was given 10% of the total amount collected as compensation for his job.[20]

By granting the *sarikin hausawa* this large amount of authority, the *fon* of Mankon burnt his fingers: the British authorities interpreted the informal arrangement between the *fon* and the *sarikin* as a sign of ineptness on the side

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[18] Provincial Archives Bamenda [P.A.B.] File 111/8, 1938.

[19] The urban Hausa population was predominantly a floating one: the population sometimes inflated with an additional thousand people within one week, before reducing to its regular volume. Moreover, permanent Hausa residents travelled often and far to stock up. As businessmen deemed it undesirable to disclose their itinerary for security reasons, it was impossible for the *fon* to determine who exactly was liable for tax payments.

[20] Interviews with *Fon* Angwafo III, December 1983, Mankon and with Stephen Awasom, and Pa Ndenge, historians and school teachers, December 1999, Mankon/Bamenda.

of the *fon*. This negative perception was given further credibility by the fact that Angwafo II was a stark illiterate. The combination of the *fon*'s ineptitude and his illiteracy did not endear him to the colonial state, while the dexterity of the Hausa chief in matters of tax collection and his general progressive disposition pleased the British. The tax-collecting role of the *sarikin hausawa* advertised him as an efficient administrator and the real man in charge of the urban area, and it betrayed the incompetence and aloofness of the *fon* of Mankon.

The *fon* of Mankon in conflict with the Hausa *sarikin*

In 1920, Angwafo II of Mankon died and was succeeded by his son Ndefru III, who was also illiterate.[21] The *sarikin hausawa* continued to collect taxes and crown rents. The new *fon* and the *sarikin* co-existed peacefully. However, the British colonial administration started questioning the arrangement made between the two institutions and, seeing the dexterity of the *sarikin* and his ability to keep basic accounts, made the decision to surpass the *fon*. The British Senior District Officer argued that the arrangement whereby the *sarikin hausawa* had to pay money collected from the urbanites to the *fon* of Mankon was cumbersome and unsatisfactory. He therefore instructed the *sarikin* to pay all the collected taxes directly to the treasury. As remuneration he received 10% per cent of the amount deposited. The administration then informed the *fon* of its decision.

As a result, the urban Hausa were brought under the complete and indisputable control of the *sarikin*. The people of Mankon felt insulted and came to the rescue of their *fon*. *Fon* Ndefru's traditional council reacted to the situation by attempting to upset the previous arrangement by which the *sarikin* had received permission to collect taxes on behalf of the *fon* of Mankon. It appointed royal agents as tax collectors for the township and as a result two tax-collecting authorities emerged in Abakpa township. The British could not tolerate this state of affairs and responded resolutely by nominating the *sarikin hausawa* as the sole legitimate chief in the township. In a decision issued on 8 March 1924, Hunt, the District Officer in charge of Bamenda, appointed *sarikin* Mama under the Native Revenue Ordinance:

> 'Mama of Kano is the chief of Hausa Quarter in Mankon-Bamenda and has authority to collect Tax and Crown Rents and to pay them to the Divisional Officer. Any person

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[21] P.A.B File B. 3142, Vol. 1, 1936.

disputing Mama of Kano's authority to collect Tax and Crown Land Rents is liable to persecution.'[22]

By appointing the *sarikin hausawa* as the chief of the Abakpa Mankon township, the British were sacrificing traditional legitimacy on the altar of administrative efficiency. The Hausa were unquestionably strangers to Mankon, and it was unthinkable that part of Mankon was seized and placed under the control of non-native immigrants. According to the Land and Native Rights Ordinance Cap. 105, 1927,[23] a native was defined as a person who was born of a parent who originated from the area in which he was living. All lands, occupied and unoccupied, were declared native lands with the exception of

- some government owned lands,
- any land granted to a non-native prior to 4 February 1927 and proved before 31 December 1930, and
- any land granted by the Governor in respect of title acquired prior to the first day of March 1916.

Section 4 of the Ordinance required that only the Governor could dispose of native land. Section 5 required the Governor to have respect for native laws and customs in disposing of native lands. The nomination of the *sarikin hausawa* as the chief of Abakpa Township in Mankon was therefore a violation of the Land and Native Rights Ordinance. It was also contrary to the native laws and customs of Mankon because they only recognised a single chief in their *fon*-dom. The *fon* of Mankon responded to this situation by repeatedly petitioning the colonial state. The British administration however argued that the *fon* was wrong in assuming that the township belonged to him: they claimed that it was crown land.[24] The *fon*'s protest thus obtained no hearing.

By 1928 however, the situation changed again. In the spirit of reforms, the British Cameroons were reorganised into Native Authority areas and the Native Authorities were empowered to collect taxes from all residents in their areas of jurisdiction. For the Hausa in Mankon the implication of this reform was that the *sarikin* had to start paying his taxes to the *fon* of Mankon. The British administration declared that the Abakpa Bamenda township lay within the Ngemba Native Authority area and that it was a section of the *fon*'s territory. It

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[22] P.A.B., File B.3142, vol. 1, 1936. The last sentence in the ordinance was an implicit warning to *Fon* Ndefru of Mankon.

[23] Meek 1957: 370-375.

[24] P.A.B. File B. 3142, vol. 1, 1936.

thus concluded that the township was not crown land as had been upheld all along.[25] This stance diminished the authority of the Hausa *sarikin* once again.

When in 1935, the *sarikin hausawa* died, the Mankon *fon* grabbed this opportunity to re-establish his authority in the Abakpa Bamenda township. The Hausa people unanimously chose Moma, the son of the deceased *sarikin*, as their new leader, but the *fon* was determined to ensure that the new *sarikin* should never become as powerful as his father. He thus immediately proceeded to appoint tax collectors and quarter heads, who were exclusively indigenous Mankon people, to run the affairs of the Township and the Sakarin Hausawa lost his authority. However, the trading community of the township complained to the colonial state about the over-zealousness and extortionist tendencies of the Mankon royal appointees. The Hausa claimed they were targets of exploitation. They encouraged their new *sarikin* not to stoop to the *fon*, who was determined to reduce him to a mere figurehead.

As it could foresee the damaging effect the ongoing conflict would have on revenue from the trading communities, British administration did not tolerate the chaos in the commercial section of Mankon. The Senior District Officer (SDO), Jeffreys, claimed that the *fon* was attempting '…to interfere with Abakpa as if it were merely a quarter of his village'[26] Jeffreys opposed any measure that linked the Abakpa township to rural Mankon. In a letter to the Resident concerning the *fon*'s attempt to impose his hegemony over Abakpa, the SDO noted:

> 'As Abakpa is a trading stranger community in which the Hausa element predominates, it would be a political mistake to link it too closely with the agriculturalist (…) population of Mankon, six miles [*sic*] away. Moreover, the chief of Mankon is not distinguished for his enlightened attitude or progressive ideas. Trouble of this nature has occurred elsewhere in the division on a smaller scale and resulted in the emigration of the Hausas to the economic detriment of the neighbourhood.'

The SDO was thus asking the Resident to shield the Abakpa township from the influence of the *fon*, because his interference could provoke a massive exodus of the Hausa, and this would greatly affect the division economically. He subsequently recommended to the Resident that:

- the *sarikin hausawa* should be reappointed Village Head;
- he should pay the rents and taxes collected from the township directly to the government; and

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[25] N.A.B.[National Archives Buea] File Cb/1928/1, 1928.

[26] P.A.B. File B. 3142, Vol. 1, 1936.

- that he should be appointed a member of the Ngemba Native Court to sit in cases involving a Hausa and Muslim Law.

The Resident simply endorsed the recommendations. As a result the Hausa *sarikin* not only once again received a remuneration of 10% of the collected taxes, but he was also made a member of the Ngemba Native Court.

Not surprisingly, the *fon* of Mankon still attempted to challenge the state's decision. He sent several petitions to the Resident and the British chief Commissioner.[27] His protest however once again did not obtain a hearing. The Hausa *sarikin* on the other hand played the game skilfully: he avoided the *fon* as much as possible and shielded himself with the colonial state. The British administration was quite satisfied with the way the *sarikin* handled both the *fon* and the cosmopolitan population of the Abakpa township and throughout his reign (1937-1944) the *fon* was kept away from the township administration. The Abakpa Mankon township and its cosmopolitan population had become an imperium in imperio and the Hausa dominated the cosmopolitan population and the legislative administration.

In 1944, Sule was elected successor of his late father and became the new *sarikin hausawa*. His reign was to become marked by a sense of self-confidence, innovativeness and efficiency in the administration. This provoked a negative reaction from the indigenous Mankon who felt an 'alien' was pushing the boundaries. However, by demonstrating his skills as an efficient, enlightened and pragmatic administrator, he endeared himself to the British.

In order to administer the Abakpa Mankon township, the new *sarikin hausawa* modified the composition of his council: he thus included non-Hausa representatives to reflect the sociological landscape of the town. He partitioned the township into seven large units and Muslim areas were, for instance, placed under Islamic administrators. He moreover passed legislation with regards to the selling of drinks, the random movement of animals, in particular horses and pigs, and the disposal of refuse. The Muslim chief outlawed the selling of alcoholic drinks in the Abakpa township in 1950 on the grounds that the women involved in the trade were untidy, and that the trade encouraged prostitution.

The indigenous Mankon felt offended by these decisions and during the early 1950s, after a particularly offending decree had been passed,[28] they felt

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[27] P.A.B. File B. 3142, Vol.1, 1936; also interview with *Fon* Angwafo III, December 1983, Mankon.

[28] In February 1950, after the township of Abakpa had been increasingly faced with a problem of crime, the *sarikin* addressed a letter to the DO in which he raised the issue, and suggested the repatriation of idlers from the township as a solution to the problem. As this mostly concerned Mankon natives who had drifted to the township in search of new opportunities, this decree was met with fierce

that the *sarikin* had to be stopped. A delegation of educated Mankon elite – led by Prince Ndefru, the son of Ndefru III, Nde Ntumazah, a court clerk, and Stephen Anye Awasom, a school teacher – met with the *sarikin* a number of times to convince him to consult with the *fon* of Mankon before taking any major decisions with regard to the Abakpa township, and to stop parading himself as a chief, because tradition did not allow the existence of two chiefs in one *fon*-dom. When the delegation was faced with plain stubbornness, it once again attempted to convince the British administrators to revisit the privileged position of the *sarikin hausawa*. Their response however did not differ from that of their predecessors. The handover notes from Kay, the British Divisional Officer, to Milne, his successor, read:

> 'As to the present status of Abakpa Township, you will be fully aware of the disputes that have occasioned over the years by the fact that the *sarikin hausawa* was arbitrarily appointed Tax Collector of Abakpa. Ndefru, the Village head of Mankon, the landlord of the whole of Mankon itself, is in the jurisdiction of the South Western Federation Native Authority. You will recall that Mr. F.R. Kay, then Senior District Officer, tentatively considered revoking the Village Head of Mankon's rights in view of his inept and tactless handling of the *sarikin* and the inhabitants of Abakpa'.[29]

In light of this background information, Milne was totally against entrusting cosmopolitan Mankon in the hands of a stark illiterate such as the *fon*. The illiterate status of the *fon* no doubt militated against him as the British distrusted his abilities.

A solution to the *fon/sarikin* conflict

Two principal developments paved the way for a definitive solution to the problem of the usurpation of the powers of the *fon* of Mankon by the *sarikin hausawa*:

- the 1949 local government reforms;
- the succession of the *fon* in 1959 by his educated and dynamic son.

In 1949, the British undertook to transform the Native Authority system into a modern local government system. Consequently, studies were undertaken that resulted in the establishment of Local Government for Mankon.[30] The reform

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protest (Interview with Stephen Anye, December 1999, Pa Ndenge December 1999, Nde Ntumazah, July 2001).

[29] P.A.B., B. 3142, Vol.11, 1936.

[30] Under section 35 (1) of the Native Authority ordinance Cap. 140 with the approval of the British Resident.

package included the democratisation of local government to allow the inclusion of educated elements, and the representation of the various ethnic and interest groups, including women, in the township. The local government became known as the Mankon Subordinate Native Authority Council or the Mankon Urban Council.[31]

The council members were divided into committees responsible for various domains including health, sanitation, education, finance and customary affairs and land issues. *Fon* Ndefru made sure that his subjects, whose loyalties to him were unquestionable, headed each of the committees. The most important committee was the Custom and Tradition Land Committee, which dealt with the distribution of land in the township. Out of fifty-two members that made up that committee, only eleven were non-Mankon.

The one clause in the Mankon Subordinate Native Authority Standing Rules that stood out for the *fon* of Mankon was Article 8, which read that:

> '…the *fon* of Mankon shall be the one ex-officio President of the Council, and shall be President by virtue of his position as the *fon* of Mankon'.[32]

This article conferred on the *fon* his lost authority over the township area. The establishment of the Mankon Subordinate Native Authority thus marked the end of the conflict between on the one hand the *fon* of Mankon and on the other hand the Hausa *sarikin* and his British supporters. But in reality neither the *sarikin* nor the *fon* could claim complete victory over the other: as the new order had stipulated that the local government council was to be built on collective rule, both had been eliminated from direct and exclusive control.

Moreover, the succession of Ndefru by his son, Angwafo III, contributed to the solution of the *fon*/*sarikin* conflict. The new *fon*'s ascension to the throne radically changed the political landscape of the Mankon kingdom and its relationship with the modern state. By virtue of his education, he was able to assert himself in local government affairs and emerged as the unquestionable head of the Abakpa township, also because he was the *ex-officio* president of the Local Government Council.

Fon Angwafo III realised that the modern state was a colossal force that a traditional ruler could neither combat, nor compete with, but had to be subordinate to. It was therefore common sense that he had to penetrate into the modern government machinery for his own survival as a traditional ruler. Van Binsbergen has indicated that many African chiefs take advantage of the 'strength of the respect their traditional position commands' to 'successfully

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[31] N.A.B. File Cb/1953/1, 1953.

[32] P.A.B File, 1954.

[33] Aka 1985: 63-68; interview with *Fon* Angwafo III, December 1983, December 1999, Mankon.

penetrate the state's administrative and representative bodies, thus acquiring *de facto* bases in the modern political order'.[34] Angwafo set out to do this with a lot of tact and shrewdness.

In 1961, Angwafo made his debut in post-colonial modern politics by vying for an elective position as deputy. During the general elections for the West Cameroon House of Assembly, he vacated his seat in the House of Chiefs – as was required by law – to contest as a representative of the Lower Ngemba constituency. As a traditional ruler he strategically opted to be politically unaffiliated, for fear of polarising his people: he entered the elections as an independent candidate and his subjects overwhelmingly voted for him.

Angwafo's entry into politics was a calculated act aimed at saving the Mankon people from political victimisation by the autocratic Ahmadou Ahidjo government. As the result of association between prominent Mankon elite and the radical Union des Populations du Cameroun (UPC) rebels, who were engaged in a guerrilla war to overthrow the Ahidjo government, the Mankon people had come under increasing suspicion and victimisation. They had been accused of sympathising with the rebels, an allegation that was given credence by the fact that Nde Ntumazah, a native of Mankon, was the leader of the One Kamerun (OK) party, the Anglophone version of the UPC. The conclusion was that Mankon was pro-UPC and consequently anti-Ahidjo. The young Angwafo III had been compelled to enter national politics to prove the contrary and to put a stop to his people's victimisation. After initially standing as an independent candidate, Angwafo soon switched political sides and declared his support for the ruling Kamerun National Democratic Party (KNDP).[35] In this manner Angwafo invalidated the anti-Mankon rumours and suspicion, and became the great saviour of his people.

Throughout his political career at state level, Angwafo maintained a high profile. While traditional leaders were generally reduced to mere puppets of the regime,[36] Angwafo held on to what van Rouveroy van Nieuwaal referred to as his 'hinge' position between the modern state and his traditional reign:[37] he

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[34] Van Binsbergen 1999: 98.

[35] The KNDP was the party in government in the Federated state of Anglophone West Cameroon and was in alliance with President Ahmadou Ahidjo's Union Camerounaise (UC) (Bayart 1973: 131-140).

[36] By Decree No. 77/245 of July 1977, all traditional rulers were reduced to mere auxiliaries of the administration and subordinated to government appointed Senior Divisional Officers of their jurisdictions (Jua 1995: 40-43, Fisiy 1996: 50-53, Konings 1999a: 203). This statutory provision clearly enshrined the pre-eminence of Senior Divisional Officers over chiefs. Article 2 of the Decree set out a threefold classification of chiefs according to demographic or economic criterion. Mankon automatically qualified as a first class kingdom. First-class traditional rulers were put on the government pay roll as category-A officers of the Cameroon public service. Angwafo was thus gazetted as a traditional ruler of the first category.

[37] Van Rouveroy van Nieuwaal 1996b: 39.

served both the state as a deputy and his subjects as a traditional ruler. The balance between exercising the functions of a modern statesman and those of a traditional ruler, worked well; both units stood to benefit from each other as they mutually reinforced their legitimacies. The regime of one-party politics (1966-1990) provided the perfect background for this symmetrical co-existence.

The one-party system, for instance, minimised political polarisation and attacks on the authority and prestige of traditional rulers, since politics were not factionalised and overtly competitive. All traditional leaders were incorporated into the one-party machinery and – depending on their traditional authority – assigned strategic positions within the party. Angwafo was thus elected several times as the divisional president of the Cameroon National Union (CNU) for Mezam Division, his home constituency. This in turn facilitated his entry into, and stay in, parliament for over two decades.

The other way around, modern Cameroonian statesmen did not hesitate to tap into traditional legitimacy to reinforce their political legitimacy.[38] President Biya, for instance, got himself crowned '*fon* of *fons*' during a visit of the North West Province in 1983. After the enthroning ceremony, where Angwafo had been one of the official kingmakers, Biya, clad in the full traditional regalia of the northwestern *fons*, posed for an official picture with his royal colleagues. Biya thus successfully combined his position as the President and as the '*fon* of *fons*', and this ingenious piece of propaganda obtained him much political support at the time.

Fon Angwafo III and multi-party politics

The 1990s were a particularly turbulent period for both Africa as a whole and Cameroon in particular.[39] Traditional chieftaincy positions became subjected to violent forces that shook them to their roots, and, while during the colonial period the Mankon people had continuously supported their *fon*, they now turned against him, thereby rendering the traditional institution fragile. This

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[38] *Ibid.*

[39] The turbulence had been earlier predicted in *Jeune Afrique* 1990, in which Diradiou Diallo noted that the profound upheavals in Eastern Europe and the resultant east-west approchement would sooner or later engulf Africa where totalitarianism was rife. The self-styled Marxist-Leninist Republic of Benin was the first victim of the democratic whirlwind when in 1989, its dictator, Mathieu Kerekou, was compelled to endorse multipartyism. This event was blasted over the airwaves and it had the expected contagious effect on other countries. Gabon, Congo, and Ivory Coast followed suit; and its tremors rippled across Cameroon where the civil society started becoming restless (Takougang & Krieger 1998: 116-128; Monga 1998).

development took place against the backdrop of the decay of the single-party regime and the related 'Anglophone' problem.[40]

As a result of global developments, i.e. the crumbling of the socialist bloc and World Bank/International Monetary Fund good-governance conditionalities, ideas of multi-party politics started to infiltrate Cameroon. The ruling Biya government generally condemned such politics as models imported from abroad, and not suitable for Africa. This official stance did not go down well with the Cameroon civil society. As a reaction, John Fru Ndi, an Anglophone businessman, and resident of the North West Provincial headquarters of Bamenda, boldly launched a political party: the Social Democratic Front (SDF).[41] The Anglophone element of this party was to become of great importance.

Due to the Biya government's negative stance regarding multi-party politics, it did not receive the founding of the SDF very well: it panicked and dramatised the event by tactless and irresponsible remarks uttered by over-zealous Francophone top-ranking officials and by the government media. As a result, the official government stance became interpreted as anti-Anglophone. Emah Basil, government Delegate to the Yaounde Urban Council, and member of the politburo of the Cameroon People's Democratic Movement (CPDM), the government party, for instance, openly alluded to Anglophones as 'the enemy within the home', for daring to form another political party. Ibrahim Mbombo Njoya, Minister of Territorial Administration stated over the Cameroon Radio Television (CRTV) that 'those who object to the current state of affairs are free to leave'. Others called the Anglophones 'secessionists' or 'Biafrans'.[42] Statements such as these gradually ossified into quotes in the Anglophone resistance literature and came to be used by the pro-secessionists as a justification of their cause.

As a result of this anti-Anglophone propaganda, the Anglophones were effectively transformed into undesirable outsiders in Cameroon. In addition, it contributed to the resignation of John Ngu Foncha, architect of the reunification of Anglophone and Francophone Cameroon, from the CPDM of which he had been the Vice President.[43] Foncha's resignation was seen and feared as a prelude to the exit of Anglophones from the union. Rather than taking a serious look at how this resignation had been brought about, the government's first priority was to find a suitable replacement for Foncha: it desperately needed a convincing Anglophone that had some weight in

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[40] See also Piet Konings' and Francis Nyamnjoh's contributions to the present book.

[41] Konings 1996b: 25-35; Takougang 1993: 91-99.

[42] Sindjourn 1995: 93-98.

[43] Foncha 1990; Ngniman 1993: 51.

Cameroon politics. The tall, robust and giant-looking *Fon* Angwafo III fitted the bill perfectly. *Fon* Angwafo was therefore appointed as Vice-President of the ruling CPDM party.

The acceptance of this appointment at a time when many North Westerners and Anglophones already felt betrayed by their leaders brought a lot of trouble for Angwafo. In his position of Vice-President of the CPDM he had to comply with party politics and subsequent party behaviour. Throughout 1990, he thus for instance not only coordinated, but also took an active part in a series of demonstrations, which were organised by the CPDM to gain support for their single-party politics.

No sooner had Angwafo gained notoriety in these anti-democracy demonstrations, than he found himself ridiculed by critics from the west and donor organisations. These organisations were in a position to compel government to change its one-party regime.[44] They for instance linked further financial assistance to African countries to their acceptance of the principle of good governance and popular participation through democracy. Donor conditionality made a multi-party regime compulsory.[45] In December 1990, Cameroon thus succumbed to a democratic regime: multi-party politics was formally legalised and the government introduced a certain degree of freedom of communication and association, including the holding of public meetings and demonstrations.[46] Subsequently, several political parties, pressure groups, human right associations, and private newspapers were set up. The government-owned Cameroon Tribune of 9 January 1991 published a list of forty-one registered political parties,[47] a number that had quadrupled by 1996.

With the introduction of a multi-party regime, the new opposition parties passed into action. They confronted the Biya regime over the issue of a sovereign national conference *à la béninoise*.[48] The reluctance of the government to consent to these demands resulted in the general civil disobedience and ghost-town campaigns, during which the forces of law-and-

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[44] For an interesting discussion on the role of international donor organisations on the introduction of multi-party policies in Africa see Gibbon 1993: 35-61; Mkandawire 1995: 81-99.

[45] Mitterand made a strong statement at the Franco-African summit at La Boule in June 1990, when he extolled the developments in Benin as a model for Africa, and warned that:

> '…French aid will be trivial to those countries that continue to rule in an authoritarian fashion with no movement towards democracy' (Anyang 1997: 1).

[46] Société de Presse et d'Edition du Cameroun [SOPECAM] 1990**.**

[47] *Cameroon Tribune,* 9 January 1991: 1-6.

[48] A sovereign national conference was held in Benin, resulting in the destitution of President Mathieu Kerekou, the establishment of new political institutions and the organisation of new elections. Cameroon's opposition parties wanted to follow the same path as Benin.

order and opposition militants exercised a great deal of violence.[49] Mankon, Angwafo's traditional area of authority, became a hotbed for political activism. Attempts by Angwafo and his associates to moderate the excesses of the campaigns failed woefully and some youth intermittently went as far as embarrassing the *fon* by openly insulting him and by throwing rotten tomatoes and eggs at him. It was clear that power was passing from the hands of the state and the traditional authorities to those of the political activists in the streets.

In March 1992, legislative elections took place. Radical opposition, championed by the SDF, decided to boycott the elections on grounds that the electoral code was unfair and that it provided a leeway for government manipulation. The North West Province overwhelmingly adhered to the call for a boycott of the legislative election, and appeals of *Fon* Angwafo to participate in the elections were rejected. An unintended consequence of the election boycott was that the CPDM swept up twenty uncontested parliamentary seats with an estimated 10 per cent vote participation.[50] Ironically, the North West Province, which had been the opposition stronghold, thus turned out to be represented in the first multi-party assembly of the 1990s by the government party, the CPDM.

When the presidential elections took place in October 1992, the radical opposition abandoned its boycott strategy and decided to participate, thereby opening the way for confrontation. As John Fru Ndi, SDF chairman, decided to run as the candidate for radical opposition and *Fon* Angwafo III campaigned for Biya, tension between the opposition and government camps increased. When the vote count started, Ndi was well in the lead and expectations for an opposition victory were high. When the Supreme Court of Cameroon finally proclaimed the results however, Biya emerged as the winner with 39.9 per cent against 35.9.[51]

The violence that followed the proclamation of the results of the presidential elections in the North West was unprecedented, and government imposed a state of emergency on the province that lasted for two months. *Fon* Angwafo III featured prominently among the victims of the elections. His modern palace in the Mankon metropolis was set ablaze, while his traditional palace in the countryside was threatened by arsonists, an act that was regarded

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[49] Awasom 1998: 1-31; *cf.* Ngniman 1993; *cf.* Monga 1998. In essence, the civil disobedience and the ghost-town campaigns involved opposition mobilisation of the population, the refusal to pay taxes, and the closure of all places of work until the government succumbed to the idea of a sovereign national conference.

[50] *Cameroon Tribune*, 4 March 1992: 1, 3-6.

[51] Sindjourn 1994: 21-44.

as a great traditional taboo because this palace was the abode of the tombs of the successive *fons* and of the collective spirit of the people.

The end of *fons* in national politics?

The treatment of *Fon* Angwafo III in the aftermath of the 1992 presidential election was a discouragement for any traditional ruler to meddle in multi-party politics. Under the leadership of *Fon* Fosi Yakumtaw of Bambalang, a faction of northwestern traditional rulers thus founded the 'neutrality faction' of northwestern traditional rulers. This North West *Fons'* Assembly (NWFA) campaigned for chiefly neutrality in multi-party politics as a way of maintaining good relations with all political leaders. The assembly was initially supported by the state and was, typically, a case of the mutual perpetuation of the 'invention of traditions whereby post-colonial states seek to enlist chiefly support'.[52] Soon however Prime Minister Achidi Achu started questioning the Assembly's purported neutrality and he insisted that traditional rulers must support the government because they were auxiliaries of the administration. He argued that the *fons* had to support him and that neutrality meant abandoning him or being indifferent to government action. As a result he organised a pro-government association of Northwestern *fons*, baptised the North-West *Fons* Conference (NOWEFCO). Given Angwafo's complete loss of support, Achu appointed another *fon*, Doh Gah Gwanyin of Balikumbat, as head of NOWEFCO. In reality NOWEFCO did not amount to much, as it continuously praised government and sent motions of support to President Biya: essentially, it was the Prime Minister's mouthpiece.

Achu further dampened the possibility of the neutrality option of the northwestern *fons* by brandishing bright prospects for them: under the newly enacted 1996 constitution, he promised the *fons* extended power. He claimed that, should the *fons* support the government party, they would receive appointive senatorial seats. Under the revised constitution, Cameroon had been endowed with a bicameral legislature, and half of the members of the Upper House (Senate) were appointees of the Head of State. Achu thus had a hot bargaining tool. It was the bait that brought traditional rulers to the forefront of the 1996 municipal elections.

The municipal elections were real grassroots elections. Cameroon's ten provinces were divided into 339 local government areas and the North West Province was partitioned into 32 local government (council) areas.[53] The elections were organised through a list system, by which each contesting

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[52] Van Rouveroy van Nieuwaal & van Dijk 1999: 4.

[53] Finken 1996: 86-86.

political party was required to group its candidates for the elections on a single list. The number of lists in a constituency thus reflected the number of political parties contesting the council seats.[54] The list that obtained an absolute majority would win all available seats in a particular electoral constituency. In the absence of any list obtaining an absolute majority, the seats would be proportionately divided amongst the contesting parties according to their scores.

Prime Minister Achu placed all his hopes on the Northwestern *fons* who had a traditional and paternalistic grip on their subjects and could appeal to them by means of sentiment. In the weeks preceding the elections, Achu therefore combed the palaces of the Northwestern *fons* and enticed, cajoled or coerced them into heading the pro-government CPDM lists. The *fons* subsequently campaigned fanatically for the CPDM, both because they wished to secure Achu's job and because they had an eye on the promised senatorial positions for themselves. However, the outcome of the elections for the Northwestern traditional rulers was a disaster: the SDF opposition party won an absolute majority in 30 of the 32 municipal councils in the North West Province.[55]

Despite the fact that the elections had been a complete failure for the Northwestern *fons*, their authoritative position was not entirely undermined. The SDF realised that many people of the North West still relied heavily upon their *fons* for traditional and religious affairs, and therefore made an effort to rehabilitate them. The SDF made a conscious decision to appeal to the people of the North West to pardon and re-establish their *fons*. In a series of post-election rallies, the SDF thus declared that *fons* had 'smeared their thrones and disgraced themselves by heading pro-government CPDM lists',[56] but that they nonetheless deserved another chance.

In addition, the *fons* managed to save themselves through the neutral North West *Fons'* Assembly. With Achu out of the way – after the embarrassing defeat he had been replaced – a leeway was created for the traditional authorities to make an unimpeded exit from partisan politics. The neutrality faction amongst the Northwestern *fons* gradually gathered momentum, their principal argument being that they wished to be on good terms with their subjects of all political persuasions. As a result the North West *Fons'* Union (NOWEFU) was born in 1998. NOWEFU declared its intentions of steering clear of partisan politics, thus implying that they would no longer use their

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[54] For conditions of the election of municipal councillors, see law no. 92–002, August 1992 in *Cameroon Electoral Code*.

[55] *The Herald*, 8 August 1996: 1-3.

[56] *The Herald*, 21-24 March, 1996.

positions to oblige their subjects to adhere to or vote for a particular political party.

The birth of NOWEFU and the declaration of its neutrality stance were however not well received by members of government of North West origin. As individual members were regarded free to adhere to any political party, NOWEFU was suspected of having a hidden agenda. *Fon* Abumbi of Bafut, President of NOWEFU, was for instance well known for his sympathies for the Anglophone secessionist movement, the Southern Cameroon National Council (SCNC). Not even the presence of *Fon* Angwafo III of Mankon, renowned for his unalloyed support of CPDM, could alleviate the fears of the government as to the real purpose of NOWEFU.

Eventually the unexpressed suspicions led to the re-establishment of NOWEFCO, which had been founded as a support association of the CPDM. NOWEFCO accused NOWEFU of having SCNC or secessionist sympathies, and of being an arm of the opposition SDF party,[57] and swore to destroy them.

Conclusion

Throughout the twentieth century the *fons* of Mankon have been entangled in a web of nation-statism inaugurated by the colonial presence. As this article has shown, the *fons* have found it extremely difficult to manage their political space. The presence of an all-encompassing modern state clearly implies the limitation of the *fons'* scope of action within new politico-legal frameworks.

The relationship between the colonial state and *Fon* Angwafo II was initially symmetrical. However, the arrival and settlement of the Hausa in a section of the Mankon *fon*-dom, its transformation into Abakpa Township and the emergence and recognition of the *sarikin hausawa* as its chief, signalled the beginning of a protracted conflict over the issue of legitimacy and belonging. Although the colonial state generally pursued its indirect rule policy by administering through indigenous political institutions, the *fon* of Mankon lost a great deal of his authority because the state preferred to use an enlightened, efficient and pragmatic foreigner as a local leader.

At the penultimate stage of the colonial state in Cameroon, local government reforms resulted in the creation of the Mankon Urban Council. The implication of this reform was that Mankon came administered, not by an individual but collegially. Power relations between the colonial state and the *fon* of Mankon thus clearly developed into a zero-sum-game: the hegemonic state continuously expanded its authority at the expense of the traditional leaders.

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[57] *The Post*, 7 September 1998: 3-4.

When the area of Mankon obtained its first educated and enlightened *fon* in 1959, it was brought to the forefront through his personal qualities. By skilfully combining modernity and traditionalism, Angwafo III was also able to exercise his influence at state level. As a survival strategy against the all-powerful pervasive post-colonial state, Angwafo penetrated the state machinery and became a major player as a party leader and parliamentarian for more than two decades. However, the introduction of multi-party politics in the early 1990s unleashed a configuration of tumultuous forces that rocked the *fon* of Mankon and shook the faith of the people in their hitherto resilient traditional institutions. The launching of the SDF in 1990, and the anti-Anglophone attack that accompanied the event, found many North Westerners and Anglophones discriminated against. As a result many rallied against the ruling CPDM (Cameroon People's Democratic Movement) party.

The appointment of *Fon* Angwafo III of Mankon as the first Vice President of the CPDM, and later, the appointment of Achu as Prime Minister and Head of Government, resulted in many Northwestern traditional leaders to support government and to openly campaign for the CPDM. The *fons* however failed to represent the general opinion of their people, as the polls often showed a favourable return for the opposition. The loyalties of the people had clearly shifted to the modern opposition leaders. Never before had the prestige of the traditional *fon* of Mankon suffered so much: the basis of his legitimacy, his following, was seriously eroded. This threat to the survival of the institution of the chieftaincy was serious enough to make the Northwestern *fons* rethink their relationship with partisan politics. In order to reconcile with their citizens and tradition, the *fon* of Mankon had to support the faction of traditional rulers who opted for political neutrality under the banner of NOWEFU.

The *fon* of Mankon, like his counterparts, suffered serious setbacks in the 1990s. Notwithstanding, traditional rulers were able to bounce back. They have demonstrated a resilience, which can only be explained by the fact that the authority of *fons* does not merely emanate from the ballot box, but also from a distant pre-colonial tradition dearly upheld by the people. Van Rouveroy van Nieuwaal & van Dijk have indicated that 'chieftaincy cannot do without power from below': if it is to survive '(…) it has to be desired by the population'.[58] Traditional rulers are relevant because they are desired by their people. The present *fon* of Mankon, Angwafo III, thus still remains an indispensable symbol of Mankon identity and a unifier of the *fon*-dom, even if the future of chieftaincy is on the balance.

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[58] Van Rouveroy van Nieuwaal & van Dijk 1999: 9.

Chapter 5

Might and right:

Chieftaincy and democracy in Cameroon and Botswana

by Francis B. Nyamnjoh

Introduction[1]

One of the main areas of research in which van Rouveroy van Nieuwaal has had committed interest is the institution of chieftaincy, the importance of which he has stressed 'for understanding social and political processes in Africa today'.[2] The following reflections on chieftaincy and democracy in Cameroon and Botswana are in recognition of his long-term devotion to the study of state/chieftaincy relations in Togo.[3]

Chieftaincy in Africa either has pre-colonial roots, or a largely colonial foundation, as in the case of acephalous or segmentary societies (e.g. the Igbo of Nigeria and most peoples of southern Cameroon).[4] Prominent among the approaches in chieftaincy studies have been partial theories raised to meta-narratives of expectation of the expiring of traditional societies, institutions and cultures. Modernisation theorists for instance have, in tune with their evolutionary and homogenising perspectives, expected such expiring as a natural course of things. Dependency, or revolutionary, theorists, on the other hand, have been critical of all traditional institutions, chieftaincy in particular, for having been appropriated or created by colonial, apartheid and post-colonial states for various purposes, including repression and the creation of division into 'citizens' and 'subjects'.[5] Both partial theories have more or less regarded

[2] Van Rouveroy van Nieuwaal & van Dijk 1999: 17.

[3] *Cf.* van Rouveroy van Nieuwaal 2000.

[4] *Cf.* Harneit-Sievers 1998; Geschiere 1993.

[5] *Cf.* Mamdani 1996.

chieftaincy as more 'might' than 'right', and have consequently wished for chieftaincy to be abolished or ignored, and make room for citizenship based on the individual as an autonomous agent. These theoretical approaches are prescriptively modernist in their insensitivity to cultural structures of African societies: the future they envisage for the continent has little room for institutions and traditions *assumed* to be primitive, repressive and unchanging in character. Chieftaincy, these theories suggest, will always look to the past for inspiration in the service of exploitation and marginalisation by the high-handedness of African states. Within these frameworks, chieftaincy is seldom credited with the ability to liberate or to work in tune with popular expectations. The tendency in these partial theories to focus analysis 'almost exclusively upon institutional and constitutional arrangements', assumes 'the classical dichotomy between ascription and achievement' and 'takes as given that stated rules should actually determine the careers of actors in the public arena'.[6]

During the 1950s and 1960s, modernisation theorists predicted that chiefs and chieftaincy would soon become outmoded, and be replaced by 'modern' bureaucratic offices and institutions.[7] Even underdevelopment and dependency theorists did not seem to give chieftaincy much of a chance,[8] as they regarded them as lacking in the ability to mobilise social and political change. This view has not entirely disappeared, as some theorists continue to argue for a common political and legal regime that guarantees equal citizenship for all, and for the abolition of the classification into 'citizens' and 'subjects'.[9] At present however, scholars increasingly acknowledge the resilience of chieftaincy institutions.[10] A renewed boom in chieftaincy is thus observed and many chiefs are taking up central roles in contemporary politics.[11] In post-apartheid South Africa for instance, active 're-traditionalisation' has been observed through claims to chieftaincy by historically marginalised cultural communities seeking recognition and representation.[12] Chiefs and chiefdoms, instead of being pushed 'into the position of impoverished relics of a glorious past',[13] have been functioning as auxiliaries or administrative extensions of many post-colonial

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[6] Comaroff 1978: 1.

[7] Warnier 1993: 318; Harneit-Sievers 1998: 57; Mappa 1998.

[8] Harneit-Sievers 1998: 57-60.

[9] *Cf.* Mamdani 1996.

[10] *Cf.* Fisiy 1995; Goheen 1992; Fisiy & Goheen 1998.

[11] *Cf.* Harneit-Sievers 1998; Linchwe II 1989: 99-102; van Rouveroy van Nieuwaal & van Dijk 1999; van Kessel & Oomen 1999; van Rouveroy van Nieuwaal 2000.

[12] *Cf.* Oomen 2000a, 2000b, 2000c.

[13] Warnier 1993: 318.

governments, and as 'vote banks' for politicians keen on cashing in on the imagined or real status of chiefs as 'the true representatives of their "people" '.[14] Although the presumed representativeness and accountability of chiefs to their populations has been questioned, this does not seem to have affected the political importance of chiefs in a significant way.[15] A growing number of scholars recognises chieftaincy as a force to be reckoned with in contemporary politics in Africa, especially with increasing claims for recognition, restitution and representation by cultural and ethnic communities. Whether or not a colonial creation, chieftaincy as a political and cultural identity marker is there to be studied, not dismissed.

This is a welcome development, since there is a need to counter the insensitivities or caricatures of the modernist discourses of mainstream theories and analysts that have tended, for ideological reasons, to rationalise chieftaincy and its dynamism away. It is important to develop approaches that are sensitive to the reality of intermediary communities between the individual and the state, and to the agency of chiefs and chiefdoms as individuals and cultural communities seeking 'rights and might' both as 'citizens' and as 'subjects' in the modern nation-state. Almost everywhere, chiefs and chiefdoms have become active agents in the quest which the 'modern big men and women' of politics, business, popular entertainment, bureaucracy and the intellect, are undertaking for traditional cultural symbols, as a way of maximising opportunities at the centre of bureaucratic and state power.[16] It is in this connection that some scholars have understood the growing interest in the new elite to invest in neo-traditional titles and maintain strong links with their home village through kin and client patronage networks.

In Nigeria for example, investment in chieftainship has become a steady source of symbolic capital for individuals who have made it in 'the world out there', and of development revenue by cultural communities who would otherwise count for little as players in their own right on national and global scenes.[17] But almost everywhere, such participation and investment has led 'not to the reproduction, but rather to the transformation of the structures and relationships of power',[18] and to creative negotiation and conviviality between continuities and encounters with change and innovation. Granted their persistence and influence in Africa, chieftaincy institutions need to be

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[14] Fisiy 1995: 49-50; *cf.* Mouiche 1992; Miaffo 1993.

[15] Ribot 1999: 30-37.

[16] *Cf.* Geschiere 1993; Miaffo & Warnier 1993; Fisiy 1995; Goheen 1992; Fisiy & Goheen 1998; Eyoh 1998; Harneit-Sievers 1998.

[17] *Cf.* Harneit-Sievers 1998.

[18] Goheen 1992: 406.

'understood not only, and not even primarily, as belonging to a pre-modern, pre-capitalist past, but rather as institutions which have either (been) adapted to the contemporary socio-political setting, or even have been specifically created for or by it'.[19]

There is hardly any justification to label and dismiss chieftaincy *a priori*, when even the most touristic of observations would point to a fascinating inherent dynamic and negotiability that guarantees both resilience and renewal of its institutions.

The present paper argues that the rigidity and prescriptiveness of modernist partial theories have left a major gap in scholarship on chiefs and chieftaincy in Africa. It stresses that studies of agency are sorely needed if we are to capture the creative, ongoing processes; thus we may avoid overemphasising structures and essentialist perceptions on chieftaincy, and on the cultural communities that claim and are claimed by it. Scholarship that is impatient with the differences and diversities that empirical research highlights, runs the risk of losing touch with social reality, or of imposing a spurious orthodoxy. Too often, we read scholarship of desire and expectations about Africa, rather than scholarship informed by what Africa actually is and by ongoing processes of negotiation of multiple identities by Africans. As Mbembe observes,[20] there is hardly ever a discourse on Africa for Africa's sake, and the West has often used Africa as a pretext for its own subjectivities, its self-imagination and its perversions. And no amount of new knowledge seems challenge enough to bury for good the ghost of simplistic assumptions about Africa. Only by creating space for scholarship based on Africa as a unit of analysis on its own right,[21] could scholars begin to correct prevalent situations whereby much is known of what African states, institutions and communities *are not* (thanks to dogmatic and normative assumptions of mainstream scholarship) but very little of what *they actually are*.[22] In other words, scholars on Africa ought to demonstrate less might and more right by being sensitive in theory and practice to the predicaments and realities of Africans as bearers and makers of history.

If we consider chiefs as agents and chieftaincy as dynamic institutions, we are likely to be more patient towards ongoing processes of negotiation, accommodation and conviviality between continuities and encounters with difference and innovation on the continent. We would be less keen on signing a death warrant for or seeking to bury chieftaincy alive. Cameroonians and Batswana, like other Africans, have been quick to recognise the merits and limitations of liberal democracy and its rhetoric of rights, because of their lack

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[19] Harneit-Sievers 1998: 57.

[20] Mbembe 2001: 3-9.

[21] Mamdani 1996: 8.

[22] Mbembe 2001: 9.

of might under global consumer capitalism and because of the sheer resilience and creativity of their cultures. With this recognition has come the quest for creative ways of marrying tradition and modernity, ethnicity and statehood, subjection and citizenship, might and right.

Using examples from Cameroon and Botswana, this article argues that Africans are far from giving up chieftaincy or from turning it into completely modern institutions. Instead, Africans are simultaneously modernising their traditions and traditionalising their modernities. No one, it seems, is too much 'citizen' (of the post-colonial state) to be 'subject' (of a chief) at the same time, not even in Southern Africa where westernisation is often claimed to have succeeded the most.[23] Invented, distorted, appropriated or not, chieftaincy remains part of the cultural and political landscapes, but it is constantly negotiated and re-negotiated with new encounters and changing material realities. The results are chiefs and chiefdoms that are neither completely traditional nor completely modern. Chiefs and chiefdoms shape and are shaped by the marriage of influences that makes it possible for Africans to be both 'citizens' and 'subjects', and to negotiate conviviality among competing influences in their lives. Being African is neither exclusively a matter of tradition and culture, nor exclusively a matter of modernity and citizenship: it is being an amalgamation of multiple identities.

Chieftaincy as a dynamic institution in Cameroon

There is little doubt that most of 'the present ambiguity and ambivalence towards local authorities' in Cameroon and Africa at large,[24] was created during colonialism.[25] In the Bamenda region for example, where powerful chiefdoms date back over 400 years, relations between chiefs and the German and British colonial authorities were marked by considerable ambivalence. Chiefs were often co-opted as individuals, disregarding the body of councillors that governed with them and until then had played a monitoring role. The customary policy-making process was thus often lost as chiefs took their lead more from the colonial administrative officers than from their indigenous 'political elite'.[26] At the same time however, their mythical qualities as moral and sacred authorities gave chiefs room to manoeuvre vis-à-vis both the administration and their own people. They thus experienced all the problems associated with indirect rule: if they were perceived by the administration to be

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[23] Ferguson 1999: 1-81.

[24] Rowlands & Warnier 1988: 120-121.

[25] *Cf.* Mamdani 1996.

[26] Lloyd 1965: 73.

overtly in support of their people and institutions, they ran the risk of sanction by government; if, on the other hand, they co-operated too closely with government, they ran the risk of alienating their people. They were often in a predicament, and learnt to play one interest group against the other as circumstances and personal interests dictated.[27]

Elsewhere, the situation was much the same. Thus the French colonial administration, for instance, created 'warrant chiefs' in acephalous societies in the southern half of French Cameroon,[28] a region without a tradition of central government. In areas with chiefdoms, such as the North and the Bamileke region, French colonial administration tried to turn chiefs into auxiliaries of the central administration. Where met with resistance, the French colonial administration was quick to remove the chiefs in question and replace them with appointees of its own. Under this system, many chiefs, including the Sultans of Bamun and Ngaoundere, 'lost their prerogatives'.[29] The policy everywhere was the introduction of 'a French created system of local control' through 'a gradual erosion of the power of indigenous political authority'.[30] Like the British colonial administration, the French one thus ran into problems of legitimacy with its appointed 'chiefs' and *conseils de notables* which, although imbued with authority and backed by the central administration, were not accepted by the people. This legal system 'encouraged differential treatment' of Cameroonians 'according to a cultural, rather than a legal yardstick',[31] thus laying the foundation for the distinction between 'citizens' and 'subjects' that has come to characterise the bifurcated state.[32]

It is evident that the 'chieftaincy reforms' carried out by the French[33] were adopted with very little alteration by the one-party, post-colonial state.[34] Although at Independence Ahidjo, the first Cameroonian president, promised to 'draw the basic principles of African democracy' from 'our traditional chieftainship',[35] the role chiefs were eventually made to play remained as peripheral, ambiguous and ambivalent as under French and British rule. The

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[27] Nkwi 1976: 135-170; *cf.* Nkwi & Warnier 1982; Nyamnjoh 1985; Rowlands & Warnier 1988: 120-121; de Vries 1998.

[28] *Cf.* Gardinier 1963; Le Vine 1964.

[29] Le Vine 1964: 91-98.

[30] *Ibid.*

[31] *Ibid.*: 91-104.

[32] *Cf.* Mamdani 1996.

[33] Le Vine 1964: 97-98.

[34] *Cf.* Nkwi 1976, 1979; Nyamnjoh 1985; Mouiche 1992, 1997.

[35] Ahidjo 1964: 31-33.

various chiefs were only regarded as useful if they could serve as effective instruments for the implementation of government policies among their people.

In this light, government took a series of moves to ensure the attainment of its objectives. These included an invitation in 1966 for chiefs to rally round the unified party; the establishment of criteria for the award of a 'Certificate of Official Recognition by the Government' in 1967; a presidential warning in 1969 to all chiefs who were seen to be reluctant to change; the abolition of the House of Chiefs in 1972; and a decree in 1977 defining the role of chiefs within the new 'nation-state'.[36] Thus while the pre-colonial autonomy of ethnic communities was not restored, chiefs were defined and treated largely as auxiliaries of the government, subservient to district and regional state administrative officers. This enabled central government to draw from chiefs as 'vote banks' often without having to credit them with effective power and active participation in decision making at local and national levels. Legally, the state 'guarantees the protection of chiefs and the defence of their rights while they are in office', but it also sanctions 'those chiefs who fail to live up to the laws of the nation-state.' Chiefs who fail to conduct their duties within the limits of state law 'can be made destitute or thrown out of their traditional office by government.' This dispensation remains largely unchanged, despite the political liberalisation and intensification in the politics of recognition that have increased competition for the attention of chiefs and chiefdoms by political elite of different persuasions since the 1990s. Some saw and continue to see in this 'a complete erosion' of the powers of chiefs who 'can only survive if they recognise and function according to the dictates of the new political elite'.[37]

From these observations, it is clear that despite 'a disquieting variety of types of political organisation' in pre-colonial Cameroon,[38] little was done by the new ruling elite to question the colonial systems grafted onto the country by France and Britain. In the post-colony, the power of chiefs in regions where chieftaincy predated colonialism has continued to be 'undermined by the central authorities' while that of 'warrant chiefs' as colonial creations has been guaranteed largely by demonstrations of force against the local populations by the state, thus causing the state to be out of touch with village communities.[39] Prior to the re-emergence of multi-party politics of the 1990s, the ideology of nation-building and national unity meant that various ethnic groups saw their local loyalties and interests suppressed, and were forced into a relationship of

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[36] Nkwi 1979: 111-115; Nyamnjoh 1985: 102-5.

[37] Nkwi 1979: 115.

[38] Rowlands & Warnier 1988: 120.

[39] *Ibid*.; *cf*. Geschiere & Nyamnjoh 1998.

dependence on a highly centralised government.[40] For the same reason, cultural communities or chiefdoms felt increasingly sidestepped and powerless: even with their most pressing problems and interests, such as the socio-economic changes which they were supposed to help realise, were planned and carried out or simply ignored, entirely without reference to them.

In the 1990s, however, the advent of multi-party politics forced the chiefs to make more open political commitments, thereby enhancing their potential for prominence at regional and national levels, even as their scope for manoeuvre appeared threatened. The chiefs were caught at the centre of the turbulent relations that characterised the modern power elite; some chiefs had become part of the latter as a result of their personal achievements in modern education. While it is commonplace to assume that chiefs were manipulated by the new power elite, it is worth researching the extent to which this assumption is true. Such claims deny the chiefs all agency in their actions, treat them as homogenous, and ignore the fact that political choices are predicated upon vested interests, which are not fixed, but subjected to re-negotiation with changing circumstances.

The overwhelming presence of central government and bureaucratic state power brought about great empowerment and opportunities for both individuals in general and dissenting individuals in particular. These opportunities have made the customary social structures of chiefdoms more ready to negotiate with, and accommodate, forms of agency and subjectivity that would certainly have been sanctioned into the margins in the past. On the other hand, successful individuals, in the modern and individualistic sense, are just as ready to negotiate with, and accommodate, customary ideas of what I have elsewhere referred to as 'domesticated agency and intersubjectivity' – perhaps because of earlier socialisation into the collectivistic philosophy of their cultural group of origin, or because of awareness of the temporality and impermanence of personal success in the modern world, or perhaps because of both.[41] The consequent conviviality or interdependence is usually creatively negotiated, and serves as the basis of future customs, to be referred to and negotiated by others in similar predicaments. Customs are thus not merely being modernised: modernity is being customised. The outcome of these processes is a triumph neither for 'tradition' nor for 'modernity' as distinct entities, but rather for the new creation to which a marriage of both has given rise: individuals and communities as repertoires, melting pots and negotiators of conviviality between multiple encounters or competing influences.

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[40] *Cf.* Bayart 1985.

[41] *Cf.* Nyamnjoh 2002a.

Thanks to such adaptability, confinement and marginalisation by the state are far from a total and permanent eclipse. Chieftaincy has survived and continues to influence ongoing processes. Indeed, the idea that chiefs are marginalised and reduced to local level politics or mere auxiliaries of the administration, must be put in perspective. This was much more the case during colonialism and the single-party years of the post-colony, than it is today under multi-party politics and the politics of recognition. Especially since the 1990s, prominent chiefs have joined the elite ranks of the ruling party and government even at national level, some of them as members of the central committee, political bureau, government, and parliament, and others as chairmen of parastatals or governors of provinces. Some chiefs, admittedly pro-government, are so powerful that they act as if they were above the laws of the central state. The *lamido* (chief) of Rey Bouba in Northern Cameroon is thus for instance known to have his own army; he can arrest, beat and even kill, with impunity. Other chiefs sympathetic to the opposition have become part of the inner-core of decision-makers and strategists, both overtly and covertly. Increasingly, chiefs are part and parcel of the modern elite, and they are as much victims of manipulation as they are guilty of manipulating. If zombification is possible, mutual zombification is increasingly the reality.

Chieftaincy has thus had continued relevance. Evidence of this includes the following:

- An increasing number of highly educated young men, some with doctorate degrees from European and North American universities, are being enthroned chiefs of various communities throughout the country. Unlike during the 1950s and 1960s, when educated chiefs were rare and Fon Angwafo III's Diploma in Agriculture (as obtained in 1953) was a conspicuous exception, few who have become chiefs since the 1980s are illiterate and most have been regular civil servants prior to, and even after, their enthronement. A good case in point of literacy and also of negotiability between the literate chief and his chiefdom is Fon Ganyonga III of Bali Nyonga. He returned from Germany with a PhD in Social Anthropology (a rare achievement) and a German wife, and inherited and married many other wives in accordance with custom following his enthronement in 1985. Initially rejected by some custodians of custom, the German wife – a medical doctor – has earned recognition and endeared herself to the chiefdom by mastering the Bali Nyonga language and through contributions to community healthcare.[42]

- Struggles over entitlement to vacant thrones are still rampant, and often require the intervention of the Ministry of Territorial Administration to resolve, even if in general it does so in favour of a pro-government candidate.

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[42] In the neighbouring chiefdom of Batibo, *Fon* Mbah, another young, educated chief, has stayed faithful to his only wife, despite pressure from his subjects to marry other wives, as is normal for a chief in the Grassfields.

- Similarly, an increasing amount of modern elites does not seem satisfied with achievements within the modern sector and bureaucratic state power, and is increasingly investing in neo-traditional titles of notability for symbolic capital. On becoming President in 1982, Paul Biya thus for instance succumbed to an offer by the chiefs of the Bamenda Grassfields, to be crowned 'fon of fons' (chief of chiefs), a ritual with as much potential benefits for the President as it was for the chiefs and chiefdoms who crowned him.[43]

- Grassfields chiefs' practice of appointing and installing representatives among their subjects in the diaspora is quite common.[44] As 'sons and daughters of the soil' of various home villages, some urban elite do not hesitate to invite their village chiefs to preside over ceremonies and functions aimed at enhancing their chances in the cities where they live and work.[45] Various chiefs encourage cultural activities among urban migrants from their chiefdoms, and are often called upon to inaugurate cultural halls built by their subjects in cities.

- Ethnic elite associations proliferate the corridors of power and resources, seeking political and economic recognition and representation for their regions or peoples as cultural units.[46] They do not hesitate to call upon their chiefs to facilitate this process of 'bringing development' to the home village,[47] even if this entails rivalry and conflict with other chiefdoms.[48]

- Inter-ethnic conflicts over boundaries between chiefdoms have increased in the politics of belonging and 'primary patriotism' since the 1990s.[49] Visiting the Buea and Yaounde archives for colonial maps and records on tribal territories and boundaries has become very popular, with urban elites assisting their chiefs with part-time research into histories.

The role chiefs played in the process of democratisation often determined their future position. In the Bamenda Grassfields for example, this position was largely determined by anticipation and recognition of, or failure to attract,

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[43] In 2000, the chiefs additionally collectively honoured Nico Halle, a prominent Douala-based lawyer from Awing in Bamenda, with the title of *Ntumfo* (chief's messager), in recognition of distinguished contributions to the development of the North West Province.

[44] *Cf.* Goheen 1992; Geschiere & Nyamnjoh 1998; Tabapssi 1999.

[45] *Cf.* Nyamnjoh 2002a.

[46] *Cf.* Nyamnjoh & Rowlands 1998; Nyamnjoh 1999.

[47] *Cf.* Konings 1996d, 1999.

[48] *Cf.* Mouiche 1997; Mope Simo 1997.

[49] *Cf.* Mope Simo 1997; Geschiere & Gugler 1998; Nyamnjoh & Rowlands 1998; Nyamnjoh 1999; Geschiere & Nyamnjoh 1998, 2000.

state-driven development efforts in their chiefdoms. With the pro-democracy clamours of the early 1990s, chiefs supporting the government felt this was the best way of securing state protection and safeguarding their interests in a context of keen competition and differences along ethnic lines. Put in a popular aphorism: because the state had scratched, or promised to scratch, the backs of chiefs, it was only normal to return the compliment by scratching the back of the Head of State and ruling party. In the politics of give-and-take and a context of severe economic recession,one would naturally hope to harvest where one had sown, and one could under no circumstances afford to sow where one was not sure to harvest. Those chiefs who threw their weight behind the opposition parties, or claimed neutrality, tended to be quite critical of the government and ruling party for failure to bring development to their home areas, or for politicising chieftaincy through an arbitrary system of classification into first, second and third class chiefs. In supporting the opposition, disgruntled chiefs were hoping for a new political dispensation that would reinstate the dignity of chieftaincy and reward them accordingly. No position in reality was politically neutral, not even the one that proclaimed that chiefs should be above partisan politics.

Since the late 1990s, a diminishing number of chiefs has openly supported the opposition or the neutrality of chiefs in partisan politics, this in correspondence with the dwindling political fortunes of the Social Democratic Front (SDF), the leading opposition party in the area. With intensification of the politics of belonging and ethno-regionalism since the amendment of the constitution to protect ethnic and regional minorities politically in 1996, Bamenda Grassfields chiefs have mobilised themselves under various lobbies to demand more recognition and resources from government, often in opposition to the competing interests of their counterparts within the Grassfields and in other regions. While the chiefs are generally conciliatory to the ruling party and government as 'the hand that feeds them and their chiefdoms', and would want to re-instate the House of Chiefs,[50] there is fierce competition and rivalry among them for power and resources.

Pertaining to agency, certain chiefs, mostly those that are educated, have succeeded more than others in negotiating conviviality between modern and customary bases of power, and between the interests of the state and those of their chiefdoms. The talents, abilities, education, networks, connections and creativity of individual chiefs determine who succeeds with whom, where, how and with what effects. Certain chiefs such as *Fon* Angwafo III of Mankon and

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[50] The reader is reminded of the fact that the Cameroonian House of Chiefs was abolished in 1972 in favour of the unitary state.

Fon Doh Gah Gwanyin of Balikumbat,[51] have become part of the new elite at the centre of national and regional power. Through their individual capacities or via networks and various associations,[52] these chiefs stake claims on national power and resources for their region and chiefdoms. *Fon* Angwafo III of Mankon, for example, the most educated chief of his time, became the first chief to be elected MP in 1961, in a keenly contested multiparty election in which he ran as an independent.[53] He ignored calls for his resignation as either MP or chief by those who thought it was improper for a chief (whose position is ascribed, or by right) to hold an elected office (achieved, or by might). From his defiance it was clear that he did not subscribe to the dichotomy between ascription and achievement, might and right. Upon the re-unification of the English and French Cameroons in 1961, *Fon* Angwafo III became a member of the sole party, which he served as president of the Bamenda section. He stayed on as MP until his retirement from active politics in 1988. However, the launching of the SDF in Mankon and the dramatic resignation of John Ngu Foncha from the ruling CPDM in 1990,[54] brought *Fon* Angwafo III back to the centre of local and national politics: he was appointed to replace Foncha as the national vice-president of the CPDM. *Fon* Angwafo III has been described as 'a shining example of a pragmatist',[55] and a man of many faces, who has skilfully married two different political cultures. He fails to see why chiefs should be treated as a-political animals or placed above party politics, when they are citizens just like anyone else. He has repeatedly defended himself in interviews with the press and with researchers like myself,[56] by asking: 'How can you deprive a citizen of involvement in politics simply because he holds a traditional title of *fon?*'

To maintain themselves as embodiments of particular cultural communities, chiefs constantly negotiate their positions within the contradictions between the state on the one hand, and in relation to competing expectations within the communities on the other.[57] This is true not only of Cameroonian chiefdoms. Moreover, it does not only speak of how chiefdoms continue to explore new ways of domesticating the agency and subjectivity of their 'sons

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[51] *Fon* Doh Gah Gwanyin of Balikumbat was the only parliamentarian for the ruling Cameroon People's Democratic Movement (CPDM) of the opposition dominated North West province from 1997–2002.

[52] Such associations were the North West *Fons'* Union (NOWEFU) led by *Fon* Abumbi II John Ambe of Bafut, and the North West *Fons'* Conference (NOWEFCO) led by *Fon* Doh Gah Gwanyin of Balikumbat.

[53] Also see Awasom's contribution to the present book.

[54] John Ngu Foncha was the Anglophone architect of re-unification and a prominent statesman.

[55] Aka 1985: 64.

[56] Nyamnjoh 2002a: 124-135.

[57] *Cf.* Konings 1996, 1999.

and daughters' at the centre or periphery of modernity, but also of the mechanisms they have adopted as communities for collective agency and intersubjectivity in changing situations. Such adaptability or dynamism is displayed both towards macro-level changes, and towards developments within the family, i.e. among youth and between genders. Continuity and change alike are determined by mutuality in concessions.

Chieftaincy as dynamic reality in Botswana

Chieftaincy and chiefs in Botswana have displayed similar agency to that noted among their counterparts in Cameroon, siding with forces that best guarantee their interests as individuals and collectively, while hostile to those that radically threaten their right.[58] Makgala traces this agency back to the colonial period when *dikgosi* ('chiefs', sing. *kgosi*) were able to reform the blanket model of the Indirect-Rule regime, which had been introduced in 1935.[59] They were enabled to do this through their insistence on the need to respect local political conditions.

In 1948, Seretse Khama, the prince of the Bangwato chiefdom who had gone to study law at Oxford, married Ruth Williams, the daughter of an Anglican English family. The marriage was opposed by Khama's uncle Tshekedi,[60] by Ruth's parents, by the apartheid regime in South Africa, and by the British colonial authorities. This resulted in Khama's banishment from Bechuanaland in 1950. Patient explaining and negotiation between might and right at various chiefly council meetings eventually led to reconciliation, and the couple was finally accepted by both Bangwato and the British government,[61] who in 1955 allowed them to come home.[62] Khama eventually served Botswana as its first president and he used his position as a lawyer, a devout liberal and a chief towards Independence and nation-building. From Independence in 1966, Khama's personal qualities guaranteed his ruling

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[58] *Cf.* Parsons *et al*. 1995; Selolwane 2002.

[59] Makgala 1999: 11-97.

[60] As Bangwato regent, Tshekedi was firm:

> 'Drop your wife and be *kgosi* [chief], or stay away with her and leave *bogosi* [chieftaincy] to me'.

This firmness made Seretse Khama suspicious: he believed that 'Tshekedi was trying to oust him to grab the chieftainship for himself' (Parsons *et al*. 1995: 78-79).

[61] For press recollections following the death of Lady Ruth Khama in May 2002, see *The Botswana Guardian*, 31 May 2002, 5 June 2002; *The Botswana Gazette*, 5 June 2002; and *Mmegi Monitor*, 4 June 2002.

[62] *Cf.* Parsons *et al*. 1995: 75-149.

Botswana Democratic Party (BDP) regular electoral victories in both the Central District – his chiefdom – and throughout the country, ever since. Commenting in a recent BTV documentary on Seretse Khama,[63] President Mogae described him as a principled person who insisted on people expressing their views, despite the fact that he could easily have been a dictator, given the amount of prestige and respect he enjoyed, and the fact that he was a chief. Khama's agency, which has been well documented,[64] and other examples provided below are yet further indications that scholars must avoid the tendency to mistake labels for substance, and to prescribe rather than observe.

The Khama factor in Botswana politics remains strong even after his death. In April 1998, when Festus Mogae took over as president from Sir Ketumile Masire,[65] Lt. General Ian Khama (Seretse's son) retired as commander of the Botswana Defence Force to deploy his right as *kgosi* of Bangwato, in keeping together the BDP of his late father, and in maximising its fortunes at the 1999 general elections.[66] The party's landslide victory was largely attributed to his appeal as *kgosi*, and his appointment as vice-president after the election was regarded as a sign of gratitude by President Mogae. The decision to give Khama supervisory powers over other ministers so shortly after he returned from a controversial year-long sabbatical from politics, was explained in a similar manner. Like his father, Khama has been able to negotiate and manipulate might and right in responding to competing claims on him as *kgosi*, Member of Parliament (MP) and vice-president by Batswana as 'citizens', 'subjects' or both.

Other *dikgosi* have demonstrated similar agency and negotiability in their various chiefdoms and nationally. The popularity of the Botswana National Front (BNF) in the Bangwaketse chiefdom, for example, is generally attributed to the considerable traditional support the party has received from *kgosi* Seepapitso Gaseitsewe, who in turn has attracted special attention and ambivalence from the BDP government, which has been keen on improving its image in the chiefdom and constituency. *Kgosi* Seepapitso Gaseitsewe's appointment as Botswana's ambassador to the United Nations in 2001 was seen by some as an attempt by government to keep the outspoken and critical chief out of the way.

Despite their relative economic success and advances in modernisation, most Batswana continue – in the face of the contradictions of liberal democracy

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[63] Broadcast 9 June 2002.

[64] *Cf.* Parsons *et al.* 1995.

[65] Note the 'Sir', in relation to British Monarchy referred to above. Seretse and Ruth Khama were also knighted by the Queen.

[66] *Cf.* Molomo 2000.

– to be attracted to customary ideas of leadership, and they realise that pursuing undomesticated autonomy is a rather risky business. There is an ever-looming possibility, even for the most successful and cosmopolitan of Batswana, of sudden unexplained failure and of having to cope alone. This explains people's eagerness to maintain kin networks they can fall back on in times of need and misfortunes, modern commercial insurance schemes notwithstanding.[67] The long arm of custom and chieftaincy has refused to leave migrants alone, just as migration has failed to provoke a permanent severing of relations with the home village and its institutions. Civil servants, politicians, chiefs, intellectuals, and academics are all part of this quest for cultural recognition even as they clamour for the entrenchment of their rights as citizens in a Botswana state. Continued interest in chieftaincy by various elites and elite associations is a good indication of such commitment to community and cultural identities beyond the voluntary associations of the liberal democratic type. Elites from majority and minority ethnic groups alike have created associations such as the Society for the Promotion of Ikalanga Language, Pitso Ya Batswana, and Kamanakao, in order to articulate their demands to have their own chiefs, Paramountcy and cultural representation, even as the logic of modernisation theorists would portray them uniquely as 'citizens' of 'a liberal democracy'.

The following four cases further illustrate the dynamics of chieftaincy in Botswana, regardless of the requiems that prescriptive and normative scholarship has sung in its regard.

Case one: *Dikgosi* and marriage

In Tswana chiefdoms, the politics, management, flexibility and negotiability of chiefly marriage are well documented.[68] Chieftaincy has conservative and progressive forces within its ranks on various issues, and its survival depends a lot more on negotiation and conviviality between the forces than on revolutions or insensitivities to the interests of one another. There is a generational dimension to how various chiefs perceive the importance of marriage. Older chiefs generally see their marriage as a duty to the chiefdom, while the younger generation regards marriage as a personal matter to be realised by the individual chief only when he has found the right woman to make him happy as a husband. Yet despite the public display of difference between the older and youthful chiefs, the very fact that the institution tolerates and provides for both married and unmarried chiefs is evidence of how conciliatory towards custom and innovation, age and youth, chieftaincy is. It guarantees survival for itself

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[67] *Cf.* Ngwenya 2000.

[68] Schapera 1994 : 125-184; c*f.* Comaroff 1981.

by posing as a meeting point for competing perspectives on marriage and its role in present-day Botswana.

It is Saturday 23 February 2002, at Goodhope, southeastern Botswana. The occasion is the enthronement of 25 year-old Lotlamoreng II Montshioa, as *kgosi* of Barolong. With the enthronement, Lotlamoreng will become one of the youngest Paramount Chiefs in Botswana. The issue of the day is Lotlamoreng's unmarried status. *Kgosi* Linchwe II of Bakgatla, oldest Paramount Chief, revered custodian of culture, and president of the Customary Court of Appeal in Botswana, expresses concern over rapid transformations and loss of dignity in chieftaincy. He claims that the onus of restoring the dignity of chieftainship lies with the chiefs themselves, especially with the young breed of chiefs who have lost respect by staying unmarried. He says that in their days, a young *kgosi*-to-be had to be married, 'so that your tribe can respect you.' Turning to *Kgosi* Tawana II, another young, unmarried chief who is also Chairman of the House of Chiefs, Linchwe says:

> 'You have to marry. We must know where *dikgosi* wake up each morning, not to be emerging from shacks all over the village. You must be flanked by your wife on occasions like this one. (…) This way, you have dignity with your people and they respect you.'

Kgosi Linchwe's reputation is such that few dare contradict him. But *Kgosi* Tawana is used to talking back. Turning to Lotlamoreng, he says:

> 'Take your time before getting married, so that when you marry you do so for your own benefit and the benefit of your family, not for Barolong and other people.'

He stresses that *dikgosi* must separate their private lives from their duties, and drawing from his own experience, he adds:

> 'Life is yours and live it the way you feel comfortable. Don't allow yourself to be under pressure from anybody. You live for yourself, your mother and your family and not your tribe. I made that mistake six years ago when I became chief. I thought my life was inseparable from the Batawana, but suddenly I realised that I had my own life to live. When it is time for you to settle, then you will have chosen the woman who will make you a happy husband – and not one you would leave for other women and schoolgirls. Six years ago, I would not have liked to bring a woman into the Moremi poverty, that is why I am ready to do so now.'

Also critical of unmarried *dikgosi* is the Minister of Local Government, Dr. Margaret Nasha:

> 'I am pleading with you to go out there and find a wife to wed. I will be waiting anxiously to get news that you are getting married; that is when I will bring you a present, not today.'

Kgosi Lotlamoreng replies:

> 'I have been listening to Minister Nasha and *Kgosi* Linchwe attentively, but while I respect them, I agree with my chairman, *Kgosi* Tawana. As you all know I have been chief for a short time only and I think it won't be wise for me to wed before some of the elders'.

Commenting after the ceremony, *Kgosi* Linchwe says that he was taken by surprise by the remarks made by *Kgosi* Tawana, claiming that these were not in order:

> 'A chief should lead by example, if he marries, the tribe will follow suit and the nation will be kept.'

Linchwe says that *Kgosi* Tawana:

> '…should know that when a chief is given royal counselling, it is abominable for him or anybody to answer back. If you answer back or engage in the game of theorising on the merits and demerits of the advice given, you run the risk of defeating the advice and the sacred exercise. I do not think many would share Tawana's sentiments because it is a given in our culture that adults, let alone chiefs should marry.'

Tawana continues to be equally adamant after the ceremony, claiming his conscience is clear:

> 'A *kgosi* should not just marry because he is *kgosi*, he should marry only when he is ready and not because there is pressure.'

He denies he has problems with *Kgosi* Linchwe, claiming instead that:

> '…*Kgosi* Linchwe has always been a father figure to me and he will remain so. He is a very close family friend.'[69]

The difference of perception between them on the issue of marriage could perhaps be the result of 'a generation gap', he speculates.[70]

Shortly after the incident, *Kgosi* Tawana reportedly announced his intention to marry Tsitsi Orapeleng of Palapye, in January 2003.[71] She has been his girlfriend since 1998, and he has a two-year old son with her. Around the same

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[69] Linchwe knew Tawana's father well: they were friends during their school days in England. Linchwe considers Tawana his son and he is always ready to give him advise.

[70] Moroke, S.A., 'Lotlamoreng claims his right', *The Midweek Sun*, 27 February 2002, p. 3; Molwane, T., 'To marry or not: Lotlamoreng gets varied advice', *The Botswana Gazette*, 27 February 2002, p. 3; Ditsheko, E., 'Tawana and Linchwe in a tiff', *Mmegi Monitor*, 26 February 2002, p. 9; Nkala, G., 'Do not come in public with a girlfriend', 'Linchwe, live life the way you feel', *Mmegi Monitor*, 1 March 2002, p. 10.

[71] Mooketsi, L., *Mmegi Monitor*, 29 March 2002.

period, the press reported that preparations were underway for Lt General Ian Khama to marry his South African girlfriend, Nomsa Mbere, a practising dentist in Gaborone.[72]

Case two: First female Paramount *Kgosi*

One of the arguments advanced against chieftaincy in Africa is the assumption that this is a predominantly male institution. The prevalence of male chiefs has been used as proof of the undemocratic nature of the institution, often in total disregard of subtle and overt examination mechanisms against autocratic tendencies on the part of chiefs and males. If one were to take this caricature for reality, the following case would seem to suggest that even this male-centred pillar of chieftaincy is not beyond re-negotiation. In other words, the fact that chieftaincy has been dominated by men in the past does not imply that it cannot be reformed to accommodate women. Here again, we see an institution that is adaptable and negotiating with changing political and social realities in Botswana. A woman claiming her 'birthright' as a 'citizen' as provided for in Botswana's constitution and stressing her leadership skills within the 'modern' service industry, is able to access a position customarily defined by 'right' and predominantly traced through the male descent line. The outcome, once again, is neither victory for 'tradition' nor 'modernity', but for Batswana as individuals and groups for whom 'right and might' taken together offer the best protection against the dangers of unmitigated dependence on either.

Mosadi Muriel Seboko was born in Ramotswa in 1950 as first child to the late Paramount *Kgosi* Mokgosi III. She was educated at Moedin College, where she completed her Cambridge Overseas School Certificate in 1969. She joined Barclays Bank in 1971, where she later became department manager and administrator. In 1995, she retired from Barclays, after 24 years of service. In 2001 she worked as floor manager with Century Office Supplies in Broadhurst. Mosadi is mother of four children, who are currently pursuing their own careers.

In an interview with Gary Wills of *The Botswana Gazette* in November 2001,[73] Mosadi Seboko explained, *inter alia*, why she wanted to be the Paramount *Kgosi* of Balete:

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[72] Tutwane, L., 'Khama confirms his marriage', *Mmegi Monitor*, 2 April 2002, p. 7; Tutwane, L., Bangwato ask for Khama's wife', *Mmegi Monitor*, 9 April 2002, p. 2.

[73] Wills, G., 'With Mosadi Seboko: Gary Wills talks to a serious contender for the Balete chieftaincy', *The Botswana Gazette*, 28 November 2001, p. 16.

'The main reason is that as the eldest child in the family of (…) *Kgosi* Mokgosi III this is my birthright. Thus, it's only fair that I inherit what I strongly believe belongs to me. Secondly, I also do not doubt my capacity to lead my tribe and I believe I'm fit in all respects for such a demanding post. I have no criminal record and certainly there are no skeletons in my cupboard!'

Asked why she, a woman, wanted to become chief in a country where this was considered the prerogative or birthright of men, she replied:

'Because of the rather patriarchal system practised in Botswana, culturally, people believe a woman cannot lead her tribe as a Paramount Chief. However, the Constitution of Botswana does not discriminate against women due to their sex. My understanding of the Bill of Rights in the Constitution suggests that actually we have equal rights as men and women, to such positions.'

And to prove that she would make an excellent chief, that she would bring some important skills and experience to the position, she added:

'In my previous jobs I've had the opportunity to handle, manage and supervise people. This has given me capacity to discharge and develop my human resource management skills. Since the chieftainship is highly people-oriented this experience is important, and having been involved with a service industry this has helped me work with people and consider their needs. And (…) I've also brought up children, including of course, helping my mother with my younger sisters and brother (the late *Kgosi* Seboko) that is, after my father *Kgosi* Mokgosi III, died rather prematurely.'

Before her eventual appointment, Mosadi Seboko felt that her appointment would have a positive impact on women in Botswana and beyond:

'As regards the impact on other women I do feel this will be a plus, especially concerning the empowerment of women. (…) [W]omen's NGOs have, for a long time, lobbied government to look at all sectors with respect to gender neutrality, and this must include the chieftainship.'

Among her supporters has been the women's movement represented by organisations such as *Emang Basadi*. She has also received encouragement and great support 'from the public in the village, especially the headmen in different wards,' and 'from individuals around the country, many of whom are in positions of responsibility.'

Her popularity notwithstanding, Mosadi Seboko blamed delays in her appointment on:

'…the fact that the acting chief, and his team, appear not to accept my wish to become the next Paramount Chief of the Balete. Actually, they have not taken this issue very well and are not affording it the neutrality that it needs. Obviously, their campaign has been brought to my notice, both from various newspaper articles and through comments I hear from other people. For example, the acting chief Tumelo Seboko stated recently that he would be putting forward Tsimane Mokgosi's name (who is my young cousin) as the

'chief designate'. I assume that this is simply because he is male? What other reason could there be? However, he has promised to inform the tribe that I have expressed a desire to become the chief, and a meeting is planned this coming Saturday [1st of December 2001] at the main *kgotla* [council] in Ramotswa.'[74]

On 7 January 2002, *Kgosi* Mosadi Seboko officially took up duty as Paramount Chief of the Balete, following approval of her appointment by the Minister of Local Government, Dr Margaret Nasha. The minister praised the Balete 'for being progressive and breaking with tradition by allowing a woman to take the reigns of traditional power', and called upon other tribes to emulate the example. At a well-attended *kgotla* meeting in Ramotswa in December 2001, during which Mosadi was elected to succeed her brother, *Kgosi* Seboko, who died earlier the same year, the minister confirmed the choice made by the people of Balete. Nasha's approval made of Mosadi Seboko substantively the first woman Paramount *Kgosi* in the history of Botswana.[75]

Reacting to discontent among 'tribal male chauvinists', *Kgosi* Mosadi said:

'What Balete need is a leader. Whether the leader is a man or a woman is immaterial. The key thing is education. People need to be educated to understand that a woman is capable of being a *kgosi*. Other than the unwritten customary rites and practices, *bogosi* [chieftaincy], is mainly administrative. As a former administrator, I do not anticipate problems in my new profession as *kgosi*'.[76]

Kgosi Seboko believes that her appointment corrects an anomaly that has been allowed to fester for years, as women were relegated to positions inferior to those of men under the guise that the woman's position is behind the man.

'When I assumed office, I never thought for once that I would need to prove to Balete that I am as capable as my brothers were. I know that as a human being I am not infallible. All I am asking of my people and Batswana is to realise that and not to crucify me when I err only because I am a woman.'

On 28 January 2002, *Kgosi* Mosadi Seboko and *Kgosi* Letlamoreng II were both sworn into the House of Chiefs in accordance with the law stipulating members of the house to be recommended first by their ethnic community and endorsed by the Minister of Local Government. Some press reports claimed:

'…Balete's new Paramount Chief (…) Mosadi Seboko rewrote the history of the House of Chiefs (…) [as] the first female Paramount Chief to take an oath of allegiance as a member of the house'.[77]

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[74] *Ibid*.

[75] 'Mosadi Seboko is officially Paramount Chief of the Balete', *Botswana Gazette*, 9 Jan. 2002, p. 4.

[76] *Mmegi Monitor*, 11 January 2002.

[77] *Midweek Sun*, 30 January 2002, p. 5.

Case three: Succession disputes

Although succession disputes and competition for power 'have occurred with remarkable frequency' in Tswana and other Southern African chiefdoms, scholars have tended not to endorse this 'as sufficiently important to warrant a re-assessment of underlying assumptions' about chieftaincy as all 'right' and no 'might'.[78] In his study of Barolong boo Ratshidi of South Africa, a sister chiefdom to Barolong of Botswana, John Comaroff observed that not only was

> '…competition for power (…) a ubiquitous feature of everyday politics, (…) neither precluded by rule nor limited to *interregna*, [rules could not] be assumed to determine the outcome of indigenous political processes'.

Indeed, were succession to be exactly according to prescription, then Comaroff estimated that 80 per cent of all cases of accession to the Barolong boo Ratshidi chieftaincy would have to be represented as anomalies. He also noted that 'while access to authority is determined by birth, political power depends upon individual ability', and that a significant amount of power in practice is wielded by recruited 'talented office-holders'. Thus, 'although entitled to formal respect and ceremonial precedence', the chief 'is regarded as a fallible human being who may or may not be powerful, and who may rule efficiently or ineptly'. Placing 'a high value upon consultation and participatory politics' as the chiefdom does, would ensure that even an incompetent chief – a somewhat unlikely phenomenon, given the implied stress on achievement – benefits from 'the advice of his subjects, whether it be proffered informally or in public'.[79]

Similar negotiation and manipulation of legitimacy have been frequent among the Tswana of Botswana. Present-day Botswana is characterised by numerous disputes over succession among majority and minority 'tribes' alike. This points not only to chieftaincy as an institution that marries might and right in fascinating ways, but also highlights its continued importance in Botswana. Of the eight Tswana chiefdoms with permanent representation in the House of Chiefs, most have experienced disputes over succession to the throne. The Bakwena, for instance, have been plagued by such disputes, recently epitomised by a bitter legal wrangle between Kgari Sechele and his cousin Kealeboga Sechele, over who should be *kgosi* of Bakwena. As the story goes, Kealeboga's grandfather, *Kgosi* Sebele II, was deposed by British colonialists and replaced with his younger brother, *Kgosi* Sechele III, who was more agreeable to them. Sebele was banished from Bakwena territory and died in exile. In 1962 Sebele's son, Moruakgomo, made an effort to regain the throne

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[78] Comaroff 1978: 1.

[79] *Ibid*.

to his family but failed. Upon his death, *Kgosi* Sechele III was succeeded by Bonewamang Sechele whose four-year old son, Kgari Sechele, was designated heir apparent following his own death in 1978. Kgosikwena Sebele, Kgari Sechele's uncle, was appointed regent while waiting for Kgari to come of age, and served in that capacity for 16 years. The descendants of deposed *Kgosi* Sebele II have never given up their struggle to regain the throne. After Moruakgomo's abortive attempt in 1962, his younger brother Mokgaladi instituted fresh legal proceedings to reclaim the throne in 1999. When the latter died in 2000, his son Kealeboga Sechele continued with the claim, describing Kgari Sechele's designation as 'irregular and accordingly null and void', and thus arguing that he is the rightful heir following the death of his father Mokgalagadi.[80]

In March 2002 however, Kgari Sechele III was sworn in at the House of Chiefs, taking over from Kgosikwena Sebele, who had served as regent for 16 years, and who resigned in January 2002. Kealeboga tried in vain – through his lawyer – to stop the ordainment,[81] and Kgosikwena was not happy with initiatives taken by Kgari supporters without consulting him. In 2000 he was instructed by the Ministry of Local Government to make arrangements for Kgari Sechele's assession to the throne. He disobeyed the instructions on the grounds that another Bakwena royal, Mokgalagadi, was also a claimant to the throne on behalf of his son, Kealeboga. Instead, he called upon the Minister of Local Government to appoint a judicial commission of enquiry, as provided for in the law. The Minister refused, insisting that Kgosikwena must make way for Kgari's enthronement. Kgosikwena took the matter to court, which ruled against him, seeing no credible doubt to Kgari's legitimacy as heir to the throne. The court did not understand 'why the applicant was so stubborn as to consult the very tribe upon which his power must largely depend.' The court also wondered why Kgosikwena, in full knowledge, had delayed for 21 years before raising his doubts about Kgari's legitimacy as heir apparent. Kgosikwena resigned as regent following the court decision, which he appealed.[82]

Commenting on a delegation of Bakwena elders to Serowe (home of Kgari's mother) to update the Bangwato royal family on preparations for Kgari's enthronement, Kgosikwena said:

> 'I don't know who sent them to Serowe, because I am the one who is the contact between the tribe and the royal family. All communication between these two parties has to go

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[80]*The Midweek Sun*, 3 July 2002.

[81] *Mmegi Monitor*, 29 March 2002; *The Botswana Guardian*, 21 December 2001; *The Botswana Gazette*, 30 January 2002.

[82] *The Botswana Guardian*, 19 April 2002, p. 6.

through me. I also hear that last month Kgari was formally introduced to the tribe in the *kgotla*. How can that be when I am the one who is supposed to do that?'

Kgosikwena also opposed to the enthronement of Kgari before the court had decided on the dispute over succession:

> 'The case of who is the rightful heir to the throne is still before the High Court and at this stage it is premature to be talking about – let alone making preparations, for anyone's installation. When the High Court rules, either in Kgari or in Kealeboga's favour, it is only then that we can start talking about installing the next Bakwena Paramount Chief and sending delegations to other tribes.'[83]

This claim is made despite the Chieftaincy Act, Section 25 of which states that no court shall have jurisdiction to hear and determine any matter concerning chieftainship, particularly with regard to the designation, recognition, appointment or suspension of chiefs. Amid this controversy, Kgari's enthronement was scheduled for 17 August 2002:[84] he was installed as *kgosi* and Kgosikwena withdrew his case, claiming he did not have the funds to pursue it.

Case four: Minority tribes fighting for chieftaincy

The claim that chieftaincy is generally unpopular and outmoded, is hardly reflected by the growing clamours by minority tribes for recognition and representation through chiefs of their own. Chiefdom remains the ultimate symbol of identity and freedom in the plural context of modern Botswana, making 'difference' and 'belonging to given cultural communities' a more convincing indicator of citizenship than the illusion of a unifying national culture that in effect thrives on inequalities and under whose cover actual hierarchies among the Batswana are only thinly disguised. Of late, ethnic minorities in Botswana have been struggling to shake off the 'unifying' Tswana culture, and striving for individual recognition and representation.

The concern of the minority groups is more than just a rumour. Since the late 1980s, they have actively been seeking equal recognition as 'ethnic' or 'tribal' entities with Paramount Chiefs of their own, and with a right to representation in the House of Chiefs on equal terms with the Tswana *Dikgosi*. Newspapers abound with stories of various ethnic minority groups, hitherto represented by headmen and sub-chiefs, asking for their own Paramount Chief as a 'tribe' in their own right.

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[83] *The Midweek Sun*, 17 April 2002, pp. 4-5.

[84] *Ibid*.

Ethnic minorities have thus taken up the issue of the Botswana Constitution, which appears to favour some groups to the detriment of others.[85] Of recent, the provisions of sections 77, 78 and 79 of Botswana's Constitution have formed the focus of the minority struggles, as the minorities claim that these sections only mention the eight Tswana-speaking 'tribes', thereby relegating all other tribes to a minority status, and providing a basis for discrimination along ethnic lines. Evidence of such discrimination include:

- inequalities of access to tribal land and administration;
- an educational and administrative policy that privileges the use of Tswana to the detriment of 20 minority languages, thereby denying the latter the opportunity to develop and enrich Botswana culturally; and
- unequal representation of cultural interests in the House of Chiefs, which is responsible for advising government on matters of tradition, custom and culture.

Critics of the Constitution on these points have argued that such discrimination is contrary to the spirit of democracy and equality of citizenship.[86]

One of the minority groups that has been at the forefront of this struggle are the Bayei.[87] The Bayei have been resisting their subjugation by the Batawana for a long time, and they have sought recognition for a Paramount Chief of their own.[88] In the words of their leader *Shikati* [Chief] Calvin Kamanakao I:[89]

> 'We all deserve to be recognised as different tribal groupings who together make a whole called Botswana. We cannot achieve unity by denying other groups their identity, the age of serfdom and domination has long passed'.

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[85] *Cf.* Mazonde 2002; Durham 2002; Solway 2002; Werbner 2002.

[86] Selolwane 2000: 13; *cf.* Mazonde 2002.

[87] Also known as Wayeyi.

[88] *Cf.* Murray 1990; Nyati-Ramahobo 2002; Durham 2002.

[89] It is noteworthy that Calvin Kamanakao's leadership has not been uncontested. Kamanakao's legitimacy as *shikati* (chief) of Bayei has been challenged by Moeti Moeti, through his father Jacob Moeti who is headman of the main Bayei ward in Maun. In a letter summoning Jacob Moeti to a *kgotla* meeting to explain his claim, Lydia Nyati-Ramahobo, coordinator of the Kamanakao Association, wrote:

> 'We value our chieftaincy, for which we have struggled since time immemorial, [and] are not happy to have it dragged in the mud with such a sense of irresponsibility. We therefore wish to afford both of you an opportunity to tell the Wayeyi people in an open, transparent and democratic fashion, the origins of his [Moeti junior's] claims. [She warned that] failure to attend will not prohibit the proceedings of the meeting and the conclusions reached would be final, [and needed to] help Wayeyi to achieve their freedom' (*Mmegi Monitor*, 16 April 2002, p. 4).

In November 2001, the Bayei Kamanakao elite association won a partial victory when the High Court ruled in favour of its challenge that Section 2 of the Chieftaincy Act, which (like the Botswana Constitution) mentions only 'eight tribes', discriminated against minority ethnic groups like Bayei and needed amendment 'to afford equal treatment and equal protection by the law' to all chiefdoms or tribes.[90] In the words of the presiding Chief Justice, the Chieftaincy Act had:

> '…serious consequences, when it is remembered that this Act is one of the laws that define which tribal community can be regarded as a tribe, with the result that such a community can have a chief who can get to the House of Chiefs and that only a tribe can have land referred to as tribal territory.'[91]

Following the ruling, Dr Lydia Nyati-Ramahobo, chairperson of the Kamanakao Association, reportedly remarked:

> 'We are now equal to the Batawana; we are no longer a minority group.'[92]

The ruling in this case should be regarded within the framework of on-going debates on discriminatory sections of the Constitution, which the Kamanakao Association had also challenged, but which the court declined to rule on. Previously, in July 2000, President Festus Mogae had appointed the Balopi Commission to investigate discriminatory articles of the Constitution and in March 2001, the commission reported its findings.[93] A subsequent draft White Paper, based on the commission's findings, argued that:

> '…it makes sense to remove the *ex-officio* status in the membership of the House and subject each member of the House to a process of designation by *morafe* [tribe]. The same individual may be re-designated for another term if *morafe* so wishes.'

Moreover, it stated that:

> '…territoriality, rather than actual or perceived membership of a tribal or ethnic group, should form the fundamental basis for representation in the House of Chiefs.'

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[90] 'Partial victory for Bayeyi: Chief Justice agrees that Chieftainship Act discriminates against them, but inclines to scrap constitutional provisions', *The Botswana Gazette*, 28 November 2001, p. 5.

[91] It should also be seen in line with the decision by the Ministry of Local Government to amend the Chieftaincy Act in accordance with the High Court judgement.

[92] *Cf.* 'Partial victory for Bayeyi: Chief Justice agrees that Chieftainship Act discriminates against them, but inclines to scrap constitutional provisions', *The Botswana Gazette*, 28 November 2001, p. 5; *The Midweek Sun*, 28 November 2001, p. 3.

[93] Republic of Botswana 2000: 93-110.

The draft White Paper thus suggested that the discriminatory sections of the Constitution were to be replaced with new sections 'cast in terms calculated to ensure that no "reasonable" interpretation can be made that they discriminate against any citizen or tribe in Botswana'. In addition, it endorsed the creation of new regional constituencies, 'which are neutral and bear no tribal or ethnic sounding names'. Regions were to have electoral colleges of Headmen of Record up to Head of Tribal Administration as designated members, and each region was to be entitled to one member of the House. The President would appoint three special members 'for the purpose of injecting special skills and obtaining a balance in representation.'

The finding of the Balopi Commission and the suggestions in the draft White Paper were much more readily accepted by the minority groups than by the majority Tswana. The latter namely had vested interests in the status quo. The Tswana argued that the recommended alterations were aimed at eroding chieftaincy by emphasising territoriality over birthright, and at dividing the nation by 'placating minority tribes to the detriment of the rights of tribes that are mentioned in the Botswana Constitution'.[94] Particularly distasteful to the major tribes was the amendment of certain sections of the Constitution, and of membership of the House of Chiefs.

As a reaction to this criticism, President Mogae, himself belonging to a minority tribe, and thus a supporter of the suggested alterations,[95] embarked on a nationwide explanation tour along the *dikgotla*. It was reported however, that, under pressure from the major tribes, Mogae backtracked on some key aspects of the draft White Paper. In a 'war-of-words' meeting with the majority 'tribe' the Bangwato, the President was for instance told that:

> 'It is of course fair that some [minor] tribes should be represented at the House of Chiefs, but their chiefs should still take orders from Sediegeng Kgamane [acting Paramount Chief of Bangwato]. We do not want chiefs who will disobey the Paramount Chief and even oppose him while there [in the House of Chiefs].'[96]

Mogae subsequently appointed a panel to redraft some of the White Paper's relevant sections, such as more equal representation in the House of Chiefs and the changing of the names of some regions, in time for submission to parliament. The revised White Paper, which was eventually adopted by parliament in May 2002, re-introduced *ex-officio* 'permanent' members of the House of Chiefs, and it raised their number from the existing eight to twelve,

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[94] *The Botswana Gazette*, 3 April 2002, p. 2, 10 April 2002, p. 5; *Mmegi Monitor*, 26 March 2002, p. 2.

[95] The Batalaote.

[96] *The Midweek Sun*, 1 May 2002, p. 3; Tutwane, L., 'Khama confirms his marriage', *Mmegi Monitor*, 2 April 2002, p. 2.

which increased the total membership of the House of Chiefs to 35 members. It was foreseen that the four additional *ex-officio* members would be chiefs from the districts of Chobe, Gantsi, North East and Kgalagadi: they would be elevated to Paramount status, while the traditional position of the eight *ex-officio* members from the Tswana tribes would be maintained.[97]

The adopted revised White Paper was rejected by most minority tribes, some of whose elite petitioned President Mogae, claiming that the changes were 'cosmetic', and accusing the government of having succumbed to pressure from Tswana tribes to ignore the findings of the Balopi Commission. The authors of the petition argued:

> 'As a general issue, we are rather not happy with the fact that while the Tswana-speaking tribes were consulted and indeed some modification made on the basis of their inputs before the paper was adopted by Parliament, the non-Tswana were consulted after the paper was adopted. This served as a psychological oppression to disillusion these tribes. It reflected on the ethnic imbalance, as to who gets listened to in this country and who does not.'

They pointed out that the revised and adopted White Paper had merely entrenched Tswana domination over other tribes, by simply translating from English into Setswana words such as 'House of Chiefs' (*Ntlo ya Dikgosi*) and 'chief' (*kgosi*), oblivious to the fact that minority tribes have different appellations for the same realities.[98] It was thus argued that the so-called 'lack of land' of the minorities must not 'stand in the way of the recognition of our Paramount Chiefs, as we the tribes have, and live on, our own land.'[99] It was clear, they argued, that 'the discrimination complained of has not been addressed', as

> '…the White Paper fails to make a constitutional commitment to the liberty and recognition of, and the development and preservation of the languages and cultures of the non-Tswana speaking tribes in the country, other than the ethnic Tswana.'

The petition moreover accused government of having betrayed its original intention to move from ethnicity to territory as a basis for representation, by yielding to Tswana pressure to maintain their tribal identities and to be represented by chiefs who assume office by virtue of birth:

> 'While the Tswana chiefs will participate on the basis of their birth right as chiefs of their tribes, the non-Tswana groups will be elected to the House as sub-chiefs, that is, of an inferior status. (…) Territoriality as a basis of representation is only applicable to the non-Tswana-speaking tribes [as] their dominant ethnicities remain unrecognised.'

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[97] *The Botswana Guardian*, 3 May 2002, p. 8.

[98] E.g. 'chief': *she* in the Kalanga language, *shikati* in the Yei language.

[99] ' "Minorities" petition President Mogae', *The Midweek Sun*, 22 May 2002, pp. 2-3.

Finally it was argued that the proposed proceedings were undemocratic, because it was foreseen that government employees should elect sub-chiefs and chiefs. It was said that the suggested changes were aimed at 'taking away people's rights to participate in the selection of those who should represent them in the House of Chiefs'. In the same manner it was pointed out that representation of the people would be asymmetrical: while it would be possible for homogenous Tswana-speaking regions to have more than one Paramount Chief (e.g. Balete and Batlokwa for the Southeast District, and Barolong and Bangwaketse for the Southern District) – this would not possible for other regions shared by Tswana and other tribes (e.g. Tawana and Bayei of the Northwest District).

Other voices critical of the revised White Paper claimed it had left unresolved the fundamental issue of tribal inequality, and had actually brought things 'back to square one'. The ruling Botswana Democratic Party and government had demonstrated that they were for the interests of the eight principal tribes and of the chosen few, making it difficult for the minority tribes to 'trust a government like this one'.[100]

Conclusion

This article on chieftaincy and democracy in Cameroon and Botswana has argued that, instead of being pushed aside by the modern power elites – as was widely predicted both by modernisation theorists and their critics – chieftaincy has displayed remarkable dynamics and adaptability to new socio-economic and political developments, without necessarily becoming erased in the process. Chiefdoms and chiefs have become active agents in the quest by the new elites for ethnic, cultural symbols as a way of maximising opportunities at the centre of bureaucratic and state power, and at the home village where control over land and labour often require both financial and symbolic capital. Chieftaincy, in other words, remains central to ongoing efforts at developing democracy in line with the expectations of Cameroonians and Batswana as individual 'citizens' and also as 'subjects' of various cultural and ethnic communities.

This chapter has provided evidence to challenge perspectives that present chiefs and chieftaincy as fundamentally undemocratic and as an institution trapped in tradition. The notion that chieftaincy and chiefs are either compressors of individual rights with infinite might, or helpless zombies to be co-optable by custom or by the modern state, denies them of individual agency.

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[100] 'Politicians criticise Mogae', *Mmegi Monitor*, 24 May 2002, p. 20.

The empirical reality of actual chiefdoms and chiefs in Cameroon and Botswana suggests that these are, and have always been, active agents even in the face of the most overwhelming structures of repression. Chieftaincy is a dynamic institution, constantly re-inventing itself to accommodate and to be accommodated by new exigencies, and has proved phenomenal in its ability to seek conviviality between competing and often conflicting influences.

In the realm of democracy, chieftaincy in Cameroon and Botswana has both influenced and been influenced by modern state institutions and liberalism. The result of this intercourse is a victory neither for 'tradition' nor for 'modernity', neither for 'chieftaincy' nor for 'liberal democracy', neither for 'might' nor for 'right', but a richer reality produced and shaped by both. Chieftaincy may be subjected to the whims and caprices of the power elite, but such impulses are not frozen in time and space, nor are the elite a homogenous and immutable entity. Changing political and material realities determine what claims are made on chieftaincy, by whom, and with what implications for democracy. The adaptability and continuous appeal of chieftaincy makes of democracy in Cameroon and Botswana an unending project, an aspiration that is subject to re-negotiation with changing circumstances and growing claims by individuals and communities for recognition and representation.

Chapter 6

A brief history of a neo-traditional form of chieftaincy and its 'constitution' in northern Tanzania, 1945-2000

by Cathérine Baroin

Introduction

Van Rouveroy van Nieuwaal has repeatedly emphasised that African traditional chiefs often play a hybrid role: they are caught between on the one hand the state and its government, whose policies and legislation they are supposed to enforce, and, on the other hand, the people over whom they preside and whose – occasionally conflicting – interests they are meant to represent. Even when they do not turn out to be mere government puppets, or when a socio-political situation generally allows for more flexibility, chiefs are often stuck in this inescapable, ambiguous position.[1]

Until the early 1950s, the chiefs of the Rwa of Mt. Meru in Northern Tanzania experienced such an ambiguous situation.[2] However, a land conflict with the British colonial administration created such turmoil, that the ruling traditional Rwa chief was rejected by his people and that new political institutions, including a different conception of chieftaincy, were put in his place. Subsequently, the role of the former traditional chief was split between two persons, both of which had very clear-cut positions: on the one hand there was the former official chief (*Mangi*), who was backed by the colonial administration, but who in reality had very little authority; on the other hand there was the chief *(Nshili Nnini)* who presided over tribal issues and, relying on a new constitution, became the unofficial but true guarantor of the Rwa identity and customs. The present article describes these rather peculiar

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[1] *Cf.* van Rouveroy van Nieuwaal 1992, 1996, 1999.

[2] Tanzania was formed in 1964 by the merger of Tanganyika and Zanzibar.

political institutions, which the Rwa adapted to modern times, and which until today play an important role in the Rwa's public and private life.

A historical background (1947-1953)

Traditionally, the Rwa have been Bantu-speaking farmers who cultivated the rich southeastern slopes of Mt. Meru (4585 m), some 50 kms away from their better-known eastern neighbours, the Chagga of Kilimanjaro.[3] Like the Chagga, the Rwa mainly used to grow bananas and coffee, combined with maize and beans, which were also cultivated on the dry plains below the mountain. During the 1930s and 1940s, the Rwa experienced great population growth, which resulted in both local and colonial concern with regard to increasing pressure on land. The situation was aggravated by the fact that many White settlers had set up large and profitable coffee plantations, forming a circle around Mt. Meru, which prevented the Rwa from expanding down the mountain and from taking their herds to the low pastures and watering points.[4]

In Northern Tanganyika, the British administration tried to find a permanent solution to the recurring conflicts between the White settlers and the indigenous Rwa, by commissioning an expert, Justice Wilson, to investigate the situation. Based on his belief that Africans should only carry out subsistence farming and provide labour for other economic sectors, whereas the White settlers should specialise in commercial farming on large-scale coffee plantations,[5] Wilson advocated homogenisation and extension of the White settlers' areas by expropriating the Rwa pastures and a few farms to the east of Mt. Meru. The Rwa, who already felt congested on the mountain and wished to expand their own coffee production, resolutely opposed the trimming of their tribal land. Resistance against colonial expansion was mostly led by young, educated, dynamic, Christian coffee growers, who had learned to read and write at the Lutheran mission schools, had started growing coffee for cash after getting acquainted with this new plant on the mission fields, and were eager for more social influence.[6]

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[3] *Cf.* Moore 1986.

[4] Iliffe 1979: 145; Luanda 1986: 273 & map III. The Rwa were not alone in their situation. In nearby Kenya, White settlers and African farmers were involved in similar land struggles; in Kikuyu land the turmoiled to the collapse of government authority at the end of the 1940s, which resulted in the 1952-1956 Mau-Mau revolt; for the Chagga of Mt. Kilimanjaro, the Rwa's eastern neighbours, on the other hand the situation was somewhat better because European plantations around them were less numerous.

[5] Spear 1997: 216.

[6] Baroin 1998: 538-541.

During the late 1940s, Tanganyika had a rather anomalous position in the British Empire: it was Mandated Territory, which after the defeat of Germany at the end of World War I had been administered by the United Kingdom under the loose supervision of the League of Nations.[7] Britain thus had 'full powers of legislation and administration', but was bound to promote 'the material and moral well-being and the social progress of the inhabitants'.[8] According to this mandate, the British attempted to carry out a new policy, under which the former tribal *Native Authorities* – a creation of Indirect Rule – were transformed into more modern and democratic *Local Governments*. It was thus decided that, in accordance with the colonial administration, local chiefs were to be elected and should rule in keeping with a written tribal constitution, which would combine local practices with modern principles, such as the separation of executive and legislative functions.[9]

In 1948, talks about the creation of a tribal constitution started. As a result of the growing unrest on Mt. Meru however, the Rwa refused to collaborate. They boycotted their traditional chief, the *Mangi*, because they felt he was supporting the colonial administration on the expropriation scheme, and they demanded his resignation. The British tried to suppress the rebellion by deporting its most outspoken leaders, but unintentionally made matters worse. As the *Mangi* maintained his position, turmoil grew bigger and hundreds of Rwa joined the Kilimanjaro Citizens' Union (KCU), a new political party that had been set up by the Chagga the previous year and that was aimed at eroding the standing of local Chagga traditional chiefs.[10] Despite this immense Rwa opposition, the constitution was created nonetheless; it was, however, never carried out, although the Rwa readily admitted 'the excellence of its underlying principles', as the British administrator bitterly noted.[11]

The year 1951 is still remembered by the Rwa as a most dramatic year in their history. It was the year that the forced land eviction took place and that the British even went as far as to burn down the local Lutheran church, which was a great sacrilege for the, by then, devoutly Christian Rwa. Other less dramatic, but equally significant, events also took place in 1951, and they were to have more continuing effects.

On 1 January, the Rwa rebellion thus organised itself in an independent political party, the Meru Citizens' Union (MCU), splitting from the

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[7] A mandate that later was passed on to the United Nations Organisation.

[8] Iliffe 1979: 246-247.

[9] Cory paper n° 71.

[10] Iliffe 1979: 491-494.

[11] Tanganyika Territory, Annual Reports of the Provincial Commissioners for the year 1948, p. 63.

Kilimanjaro Citizens' Union. This party was to play a leading role at a later stage when dealing with the British administration and setting up an independent coffee co-operative.

On 24 February, the Rwa elected their first Paramount Chief, in parallel with the pro-British *Mangi*. They gave this new chief a new title, *Nshili Nnini*, meaning 'big leader', using the same word, *nshili*, that was used to refer to a clan leader, *Nshili wa Ufwari*. While the election of a Paramount Chief in a comparable situation had been quite official – the Kilimanjaro Citizens' Union had campaigned for the election of a Paramount Chief for all Chagga,[12] and the first Chagga Paramount Chief, Thomas Marealle, had been elected on Mt. Kilimanjaro one year later – the election of the Rwa's *Nshili Nnini* was never acknowledged by the British administration. His election was for instance never even reported in the District Commissioner's (DC) annual report, which was not surprising: his authority had been bitterly challenged by the Rwa. Although their confrontation remained non-violent, it took all sorts of administrative and legal forms, and extensive international contacts were set up in order to have the Rwa case known all over the world.[13] The DC was not inclined to praise the organisational abilities of such a trouble-making tribe.[14]

Subsequently, the Rwa hired a lawyer and filed a suit against the British, the Meru Land Case, which was heard by the Trusteeship Council of the United Nations Organisations (UNO) – the legal successor of the League of Nations – in New York, in 1952. It was the first time a small African tribe challenged colonial domination on the international scene, and as such it became a well-known episode in the African struggle against colonialism.[15] However, the new political institutions that the Rwa created in the wake of the Meru Land Case, have never been mentioned, nor reported, in the Colonial Archives and hardly received any attention in later studies.[16] They remained underground, but nevertheless played – and still play – a significant role in the Rwa's central political system. In fact, the unacknowledged character of the Rwa's alternative political institutions is the reason that they remained in place after traditional chiefdoms were abolished in Tanzania in 1963 in the first place. When chieftaincy was abolished, the *Nshili Nnini* was left as the sole representative of tribal identity.

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[12] Moore 1986: 154.

[13] Spear 1997: 223.

[14] In the 1949 *Annual Report*, the Rwa were thus mentioned as 'a tribe whose political aspirations are greater than their ability and experience'.

[15] Japhet & Seaton 1967; Iliffe 1979; Spear 1997.

[16] Neither Puritt's study of Rwa social organisation (1970), nor Spear's excellent book (1997) make mention of them.

The new political institutions

The new political system created by the Rwa in 1951 consisted of three parts:

- the *Nshili Nnini*, or head leader
- the *kamati*,[17] or tribal council
- the tribal constitution.

The duty of these institutions has been to rule local affairs and to enforce moral and social order, completely independent from the national political system. The British colonial administration, and later the Tanzanian State administration, never interfered with these internal matters. Let us take a closer look at these three-fold new institutions.

(i) The *Nshili Nnini wa Varwa*, the Paramount Chief of the Rwa, is the tribe's moral leader. In Swahili, his title is translated either as *Mwenyekiti wa koo zote Meru* (Chairman of all Meru clans), or *Mwenyekiti wa Jadi na Mila za Wameru*. The Rwa themselves translate this latter formula into English as 'Chairman of taboo and Meru traditions'.[18] This chief's role is thus to enforce customary law according to the tribe's constitution and wishes. He does not make decisions alone: a global consensus is always looked for, and all matters of general concern are discussed within the tribal council or in general meetings.

The first *Nshili Nnini*, who was elected 24 February 1951, was Tobia Nassari Ayo, the former leader of the Ayo clan. His clan was an commoner one, and Tobia was chosen not for any prominent position or wealth, but for his personal qualities: he was a gentle and quiet man, who listened to people and spoke eloquently. He had strong moral standards and knew the Rwa traditions and culture well. He remained *Nshili Nnini* for 25 years, until 1976, when he resigned because of old age. The next *Nshili Nnini* was Yesaya Lemera Kaaya, the former *Nshili's* long-term and experienced assistant. He, in turn, resigned because of old age in 1984. Moses Isacki Nnko, the former leader of the Nnko clan, succeeded Isaya after being formally installed in January 1986. He resigned because of ill health in 1994, and his assistant, Bethuel Paulo Kaaya, took over.

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[17] This Swahili word is derived from the English 'committee'.

[18] This translation is not accurate as *jadi* should rather be translated into ancestor, descent, origin, genealogy, lineage (Johnson 1990: 147).

The *Nshili Nnini* and the clan leaders have no special dress. They wear Western clothes like all other men nowadays. However, when on duty, chiefs can be recognised by the special sacred stick they carry with them. Each chief has his own stick, *ndata*,[19] which is about 50 cm long and ends up in a sphere about the size of a fist on the one end. It is carved out of a very hard and dark wood, from a tree called *senefu*. The *Nshili* holds his stick right below the sphere, vertically. No one else should touch the stick, and although the chief can curse a person by pointing it at him, or by turning it upside down in front of this person, he should never use it to kill another human being. The supernatural power of *ndata* is such that it also stops fights: the chief only needs to raise it above the belligerents, and they will stop immediately.

(ii) The *Nshili Nnini* presides over a council of elders called the *kamati*.[20] This council is composed of about 15 to 20 members, which include the leaders of the main clans and older age groups,[21] together with a few respected old men. The secretary, *katibu*,[22] of the *kamati* convenes meetings and writes letters decided upon by the council. The *Nshili Nnini* also has an assistant (*ivele* or *ngoviri*). This man, because of the experience he normally accumulates in performing this duty, usually succeeds the *Nshili Nnini*.

The council holds regular meetings, two or three times a month, to discuss a variety of tribal affairs. Most of its activities pertain to general matters (the Meru Land Case for example, before it was settled), policies and contributions to be collected for development and it functions as a supreme court, settling disputes for which no solution has been found at the lower level.

When an ordinary dispute arises, the matter is first discussed at the local level, i.e. within the family if it is a family problem, or within the lineage or clan if that is appropriate. If two clans are involved, leaders and members of these clans will meet in order to settle the dispute. Only when no agreement is reached at a lower level, is the matter sent to the level above. When a family conflict cannot be settled by the head of the family, it is thus discussed by the lineage; if the lineage in turn does not succeed to arbitrate the case, members of the whole clan will try to find a proper solution. In former times, a plaintiff

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[19] The stick is a well-known status symbol throughout in the area, and both the Maasaï and the Swahili used them.

[20] This council is also referred to as *mringaringa*, the name of the huge tree (*Cordia abyssinica*, i.e. 'borage') under which the council meets in the very central village of Poli.

[21] Rwa society is organised according to age and the whole male population is divided into a number of *rika*, age groups. Young men enter the youngest *rika* through circumcision and initiation, and after 15 years or so, recruitment in this *rika* will close and its members will, under their elders' guidance, take up the status of warriors. Meanwhile a new *rika* is opened for younger men.

[22] A Swahili word.

who asked for the arbitration of his lineage or clan had to provide beer for the elders. Only then would they meet and discuss the issue. But as beer consumption has dropped heavily as a result of Lutheran influence,[23] the elders' demand for beer dropped, and plaintiffs are supposed to provide other drinks or cash when they ask the elders to meet and consider their case.

Besides general issues pertaining to the whole tribe, the cases that are finally brought up to the *kamati* usually stem from daily controversies that families or clans are not able to solve. Many cases relate to land issues, which are normally of clan concern: inheritance, lending or selling of land, and boundary marking (when a farmer unduly displaces a field limit, encroaching onto his neighbour's land). Family and matrimonial problems also take up much time on the council agenda: conflicts between a man and his wife, between brothers, parents and children, or decisions as to the fate of a widow and orphans. All of these are not personal matters but legitimate group concerns. Compensation for theft, injury or murder may also be brought to the *kamati*, since they are also matters that the lineage or clan are normally involved with. Such is also the case with controversies relating to women (if, for example, a man takes somebody else's wife), or with contracts on animal lending, which entail arrangements that are defined by customary law.

Before the whole council meets to discuss a problem, a simpler solution may be looked for. For example, one or a few members of the council will be asked, personally, to arbitrate a specific dispute in which the parties involved have not been able to come to an agreement on their own. It is hoped that the wisdom and influence of an elder will help find a settlement. If this is does not suffice, the whole council will meet to discuss the issue, and the decision will settle the matter once and for all, no appeal being allowed within the traditional system.

In most cases, people bow to the *kamati's* decision, and only seldom does someone decide to take his case further to the local Primary Court. A Primary Court judgment, if contrary to traditional customs, can be reversed by the *kamati*, and the latter's verdict will usually prevail because it stems from a collective agreement that the individual is bound to accept. Moore's keen remarks on Chagga law apply here as well:[24] she rightfully notes that official Tanzanian law, which is enforced in Primary Courts, and local customary law rely on opposite conceptions of society. Official law is strongly influenced by European ideas, which look at societies as 'only a great sea of individuals (…) [where] clans and families [are] not (…) given serious official attention'.[25] Yet

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[23] Baroin 2001: 89-92.

[24] Moore 1986: 169.

[25] *Ibid*.

it is quite clear that both in Chagga and in Rwa society today, clan and family interests prevail over the individual. Clans and families remain the basic operating social units, the concerns of which customary law (whether Chagga or Rwa) deals with. Because they address the appropriate issues in a suitable manner, the clan or the council usually succeeds in settling matters.

There is one final important field that falls within the competence of the tribal council: decisions pertaining to ordeals. Ordeals indeed set up a threat not only for individuals, but for the social group (family or clan) as a whole, which is why they are of family or clan concern. The procedure to which the Rwa resort is called 'to break the pot',[26] and it is still used in present Rwa's daily life as a manner to solve some problems for which no other solution has been found. If some damage has been done – somebody's barn is burned down, a cow is stolen, a piece of property (in one case from 1997, a radio) is stolen from a house – and despite extensive searches and inquiries, no thief or wrongdoer can be found, and thus nobody can be held responsible, there is only one sure way for the victim to secure compensation or revenge. He (she) will launch a supernatural procedure, called 'to break the pot'.[27] First it is publicly announced, some two weeks in advance, that the pot will be broken for this specific case. The announcement is meant to give the person at fault a further opportunity to report himself (herself) before it is too late. If he does not show up, a specialist of pot-breaking will be called for. This specialist uses a small clay pot shaped as a feminine figure with two breasts, puts some specific plants inside it and lays a curse, by saying: 'If the person who burned this barn (or stole this cow, or stole this radio) does not report himself, let him be cursed'.

The threat is such that the wrongdoer usually prefers to report himself straight away. Then, in order to 'cool down the curse', *yorisa kidengo*, i.e. to free himself from it, he must compensate the victim, pay for the pot procedure and pay a fine, as soon as possible. If he fails to do so, the curse sooner or later will bring endless misfortunes upon him, his family, his clan, his descendants and/or his property. He may get sick or die, his family or clan members may get sick or die, he may have no offspring himself, his children may die, his cattle may die or have no offspring, or his crops may not ripen. Everybody is so deeply convinced that such disasters are bound to occur, that breaking the pot is a very efficient way to force a wrongdoer to come to the fore, and thus to solve this kind of problem.

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[26] *Ipara nungu* in Rwa language*, kupasua chungu* in Swahili.

[27] Again, this practice extends far beyond Mt. Meru, and the Rwa say they borrowed it from the outside. Moore mentions a somewhat similar 'curing pot' among the neighbouring Chagga of Kilimanjaro (1986: 48-49).

Another occasion for breaking the pot arises if a series of misfortunes strike a family or a clan, and people start looking for an explanation. They will agree that some family or clan member did something wrong, possibly a long time ago, that he never paid for. Maybe somebody fell short in his duty of honouring a particular ancestor, and the latter is now seeking revenge; maybe he killed somebody or stole something, and never acknowledged his deed after the pot was broken. The problem therefore is to find out who is responsible, and what misdeed explains the ill fate now beleaguering the group.

Because the curse endangers the wrongdoer's whole clan, no one is allowed to undertake the breaking of the pot without the approval of his clan: the risk would be that the wrongdoer belongs to the same clan as the victim, in which case the procedure would backfire and turn the curse against all clan members. The clan of the victim therefore first inquires and debates among its members in order to make sure that no one within the clan is responsible for the offence, before allowing the procedure to take place. In the late 1980s, the Rwa decided to add one more guarantee against the deadly risks involved in breaking the pot: only the tribal council could from then on be entitled to decide about letting somebody break the pot.

Most Rwa today agree that the social benefit of this procedure is that it provides strong incitement for people to behave. But members of the Pentecostal church, which influence is growing on Mt. Meru,[28] refuse to participate in laying any curse. They consider it a sin, and claim that breaking the pot amounts to calling the devil upon fellow Christians.[29]

(iii) As mentioned before, the idea of a tribal constitution was first put forward by the British administration in 1948, but could not be enforced because of local Rwa rebellion. After the Meru Land Case had been settled,[30] and the Mangi had resigned in 1952, talks about a constitution resumed between the British and representatives of the Rwa people, including members of the Meru Citizens' Union:

> 'After twelve such meetings, the new constitution was written up and circulated throughout the tribe; it was discussed at village meetings and finally accepted on May 27, 1953. The more prominent features of the new constitution were the decision to elect the

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[28] The Pentecostal church first established itself on Mt. Meru from 1968, and gained more influence after a conflict within the Lutheran church in 1990-1993 (Baroin 1996: 543).

[29] Members of the Pentecostal church also refuse to attend *kamati* meetings.

[30] The Rwa did not win their case in New York and White farmers did settle on the disputed land. But after five years, the settlers felt they could not develop the area and left, and the Rwa purchased back most of the land (Puritt 1970: 9-10).

> *Mangi* by secret ballot, the separation of the executive and the judiciary at all levels, and the setting up of sub-committees of the tribal council to deal with specific services.'[31]

After the new constitution was approved, a new *Mangi*, Sylvanos Kaaya, was elected. He dealt with all administrative matters in relation to the colonial power, while the *Nshili Nnini* remained in charge of internal affairs. When in 1963, shortly after the establishment of independence, the *Mangiship* was abolished, together with all traditional chieftainships in Tanzania, the 1953 constitution also ceased to exist. The text completely disappeared,[32] and it is not even clear whether it was ever enforced after Kaaya's election. However, the concept of a constitution remained and lived on in the political system of the *Nshili Nnini*, who continued to perform his duties: he could not be abolished, since he had never been officially accepted in the first place.

After the initial abolishment of all traditional polities, the *Nshili Nnini* and his council dealt with tribal affairs and cases on an oral basis, according to customary law. It was, on Mt. Meru as elsewhere, a set of unwritten rules, of which the elders were knowledgeable, with regard to traditional local affairs and that they could judge cases. It was only much later, apparently, that the tribal council decided to write down the customary law. They wrote a document that they themselves referred to as their 'constitution', using the same word that the British had introduced in 1948. However, the content of this document was quite different from that of a constitution in the English sense.

The document, written in Swahili, has had many shapes and forms. In the course of four stays on Mt. Meru,[33] I collected four successive versions of it, spanning a time of ten years, from 1985 to 1995:

- The earliest written document I came across dates from 1985. It is a six-page, typed manuscript in Swahili, entitled *Decisions of the Assembly of Traditional Leaders of the Meru (Rwa) People – Phase Three – 1985*.[34] This document first indicates the names of the 14 members of the tribal council who enacted the 66 laws that follow (*sheria zilizowekwa*, 'the laws that have been changed'). It is signed by three persons: Yesaya

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[31] Puritt 1970: 70.

[32] I could find no copy of it in the Tanzanian or British colonial archives, nor could Henry A. Fosbrooke, the Government Sociologist who had originally helped write it down, provide me a copy of it when I met him as a very old man in 1992.

[33] These stays took place between 1992 and 1997, and add up to 10 months.

[34] *Maazimio ya kikao cha washili wa mila za Wameru – Awamu ya tatu – 1985*. No document was found corresponding to phase 1 or 2.

Lemera Kaaya, who was the ruling President of the council, his successor Moses Isacki Nnko,[35] and the secretary of the tribal council.

- The next available document is written in English and is dated December 1986. It is called *Meru Traditional Regulations*, and starts with the same list of 14 people, followed by a greater number of paragraphs. The previous 66 are extended to 74, and they are divided into a number of subheads: regulations concerning marriage, injury or murder, stealing animals or food, rites concerning death and inheritance, and general regulations.

- The third document corresponds to 'phase 4' of the 1985 constitution. It is written in Swahili, and dated 1989. This time, it comprises a list of 81 different 'laws' (*sheria*) decided upon by a list of 16 council members.

- The latest document was agreed upon in 1995 by a council of 20 members. The 1989 draft of 12 pages developed into a neatly typed document of 25 pages, where the same 81 points are given a more detailed phrasing. The obvious concern is to avoid ambiguity in interpreting the law. The title is also more elaborate: *Laws of Meru Traditions and Customs as decided upon in the General Meeting of All Leaders (*Mringaringa*) on 28 January 1995*.[36] At the bottom of the front page it is written: *Zimetungwa na halmashauri kuu ya jadi na mila za Wameru*, meaning 'Compiled by the Head Council of Tradition and Customs of the Meru people'.

These four documents clearly demonstrate that, in recent times at least, the Rwa have paid much attention to their laws. From one to the next, the constitution has become more complete and longer. Comparing the first and last version (1985 and 1995) enables us to draft the general contents of the constitution, and to analyse the global trend of its evolution.

Fitting to modern times

Both documents share the enumeration of long series of fines that are due in various circumstances. The first 18 articles deal with marriage payments. They give a long list of animals, cash and other gifts that the bridegroom has to give to various members of his bride's family, before and after the wedding. No mention is made, however, of the time when these gifts should be given.

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[35] At the time, Yesaya was still *Nshili nnini*, in charge since the official inauguration of his successor Moses took place in 1986.

[36] *'Sheria za jadi na mila za Wameru kama zilivyopitishwa katika mkutano mkuu wa washili wote (mringaringa) uliofanyika tarehe 28.01.1995.'*

Another long list of articles indicates which fines must be paid, depending on a great number of possible damages: injuries of different kinds, murder, helping with abortion, impregnating a girl, thefts of all sorts (stock, agricultural products, honey or beehives). Other important topics that the two documents are concerned with are inheritance, selling or lending of a field, or other economical regulations such as those to be followed when someone keeps somebody else's animal.

A full analysis of all these laws, which the Rwa consider as the cornerstone of their tradition, would involve a detailed description of their social customs and rituals, which is beyond the scope of the present article. It will suffice here to highlight the most significant changes that were introduced in the last constitution, as compared to the one written ten years earlier, as they provide evidence about the social changes which took place lately in Rwa society:

- From one document to the other, rules are reordered in a more logical way and fifteen new points are introduced, thus turning the last constitution into a lengthier (from 66 articles to 81) and more detailed document. Many rules are phrased more explicitly and examples are introduced in order to avoid ambiguity. This concern for more logic and more precision is, again, a clear sign of the people's interest in these laws.

- Another obvious basic concern is to adapt rules to modern times. This can be seen in one striking difference between the two documents; namely, the updating of fines. Their increase is not a mere consequence of inflation. It also demonstrates the people's understanding of inflation and their desire to deal with its effects.

- Another sign of the Rwa's concern for modernity is the introduction of a new clause: the obligation for parents to send their children to primary and secondary or technical schools. Indeed, the general concern for providing education has continued to grow on Mt. Meru, keeping pace with demographic pressure and land shortage. These factors in turn make it necessary to look for other sources of income, which better education is likely to make available.

- Land pressure on Mt. Meru also led people to keep and breed less livestock. It is thus not surprising that many fines that were valued in kind (cattle or small stock) in 1985, have been given cash equivalents in the updated constitution. Few people would be able to pay these fines in kind nowadays.

- Again, the Council's desire to adapt customary law to the changing conditions of life is demonstrated in a new article: it formally states which rules should apply in case of a car accident. Such occurrences are

indeed on the rise, due to the ever-increasing traffic on the Arusha-Moshi tarmac road, right to the South of Mt. Meru.

- But other new developments in the 1995 document result from more fundamental changes in the Rwa's mores and mentalities. Children are for instance increasingly born out of wedlock, and the new constitution takes this new social trend into consideration by providing them with rights they did not have previously. Such children and their mothers used to be social outcasts, but they became so numerous that they cannot be simply discarded anymore. A new attitude has developed, partly as a result of church influence, and the general feeling today is that these mothers and children should be given a minimum social recognition and economic support. One new article in the constitution thus stipulates that, if a man is proved to be the father of a child whose mother he refuses to marry, he must still provide for the child's upbringing, pay for his school fees as a married father does, and give him a share of inheritance.
- Moreover, a number of new rules specifically deal with various cases of sexual intercourse outside wedlock, and a new article has been introduced that allows daughters to inherit land from their fathers, 'in case they do not live in their husband's homestead' (a euphemistic way of saying that they are not married). The new constitution not only tries to make good the damage on the side of the mother and the child; it also punishes the wrongdoer by prescribing heavier fines on a man who impregnates a girl and subsequently refuses to marry her. This harsher punishment is another indication of the growing general concern for what has come to be a big moral and social problem.
- Married women as well are endowed with increased rights. For example, a new article states that a woman who is expelled by her husband has a right to cultivate a field that her husband's clan must provide her with. This is a way to provide her with personal means of subsistence and with the right to stay with her children in the area. A heavier fine is also levied upon a husband who injures his wife and breaks one of her bones: an extra ewe is added to the previous fines.[37]

Where some of the articles in the Rwa's constitution thus demonstrate their concern for adapting to modern times, others remain very much in line with tradition. Thus, the custom of 'breaking the pot' is introduced, by stipulating that it is prohibited to break the pot without *kamati* permission. However, the purpose of this article is not to officially acknowledge a custom that everybody

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[37] In 1985, one cow, one sheep and beer for the two clans were added.

takes for granted; it is to rule and control the handling of this very dangerous procedure.

In all successive versions of this document, land clearly remains a basic issue. The latest version introduces two additional articles regarding land. One stipulates what should be done in case one moves the boundary mark of his field (not a rare occurrence), and the second expressly prohibits mortgaging a field. This article can be considered as an attempt by the clan elders (who are strongly represented within the *kamati)* to safeguard their main source of power, namely control of land, since mortgaging a field can be an indirect way to sell it without clan permission, i.e. to escape the traditional obligation to ask for the clan elder's permission in order to sell a plot of land.

Further articles have been added which relate more closely to constitutional rights proper. They describe how chiefs should be elected, and stipulate that no cumulation of offices is allowed: a clan chief can thus not be an age-group leader or a church leader. These three basic sources of power are thus clearly differentiated.

One final striking feature of the 1995 document is the obvious demonstration of the need for outside recognition. The final article, after listing the names of the 20 members of the constitutional committee who drafted and agreed upon the text, entails one sentence for government approval: 'as approved by the Chief Lawyer of the Government'.[38] A blank space is left for this person's signature.

This document, I was told, was the result of the following steps:

- The new constitution had been prepared by the council of elders whose names are listed at the end;
- Then it had been discussed and approved on a wider scale, by the clan leaders and age-group leaders;
- Then it had been sent for approval to the Tanzanian government, as the final sentence of the 1995 document testifies.

The Rwa indeed felt they could not officially approve their own constitution if any of its articles was in contradiction with the Tanzanian State Laws. This position exemplifies the strength of the national feeling in Tanzania, which is a prevailing attitude throughout the country. The Rwa, somehow, consider themselves to be Tanzanians before being members of their own tribal community. At the time of my fieldwork, they were waiting for a positive answer from the government, before organising a general meeting with the purpose of approving their new constitution officially. Only then would they

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[38] *Na zimeidhinishwa na mwanasheria mkuu wa serikali.*

use it as their new legal basis. With such a purpose in mind, it is quite clear that no other language could be used but Swahili, together with English the official language, and by far the most widespread in Tanzania.

Conclusion

The Rwa constitution provides an interesting picture of what the Rwa consider to be the core of their social laws. However, these laws are the ones that the Rwa *want* to apply to themselves, or feel they *should* apply to themselves. They may not fully correspond to what actually takes place. As Moore commented with regard to Chagga customary law: '… fixity of rule statement is frequently found coupled with flexibility of practise.'[39] For example, the livestock that a Rwa bridegroom is supposed to give to his in-laws is sometimes paid years later, if ever. One elderly informant once proudly told me that he had just recently paid the bride price on behalf of his own father, who had died before he had finished paying it. Despite the fact that some rules are thus not given much notice, it is important to keep them in mind: when a crisis occurs, the reason for ongoing misfortunes may be attributed to the fact that these rules were ignored.

The constitution not only provides some insight as to how the Rwa view their own culture. In addition, it is a form of political manifesto. By stating in writing the tribe's 'traditional' institutions, Rwa identity is shaped and strengthened. From a historical point of view, the tribal institutions described in this article were created to resist British colonial dominance in the wake of the Meru Land Case. But they can also be understood as a broader consequence of indirect rule, and of the 'creation of tribes' that went with it: Iliffe thus states that, with regard to Tanganyika, the British – in an oversimplification – only viewed Africans as belonging to tribes, and so Africans created tribes in order to function within the colonial framework.[40]

The Rwa political institutions clearly demonstrate their desire to regard themselves as a united and operational tribal group, and in this respect one should not be surprised that they went as far as to adapt their institutions to modern times, making them one further example of neo-traditional bricolage, for which Africans have demonstrated so much talent.[41] However, tribal unity was greatly jeopardised in the early 1990s by a violent conflict that erupted

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[39] Moore 1986: 40.

[40] Iliffe 1979: 318.

[41] See for example the Nkoya of western central Zambia (van Binsbergen 1992-94), or the Ngwato of Eastern Botswana (Landau 1995).

among the Rwa over the control of the Lutheran diocese on Mt. Meru.[42] A lingering dispute followed between the authorities of the official Lutheran church on the one hand, and the 'rebels' who started a new independent church on the other hand. It resulted in so much social disruption that development projects could no longer be implemented, and the proper working of the Rwa's political institutions was greatly hindered. In Rwa society today, the neo-traditional tribal institutions compete with two additional sources of power: the churches and the state administration.

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[42] Baroin 1996: 540-550.

Chapter 7

Legal syncretism in Sekhukhune:

Local law and the power of traditional leaders in northern South Africa

by Barbara Oomen

Introduction

The present paper deals with local rules that govern the power and authority of traditional leaders in Sekhukhune, in northern South Africa, and their dynamic relationship with official state law. As such, this chapter finds itself at a cross-section of three of the leading themes in van Rouveroy van Nieuwaal's rich oeuvre:

- there is the interest, apparent in much of his early work, in the nature of local law, as lived in a given African village;[1]
- there is the recurrent theme of the power and authority of traditional leadership in contemporary Africa, which inspired numerous articles, books and films alike;[2] and
- there is the theme of the interaction between formal, codified state law and local living norms.

The way in which traditional leadership entails 'a synthesis between antagonistic forces stemming from different state models, bureaucracies and world views' has been dubbed 'syncretism' by van Rouveroy van Nieuwaal, a term that underlines the dynamic, dialogical relationship that has been forged between the two legal systems.[3] This paper concerns itself with this syncretism by looking at how local customary norms exist in relation with official state legislation. It does this by examining those rules that determine the position of

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[1] *Cf.* van Rouveroy van Nieuwaal 1976, 1980, 1982, 1998.

[2] *Cf.* van Rouveroy van Nieuwaal 1987, 1991, 1992, 1996, 1996, 1999c.

[3] Van Rouveroy van Nieuwaal 1999: 21.

traditional leaders in post-apartheid South Africa, in the area of Sekhukhune.[4] The central argument is that local customary law is continuously negotiated, and should be understood within the framework of local power relations.

In order to discuss the issue of syncretism within the framework of local, customary law, a distinction needs to be established between what is referred to as 'official' and 'living' versions of customary law.[5] Official customary law is a subcategory of South African state legislation, and is a relic from the latter's apartheid system, which relied strongly on legalised cultural difference to support its segregationist policies.[6] This heritage has been reaffirmed within the new order through a constitutional provision which, *inter alia*, states that:

- the institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution;
- a traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs; and
- the courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.[7]

These provisions refer to a large amount of, often obsolescent or obsolete, legislation, such as the 1927 Black Administration Act, the 1951 Black Authorities Act, the large corpus of ensuing decrees, regulations and court judgements, as well as the customary law textbooks to which the latter refer.[8] They grant traditional leaders substantial power with regard to land allocation, local government and the adjudication of customary law. They moreover install Tribal Offices and provide for payment of the traditional authorities. This official customary legislation draws heavily upon – often apartheid-inspired – ethnographic textbooks that list rules of African customary law in an imposed format inspired by the Judaeo-Christian Ten Commandments.[9] While this official customary law is 'frequently consulted as the most readily available

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[4] Sekhukhune, inhabited mostly by Bapedi, is an area in South Africa's Northern Province, which makes up most of the former homeland of Lebowa.

[5] South African Law Commission, Project 90: Customary Law, Pretoria: 2000

[6] *Cf.* Mamdani 1996: *passim*.

[7] S211 Act 108/1996.

[8] Respectively Act 38/1927, Act 68/1951 & Act 120/1998. For an overview of the legislation see: de Villiers 1998, Bekker 1991, Bennett 1991; Olivier *et al*. 1995.

[9] Ethnographic works such as Harries (1929); Mönnig (1967); Prinsloo (1983).

source', it is 'often inaccurate and misleading'.[10] The South African Law Commission laments that, in contrast, little is known about 'living' customary law – the subject of this paper – which 'rests squarely on the existing and generally accepted social practices of a community' and is 'imprecise, flexible, and liable to constant and subtle change'.[11]

For the purpose of this paper I suggest a refinement of the dichotomy which is habitually made between 'official law' and 'living law'. I propose that the following four registers of law can be distinguished, each embedded in separate discourses and discernible through a distinct research methodology:[12]

- common law
- customary law
- stated customary law
- living law.

South Africa's *common law* is the composite of laws, legal precedents and doctrine, with the constitution as its umbrella text. *Official customary law* is a species of the generic common law, its recognition couched in a specific discourse but its substance essentially also discernible from text. *Stated customary law* is a set of idealised rules often retrieved through interviews with traditional leaders or village elders.[13] *Living law* finally, is a term coined by Ehrlich,[14] and, with synonyms as 'local law', 'folk law' and 'law in action', serving to indicate law as lived in day-to-day life and the norms and values it draws on. Although the four registers are distinct, they all influence one another, and draw legitimacy from one another.

The term 'customary' needs some refinement. Terms as 'stated customary law' and 'living customary law' typically refer to the – supposed – living law in areas where a traditional authority forms the main political alternative to the state. While Sekhukhune may be considered such a field, it also abounds with other institutions involved in the creation of local law, such as government

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[10] South African Law Commission, Project 90: Customary Law.

[11] *Ibid.*

[12] Many comparable distinctions have been made. Bennett (1997) for instance speaks of the official code, ethnographic texts and living law.

[13] Until recently, this manner of collecting data was generally accepted as the prime way to 'assert' customary law. Despite the fact that numerous commentators have emphasised how this method often does not lead to statements of what local law is, but rather of what respondents would like it to be, it continues to be the prime research tool of many South African legal researchers and policy makers. The best-known and most-detailed description of how customary law was created in a dialogue between policy makers and local rulers can be found in Chanock 1985.

[14] Ehrlich 1936: 493.

agents, vigilante organisations, churches, and civic organisations. In addition, local law draws on a variety of sources ranging from the 'loosely constructed repertoire' of custom, to constitutional and developmental values; this can be seen with regard to the legitimation of support for traditional authority.[15] In this paper the terms 'living law' or 'local law' will be used instead of 'customary law' when discussing what *molao* (i.e. 'law' in the main local language, Pedi) entails locally.

A final point needs to be made. Living law is negotiated within ever-fluctuating social and political settings, which it simultaneously reflects and shapes. This precludes a neat listing of Bapedi 'customary' rules on traditional authority.[16] Ideal norms may reflect important worldviews and moral claims; presumably this makes it possible to simply state them. However, ideal norms tend to articulate exceptions, rather than rules. What is more useful, then, is an investigation of the forces that determine which rules are invoked by whom, for what reason, at what moment, and based on which sources. This requires continuous analysis of the Sekhukhune legal culture, defined in Bierbrauer's terms as the 'socially derived product encompassing such interrelated concepts as legitimacy and acceptance of authorities, preferences for and beliefs about dispute arrangements, and authorities' use of discretionary power', as well as the forces that shape it.[17]

This paper is structured as follows. First, the general characteristics of living law in Sekhukhune are described. Subsequently it is illustrated how – in two very different cases – this living law interacts with state law in determining the position of traditional leaders.

Living law in Sekhukhune

Living law in Sekhukhune has a number of key characteristics:

- there is a plurality of dispute settlement forums
- it has an element of *negotiated law*
- it uses state legislation as a resource
- rights are relational
- it has a processual legal culture.

(i) *Sekhukhune living law has a clear plurality of dispute settlement forums.* Overall, a distinction can be made between magistrates' courts, official

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[15] Comaroff 1981: 18.

[16] Such listings can be found in Harries 1929; Mönnig 1976; Prinsloo 1983.

[17] Bierbrauer 1994: 243.

customary courts, unofficial customary courts and other forum involved in dispute resolution.

The magistrates' court is a government-established and government-run forum. Generally, it is considered the last forum people with disputes turn to. One magistrate explains that '…cases should start at home, then be taken to the chief, and only then to us'. However, cases that have first been addressed by chiefs, rarely reach this final stage. In the period 1994-1999, the Sekhukhune magistrates court only registered six appeals from official customary courts. As a result, the magistrate in question feels that the Sekhukhune magistrates' court is

> '…the most boring place to work you can imagine. (…) People solve their cases at home. The vigilante organisation *Mapogo* does the criminal cases these days,[18] and customary cases remain with the chiefs. I only have one seating a week, in which I predominantly deal with assault and theft.'[19]

The magistrates' court generally tries cases according to 'official' customary law: Seymour's *Customary Law in Southern Africa* is the most popular reference.

Official customary courts are courts that have been officially recognised by the state,[20] but that are run, and presided over, by chiefs. Official customary legislation only stipulates which cases these courts may *not* try. Usually these are very serious cases such as murder, rape, robbery and extortion.[21] Formally, customary courts are obliged to report all their decisions to the magistrate, but in reality hardly any of them do. Typical customary court cases include couples that wish to separate, demands for the return of bride wealth, custody of children, domestic violence, land disputes, breach of contract and lack of respect for the *kgoro*, i.e. the ward as the official customary forum for dispute.

Cases in the official customary courts are often appeals from unofficial customary courts: courts that are not recognised by the state, but that are associated with the traditional authority hierarchy. They vary from

- courts held by traditional leaders who do not have statal recognition, but who are recognised by their people, to

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[18] Full name: *Mapogo a Mathamaga*. *Cf.* Oomen 1999

[19] Interview, 9 September 1999.

[20] 38/1927. Proclamation 961 of 1992 assigned the power to confer civil and criminal jurisdiction to traditional leaders to the Minister of Justice.

[21] The full list forms Schedule III of the 1927 *Black Administration Act,* as amended up to Act 47 of 1997, and includes treason, murder, rape, robbery, assault with intent to do grievous bodily harm, abortion, sodomy and extortion.

- the courts held by headmen and ward heads, to courts that are *ka setso* (traditionally) *mo lapeng* (in the yard).

Although unofficial customary courts are generally less bureaucratised than official customary courts, their procedures are very similar. These procedures hinge on a mixture of adjudication and negotiation, in which the adjudicator can be the *kgosi* (chief), headman or family head, alone or with some councillors, who has either inherited the function or has been elected or appointed.

Generally, Sekhukhune citizens prefer their customary courts over the magistrates' courts. The majority of people relate this preference to the procedure and the performance of their customary court: the fact that cases are usually decided within a day, that they are debated by many persons in their own local language, that they are easy to follow, that they are aimed at harmony and consensus, and decided on 'by people who know who you are and where you come from'. Some emphasis is also placed on the cultural and traditional character of the dispute resolution process of the customary courts: '…this is how our parents did things, and this is what we will bequeath to our children'.[22] Some people are however less positive about the customary courts. They emphasise that the courts are embedded in local politics and social relations and that they are subsequently prone to prejudice, and that there is a general lack of education.

Other forums involved in local dispute are formed by powerful local institutions, such as:

- the so-called civics (a civil organisation that at its heydays in the 1980s consisted mostly of rebellious youths; the powerful *Mapogo*, i.e. a private security organisation conspicuous for its violent public flogging of criminals);
- Community Policing Forums (CPFs: government initiatives set up as a liaison between the South African Police service and the local communities they serve);
- the Transitional Local Council, a municipality institution; and
- organisations such as 'People against Stocktheft'.

The parallel existence of the different dispute settlement forums – with a varying degree of formality – allows for a certain degree of forum-shopping in Sekhukhune.[23] In addition, it stimulates the various courts not only to produce

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[22] Response in anonymous survey research conducted in the period January – September 1999.

[23] *Cf.* Bierschenk & Olivier de Sardan 1998.

negotiated settlements acceptable to all parties, rather than decisions which only benefit one party, but also to legitimise their own position and to actively 'solicit cases'.[24] Many official customary courts were thus for instance forced to re-invent themselves in the post-apartheid era. As government support for the official chiefs, councils and courts withered away, they were obliged to reposition and legitimate themselves within the fast-changing institutional landscape.

(ii) *A second characteristic of Sekhukhune living law is that it has an element of negotiated law.*[25] This term refers to the fact that law-making, for all its reference to rules, takes place squarely in the context of local power relations, and is crucially shaped by them. In order to be able to address the issue of negotiated law, it is important to briefly consider the place of dispute resolution, such as the customary courts, in a specific social field like Sekhukhune. Admittedly, dispute settlement takes place in a continuum whose parameters are set by the ongoing socio-political process within the community, and court cases merely form part of the social processes in which people are involved.[26] Yet customary courts should also be considered as symbolically and materially distinct social spaces. They provide well-defined, singled-out forums with a specific vocabulary, roles and procedures in which issues can be brought up that would be unheard of outside, where various more or less exclusive forms of sanctioning are at hand, where power relations are laid bare in ways not quite replicated in other places in the same society, and where norms and values are explicated and potentially reaffirmed in a distinctive manner. Apart from mirroring the rules and relations in the wider society, courts also shape them. This is why (customary) courts and the cases they deal with, merit their continued central place in the study of local (re)production of law, albeit that the role of 'trouble-cases' cannot be understood without looking at 'straightforward cases', and the way in which they are rooted in the wider institutional, political and moral landscape.

Just as this wider moral landscape involves permanent negotiation of status – vis-à-vis other living humans, but also vis-à-vis the ancestors, the invisible world – so court sessions, too, can also be considered as essentially bargaining processes. They are based on reference to an amalgamation of rules, facts and values. In this process the relative importance of speakers plays a great role in determining how their arguments are valued. A typical case in Sekhukhune will

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[24] *Cf.* von Benda-Beckmann 1984.

[25] For the notion of dispute settlement by negotiation, see Gulliver 1963, 1979; Gérard 1996; Bierschenk & le Meur 1999; Lund 1999; Berry 2000.

[26] Strathern 1997: 128.

thus begin with an outline by the adjudicators, who set the tone and delimit the range of topics to be discussed, and only then family members and others accompanying the parties are given the opportunity to air their opinions. After this the floor is open. The elderly speak first, and if women and uninitiated men are allowed to speak at all, it is right at the end. In a next stage, the councillors and royal advisors themselves ask questions and give opinions, and in doing so already put forward the contours of a solution. Arguments deemed valid are met with explicit appraisal: cheers, murmurs of approval, clapping. Only then will the adjudicators decide. Generally, they will follow the argument made by the most influential villagers, although the adjudicators derive from their own prominent position some leverage to mitigate or aggravate the solution proposed.

Adjudication and negotiation exist side by side: the local dispute-resolution process is about mixing and matching rules that refer to culture, common sense, statal regulations, the constitution, precedent, and a variety of other sources. The various elements in this mix are hardly considered contradictory. While there is no such thing as a 'system' of customary law, there is a flexible pool of shared values, ideas about right and wrong, and acceptable sources of morality, that are commonly acknowledged and rooted in local cultural orientations. These include the importance of tradition and respect for the local order, the ancestors and for God, but also the importance of development, unity, discipline, justice in general, and even – at times – obedience to the state system. Behind these general values lies a whole pool of – often contradictory – norms and rules that may be invoked but not necessarily so. Thus, while respect for tradition is generally accepted as important, its contents can be heavily debated. The fact that local law is 'combined law', engendered in many places, but woven together in the uniquely specific spatial and temporal moment of the court case, explains why the notion of 'legal pluralism' does not capture the essence of the local level dispute resolution process.[27]

Therefore, while the language in which disputes are argued is that of rules, such rules do not necessarily determine the outcome of disputes. Similar observations about the differing context of discovery and of justification have often been made concerning the judicial procedure in state courts in both Africa and the West, but they take on an extra dimension in customary courts.[28] Here, the range of norms possibly invoked is infinitely larger; the legal is much more intimately caught up in the social and the political, in the knowledge litigants and adjudicators have of one another, and in the stakes many of them have in specific outcomes. Inevitably, rules can also check power and delimit the range

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[27] The term 'legal pluralism' is Fitzpatrick's, as quoted in: von Benda-Beckmann 1984: 31.

[28] *Cf.* Moore 1978.

of possible outcomes. They are, as we shall see in the next section, important resources in the negotiation process.

(iii) *A third significant element of Sekhukhune living law that is that it makes use of state legislation as a resource.* Fundamentally, this implies that official state law is used in a variety of manners, by various people for different purposes. Local stakeholders who are, collectively or individually, involved in the negotiation of local law, have access to a variety of resources. These resources include reference to tradition, the Bible, common sense, development ideology, laws, the constitution but also the threat of force, privileged access to information and status in society. At this point it is relevant to listen to Gulliver, a classic author on African customary law:

> '"Resources" is, in fact, a loose concept intended to cover anything that, in context, offers potential power in the negotiations. Thus resources range over economic and physical assets of many kinds, the relative status of the disputant and his supporters and their skills and experience, the degree of support that a disputant can recruit and the unity in purpose and policy of the party so formed, the support of influential outsiders with their own interests and values, and normative correctness vis-à-vis society at large, particular sectors or individuals within it and the opposing party in particular. No useful purpose is served by an attempt to enumerate or classify the full range of possible resources, not only because the range varies a good deal cross-culturally but also because available resources depend so heavily on the context of a particular dispute.'[29]

Norms, whatever their source, should thus be considered a resource drawn in by litigants together with all other resources that can further their position. State law, whether common law or codified customary law, can then be considered a potential resource in the negotiation of local law.

To which extent, and in which form, state law is invoked in the local arena, depends on mediators. Mediators are often those people who have privileged access to state institutions such as the Department of Traditional Affairs, the African National Congress (ANC), and newspapers, and who derive distinct bargaining strength from this access. The ambiguous character of the messages sent out by the state – through overlapping legislation and contradictory policies – makes it easy for mediators to select those aspects of state law deemed useful, and leave aside those which will not further their interests.[30] Long ago, Schapera described how important, for instance, the personality of traditional leaders is in deciding the local applicability of 'missionary and

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[29] Gulliver 1979: 202.

[30] The most notable example of overlapping legislation is the continued existence of the Black Administration Act, the Black Authorities Act and old Lebowa legislation in coexistence with the 1996 Constitution, which is based on the principle of equality for all South Africans. *Cf.* Fleming 1996: 57.

similar norms'. [31] The same goes for other local leaders, like headmasters, local politicians, civic leaders and other brokers with a local following and – sometimes monopolistic – access to state information. One result is that the local dispute resolution process can borrow and derive legitimacy from the state legal system and may thus become increasingly similar, while simultaneously retaining an 'exit option', notably the freedom to underline its difference.

Just how state law is brought into play is different in every case. State law can for instance be presented as tradition, as was done in the following case in Madibong in 1999.

> After reorganisation, the Madibong Tribal Court included two female councillors. Both of these however found it difficult to attend meetings, because they were always held during the week, which they found difficult to combine with their full-time positions at an NGO. When the female councillors confronted the Tribal Court and asked why the court could not meet on weekends, the royal advisors, who were far from happy with the changes introduced by the chief, stated that it was an ancient Madibong tradition to meet during the week. They claimed that this had been the way 'since times immemorial'. [32] In actual fact, although possibly unknown to the royal advisors, the meetings on weekdays were introduced by the homeland administrators during the 1970s, in order to ensure that only the conservative old villagers, instead of the often more radical migrants, would be involved in the local decision-making process. [33] State law was in this case thus portrayed as an ancient custom and used by the conservative male councillors to avert unwelcome change.

In another Sekhukhune case state law was completely invented. During the introduction of the new Mamone chief, B. Sekwati Mampuru, in the satellite villages, he was often accompanied by a representative of the Department of Agriculture, who told the assembled villagers that:

> '…the land on which you live is a Trust Farm, which is why we have given all of you a Permission to Occupy. Before, you would pay SARand 10 a year for this to the magistrate. Now people think this has changed, and they don't have to pay anymore. But this is not true: your yearly contributions should now go to me as representative of the Department of Agriculture.' [34]

The presented 'legal rule' had no tangible basis whatsoever, and would in all probability only benefit the official concerned. Yet its apparent backing by the

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[31] Schapera 1969: 244.

[32] Various interviews, May – June 1999, Madibong.

[33] This was explained to me by Ga-Maphopha councillors, 16 September 1999. During the week, younger community members would be away, residing at their places of urban employment, only to return at weekends or month ends, if at all.

[34] Eenzaam, 14 June 1999

traditional authority, and the absence of alternative voices, made that most villagers accepted to pay the new yearly fee.

(iv) A key element of the use of legislation as a resource, is that it depends on the social position of the person that puts it into action. If the person who invokes legislation is relatively powerless, and cannot rally enough support for his (her) position, it is often put aside. Just as the political landscape leaves its imprints on local law, so do social relations crucially determine a person's rights. Whether someone is a man or a woman, a royal or a commoner, married or unmarried, supporter of one chiefly contender or the other, initiated or not, all determines rights to marry, to own property, to settle disputes etc. The kinship-based Sekhukhune moral landscape, in which status is highly valued, makes it hard to conceive such a thing as an absolute right: rights are determined in relation to others, and can change with shifts in these relationships.[35] How people are situated within kinship networks also influences their power to negotiate, and social identities are reflected in the legal.[36]

Land ownership is a classic example of this relative and relational character of 'individual rights'. Throughout Africa, where rights of access to land depend on social identity, social identity and status have become objects as well as instruments of investment.[37] In Sekhukhune, one's social, financial and political status determine the rights to land one can expect to acquire and keep, even if the way in which this is played out differs per chief, area and over time. One Sekhukhune citizen, who had staunchly supported a chiefly competitor and had been allocated a plot of land by him, was thus arrested for unlawful occupation of land and heavily fined, after that competitor's support decreased. Conversely, a female member of parliament[38] remembers how

> 'my chief told me that women are not supposed to own land, unless they have a degree or are divorced. So my land was first put into my young son's name, and only transferred to mine after I had got a degree.'

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[35] It is important to emphasise, as has been done in anthropological literature of the past decades, that personhood in kinship-based societies is relationally defined, and the self can be depicted as 'enmeshed in a web of influences, a field of relations with other people, spirits, and natural phenomena, none of which are set apart from the self as static and objectified states of being and all of which are linked to the self in terms of continuous strands of influence' (Comaroff 1980: 637).'*Motho ke motho ka batho'*: *'*a person is a person through other people', as the saying goes in the local languages Sepedi and Setswana.

[36] *Cf.* Griffiths 1997.

[37] Berry 1989: 404.

[38] L. Ngwenya, 22 September 2000.

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(v) The combined notions of a plurality of forums, negotiated law, state law as a resource and relational rights all draw our attention to the intimate relation of Sekhukhune legal culture to the social and political landscape. This relation is two-sided and dialectical: not only is the legal grafted in social and political relations and does it oscillate with them, it can also act to check abusive actors and strengthen social positions, thus reshaping them. Law, by an oft-quoted classic formulation, is both motor and flywheel, both sword and shield. The fact that legal culture is so closely related to, and constitutive of, the wider Sekhukhune social order, endows it with its fifth and final notable feature: its processual character.

South African state legislation, as most formalised systems of law, consists largely of 'absolute' rights, and puts a high premium on legal certainty. A central notion is that legal subjects can, from one day onto the other, attain a certain status (being married, being the owner of property, being a traditional leader), which automatically endows them with a number of rights and duties. After parties have fulfilled the formal requirements to marry and have signed the marriage register, a number of legal consequences automatically and irrevocably sets in. The owner of a plot of land can leave the country for years, but has just as much right to his property upon return; and a chief, according to the Black Administration Act, can be appointed by the President and will then 'enjoy the privileges and status conferred to him by the recognised customs and usages of his tribe' and 'shall be entitled to loyalty, respect and obedience of all the Blacks resident within his area' from then onwards.[39]

Local law, by contrast, is of a much more processual nature. Status and rights require permanent legitimisation, revalorisation and affirmation within the changing social and political context. As they are often not explicated, it is hard to draw them out of their context, to transform 'local law' into 'idealised customary norms'. 'It depends', should be the answer to questions concerning the rights of women, property owners, traditional leaders. How difficult it is to disentangle rights from their context and freeze them on paper, became visible in the process of drawing municipal boundaries in 2000. Suddenly, vague borders between chiefdoms, plots of land given in loan long ago, had to be delimited and put down on paper. This caused enormous clashes, with deaths all over the country.[40]

This permanent renegotiation of 'legal' status makes it hard to settle cases irreversibly. 'Cases here just go on and on, rotting away', as one Hoepakranz

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[39] Respectively, S 1 Black Authorities Act 38/1927 and Parts of Ss 5 and 6 of the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service in Proclamation 110/1957 as amended upto Proclamation 110/1991.

[40] *Daily Mail* and *Guardian*, 21 January 2000.

chief said, talking about a divorce case that had been tried thrice by him, and in addition by a neighbouring chief and by the magistrate. This was no exception: parties involved in disputes will often forum-shop, take their disputes to different courts in which they feel they have a distinctive advantage, or come back to the customary court which once settled their case if they feel that a changed socio-political situation might result in a different outcome. Court cases, the places where 'life and logic meet', are reopened if life's circumstances have changed: the more disputes are settled, the more they will erupt'.[41]

Traditional leadership can therefore be regarded as a 'state of becoming', rather than a 'state of being'. Whether leadership has been successful, in other words whether a traditional leader is entitled to respect, obedience and loyalty, will often only be clear after a long period of rule. A newly-elected traditional leader will have to constantly legitimise, reaffirm, revalorise his position. In general, residents of Sekhukhune found it hard to evaluate their traditional leader. They claimed that 'he is still young, we still have to see his true colours'.[42] But when he came to be considered defective in the attendance of meetings, and in showing the required respect towards his councillors, rumours quickly erupted on whether it was not his brother, instead of him, that was the rightful heir. However, the chief was not wholly dependent upon public opinion, since he had a state certificate of appointment, ensuring full backing by the state system.

Stories of succession

The area of Sekhukhune has in recent years been plagued by rampant succession disputes, which have torn apart not only the paramountcy, but every tiny hamlet as well. The importance of these often bitter and protracted battles should not be underestimated: they lead to political polarisation, the failure of development projects, and sometimes even bloodshed. President Nelson Mandela was well aware of this when he visited the area just before the 1999 elections. During a closed meeting with the traditional leaders, he pleaded with the two protagonists in the battle over the Sekhukhune paramountcy. His intervention – which at least at one level could be considered to be that of just another state official, in a long line of governors and native commissioners confronted with local politics – did not help: the two leaders even refused a joint picture with the president.

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[41] Strathern 1985:123.

[42] Interview Mamone councillors, 22 June 1999.

Even if the legitimacy of a traditional leader is of a processual nature, and cannot be obtained by the mere formal point of succession to the throne, debates on succession issues are essential to the understanding of the power and authority of traditional leaders. Here, many of the above features of Sekhukhune living law come to the forefront. Succession disputes show how – in addition to other resources – law, in its various guises, is an important resource in struggles that are essentially political. Succession disputes also highlight the fact that 'tradition' and 'culture' are widely acknowledged as important, but that their contents are vehemently contested. They show the relation between the national and the local, and how 'official law' and 'living law' interact and thus shape the position of traditional leaders.

Codified customary law on succession can be found in customary law textbooks which refer to the classic ethnographic works on the Bapedi.[43] Their general stipulations can be summarised as follows:

- A chief is succeeded by the eldest son of the candle-wife;[44]
- This candle-wife comes from another royal family, is selected by the closest relatives of the chief, and her bridewealth is paid for by the whole community;
- If the candle-wife cannot give birth to a son, a stand-in from her family is betrothed in her place;
- If the chief does not succeed in impregnating the candle-wife or the stand-in, or dies before he has done so, a member of the royal family is appointed by the royal advisors to 'raise seed' with her. If the candle-wife had not even been betrothed at the time of death, she can still be married by the tribe in the name of the deceased;
- Only a son who has been born out of the candle-wife or her stand-in, can become the chief;
- If the chief dies and a heir has not yet been born or is still too young to ascend to the throne, a regent is appointed in his place. This can either be a younger brother or a paternal uncle of the deceased, or the candle-wife .

The guiding principle is therefore that a chief is a chief by blood. If a chief however does not succeed in begetting a biological child with the candle-wife or her stand-in, a 'sociological son' can takes the place of the biological child.

The candle-wife plays an important role in succession issues. Because the whole community pays her bridewealth, she is considered to be the whole

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[43] Du Plessis & Balatseng 1997; Olivier *et al*. 1989; Mönnig 1976; Prinsloo 1983; Vorster 1969.

[44] The *mmasetšaba*, the wife selected to bring forth the heir.

community's mother and her child too belong to them. Chief Sekwati's protests for instance, in 1999, against community pressure to marry a new candle-wife, were responded to with comments such as: 'He doesn't want to marry, [but] *we* think its time to get a new wife'.

If these codified rules are relatively clear-cut, reality is a lot messier. Even the ethnographers who provide the lists of rules, complain about the fact that 'conflicting and rival claims (…) have occurred more often than not during the history of the Pedi' and about how 'succession rules have often been neglected'.[45] In an incisive article on the relation between achievement and ascription in succession to chieftaincy amongst the Tswana, Comaroff remarked that:

> 'Rules (…) cannot be assumed to determine the outcome of the indigenous political process. If they are read literally (…) 80 percent of all cases of accession to the chiefship represent 'anomalies'. Under such circumstances, the jural determinist assumption simply cannot be entertained: stated prescriptions do not, in general, decide who is to succeed.'[46]

A similar estimate can be made for the Bapedi of Sekhukhune. Both history and present politics abound with examples of chiefs who were not the rightful successors according to the rules above, but who yet were accepted as such; or alternatively, of chiefs who, as the eldest sons of the candle-wives, were rightful successors, but whose ascension was yet bitterly contested.

Clearly, something else is at stake than just the application of rules. Succession disputes are not rule-driven; a different logic underlies them. This logic is that the system of succession in Sekhukhune contains a built-in vagueness and uncertainty that not only allow the best candidate out of a limited pool to ascend to chieftaincy, but to also argue this claim in terms of customary law. It thus allows for meritocracy within an ascriptive ideology.[47]

This uncertainty lies in the various stages of the marrying of the candle-wife, begetting the heir and appointing him as such. In Sekhukhune, in contrast to what is common amongst the Tswana, a chief often marries his candle-wife last. By that time, he will have a score of grown-up sons by other wives, eager to at least take up position as regents. If the chief manages to beget a son with the candle-wife, her position can easily be put to doubt at a later stage. Did she belong to the right royal family? Were all the rituals complied with? Was it really the whole community that paid her bridewealth? Did she not have an affair at the time? If the candle-wife is barren or dies without male issue, and is replaced by a stand-in, the latter's relationship with the candle-wife can be

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[45] Mönnig 1967: 124.

[46] Comaroff 1978: 1.

[47] *Cf.* Comaroff 1975.

questioned. Was she really close enough to the candle-wife to replace her? In the advent that the chief dies before a son is born, and the closest relatives of the chief secretly point out someone to 'enter the house' in his place, this opens the way for later questioning of that person's identity. Was it really the chief's brother? Did not the candle-wife refuse him?

All this is strengthened by the secrecy that surrounds the negotiations with the candle-wife's family and the conception of the heir. These are affairs of the chief's close relatives, not shared with the wider community. Possible chieftaincy candidates are often brought up and educated far away from the community. Although the official reason cited is fear of bewitchment, it in reality enables the royal family to critically watch the candidate while growing up and – if he is not up to standard – to put forward an alternative candidate, whose constituting the only rightful heir can then still be claimed on the basis of a creative application of the flexibilities inherent in customary law.[48]

An example from Pedi history that still reverberates today, shows how all this is played out. The case, which 'will always be the subject of endless argument among the Bapedi',[49] and led to an important split among them, concerned the succession of King Sekwati, who died in 1861. Two of his possible successors, Sekhukhune I and Mampuru, would fight over the throne during their whole lives, and even today the descendants in each lineage, Chief Sekhukhune and Billy Sekwati Mampuru, claim paramountcy of the Bapedi by referring to this period.[50] Put simply, the positions were as follows. Sekwati was the youngest of six brothers, all of whom had been killed in the battle against the Matabele. Amongst the dead was his eldest brother, Malekutu, for whom a candle-wife named Kgomo-Makatane had already been selected. Sekwati, the story goes, had ordered someone to have intercourse with her in his dead brother's name, out of which Mampuru was born. In the succession dispute that would follow, however, it was argued that the seed-raiser was a commoner and that Malekutu had never actually married the candle-wife because he had not sent the customary black bull. These arguments were raised by Sekhukhune I, the powerful eldest son of Sekwati's first wife, who had claimed the throne by burying his dead father, and as a man of 'energy, resource and cunning' managed to garner a lot of support.[51] Still, apart from his apparent political backing, he also needed legitimation in customary law to become a regent instead of Mampuru. Today, his descendants are regarded by the majority of the Bapedi as the rightful Paramounts, if not by genealogy then because 'you can't just claim paramountcy by pointing at history; you also need a following'.[52]

This is but one, be it a famous, example of the resources on which chiefs in Sekhukhune draw to claim the throne. Other examples include issues like

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[48] *Cf.* Gluckman 1983; Delius 1983.

[49] Hunt 1931: 294.

[50] *Cf.* Delius 1983: 84-94; Hunt 1931: 284-294; Mönnig 1967: 25-26.

[51] Hunt 1931: 303.

[52] Interview with chief Malekane, 6 September 1999.

political backing, force, strategic alliances, support of the chief's closest relatives, and the popular and financial backing to be successful. Simultaneously, a legitimation in terms of customary law, attainable through manipulation of facts and rules, is a *sine qua non*.[53] The intimate relation between achievement and ascription has well been phrased by J. Comaroff:

> ' …winning the chiefship is a matter of achievement, an achievement gained largely by controlling resources and capabilities which are extrinsic to formal institutional arrangements. Yet such outcomes are rationalised in entirely ascriptive terms: the successful competitor *becomes* the rightful heir, and his mother's status as his father's principal wife is affirmed *after* event. (…) By invoking rules in this way, the Tshidi maintain a performance-oriented system within the context of an agnatically ordered small-scale society. Moreover, in so doing, they resolve the fundamental dualism in their political ideology – i.e. the emphasis upon good government and the delegation of legitimacy to able men on the one hand, and the theory of ascription on the other.'[54]

Although this indicates that there is a clear link between achievement and ascription in the succession of the chieftaincy, works like the above-quoted do not deal with the effects of the statal recognition of traditional leadership and customary law on local legal and political dynamics.[55] Clearly, official customary law and living law depart from different rationalities.

If succession disputes have been part and parcel of Sekhukhune politics since recorded history, the statal recognition of traditional leaders has added another potent resource to these local struggles. If the ethnographers quoted above conclude with satisfaction that

> 'in the present time [1960s], where the incumbent has to be recognised by the European administration, succession tends to automatically follow the normal pattern, since the administration adds its recognition to that of the rightful heir and thus damps any claims of his brothers',[56]

and that

> 'these days [1980s] breaking of the rules is not possible anymore as succession is controlled and affirmed by a higher authority',[57]

the question arises how recognition of certain incumbents by means of the absolutist state law has affected the local balance of power. Generally

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[53] *Cf.* Werbner 1969.

[54] Comaroff 1978: 16.

[55] *Cf.* Griffiths 1997: 28.

[56] Mönnig 1967: 264-265.

[57] Prinsloo 1983: 39.

speaking, statal recognition has become another resource in the local struggle, albeit an important one.

Before discussing implications of this state recognition however, it should be noted on the outset that, far from being a homogeneous entity, the state also consists of different offices and entities that can, and do, give weight to countervailing claims. In the area of Sekhukhune, the state is represented by three main institutions involved in recognition of traditional leadership:

- the National and Provincial Department of Traditional Affairs,
- the courts, and
- the Ralushai Commission.

From the Sekhukhune traditional affairs official to the state anthropologists at provincial level, the people working at the Department of Traditional Affairs are incessantly pulled into local succession disputes and play an important role in them. Officially, the 'tribe' (normally by means of the royal family) recommends a chiefly successor who is then appointed by the provincial premier. In practice, the department's anthropologists check the candidates against the files of genealogies they possess – which are already computerised at national level – and against the relevant anthropological handbooks and customary law textbooks. If the candidate put forward does not comply with the requirements of the official customary law contained in these texts, a candidacy will generally be refused. As the Director of Traditional Affairs stated:

> 'We decide cases on the basis of genealogies and culture. Sometimes we have to go three or four generations back to find out what the customs of the people are. And this is really our problem: that some people do not want to follow their culture.'[58]

A colleague cited the example of several communities that had put forward a woman as a candidate for chieftaincy:

> 'You can see that there are political motives at play there, one of these women is even a member of parliament. But we really can't allow people to just leave their custom if some learned people tell them to do so.'[59]

Other state institutions often implicated in succession disputes are the courts. The South African Supreme Court has heard scores of cases brought forward by candidates who feel that their contenders have been wrongly appointed. The judge's approach in the case 'KK Sekhukhune v. N. Ramodike

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[58] Interview Rev. Kekana, 6 March 1998.

[59] Interview, 4 March 1998.

and R. Sekhukhune' is illustrative. The judge concluded that the legal issue, as deduced from a complicated and drawn-out argument, was whether a chief who had renounced the throne could reclaim it later, and ruled that:

> 'There is no basis in customary law or history or logic for a contention that a *kgosi* who, of sound mind and fully capable of fulfilling the functions of a *kgosi*, renounced or repudiated his chieftainship, can reclaim it later. (…) To hold otherwise would wreak havoc with societal patterns established by the tribe.'[60]

A legal scholar, reviewing this case for the *Journal of South African Law*, complimented the judge on having done a good job in ascertaining the relevant customary law by means of expert witnesses, and concluded that the 'important judgement (…) will form a precedent for Northern-Sotho law, and even indigenous law as a whole'.[61] Apart from the regular courts, the Commission on the Restitution of Land Rights complained about receiving land claims which were essentially attempts to restore or establish chiefly authority.[62]

If the traditional affairs officials and courts have often come up with conflicting decisions concerning succession disputes, the installation of the Ralushai Commission in the Northern Province only added to the insecurity. This Commission is chaired by and named after Professor Ralushai, a well-known anthropologist and archaeologist of the region whose previous work included a report on the issue of witchcraft beliefs in the province. The commission was installed in 1996 in order to probe into claims that the former homeland government had 'irregularly deposed legitimate traditional leaders and replaced them with illegitimate chiefs'.[63] Promptly, the commission became a forum for all succession disputes, whether they resulted from homeland depositions or not. However, by 2001, the report had not yet been released, in spite of frequent marches by traditional leaders and other forms of protest. Provincial premier Ramathlodi feared that the commission's decisions on the 244 cases heard would lead to bloodshed and rioting. He announced that he would wait for similar investigations in South Africa's other five provinces with traditional leaders before publication. His decision was probably wise. A brief glance through the – secret – report in 1999 revealed recommendations such as the abolishment of the practice of allowing candle-wives to reign as regents, which had become common practice during the homeland days and dated back to the custom of male primogeniture. Individual cases swarmed

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[60] KK Sekhukhune v. N. Ramodike and R. Sekhukhune, unreported, p. 55.

[61] Prinsloo 1992: 519.

[62] Personal communication, D. Gilfillan, 9 June 1999.

[63] SAPA [South African Press Agency] 2000, 'Investigation into appointment of Northern Province chiefs could be extended', *ANC News Briefing E-mail Service*.

with references to the Black Administration Act, and also included recommendations hardly compatible with current human rights discourse, e.g.: '…the royal family should appoint a seed-raiser to make a child with the candle-wife as soon as possible'.

The various state institutions can support different candidates. Codified customary law is hardly a straightjacket but allows for substantial official agency. Yet these two sources of legal authority have much in common in their respective approaches.[64] First, there is a recurrent emphasis on absolute, fixed rights and a reliance on laws, legal precedent and experts to determine the contents of customary law. Secondly, there is the almost paternalistic desire to protect and sometimes even explicitly revive custom and culture in the face of the onslaught of modernity. Thus, state institutions essentially favour ascription over achievement and can be pulled in as a conservative force in disputes that are often meant to ensure better governance locally.

The Commission on the Tribal Constitution

> 'In the land of Bopedi, Mamone is a village that has been known for its peace, dignity, progress and law and order from the day it was founded onwards. But the warmth and equality that once covered this community, vanished into thin air with the winds of life.
>
> Thulare's people must have been blinded by those winds, for their heads and ideas started to collide. It was only 19 years later that they woke up again, rubbing their eyes and trying to find each other.
>
> On the 19th of December 1998, the sun rose anew over Maroteng, the mountain Mahlole came alive again, and the community around it came closer to find out if they really saw the large mountain of Mamone, or if they were still blindfolded. But when they looked at their village, it seemed wrapped in an old torn blanket full of flees, and direly in need of sleep.
>
> They found that the only needle with which to really repair the community was to write up a tribal constitution, the law of the land, and this is why the community elected a committee to guide it in this story.
>
> To the community – the chiefs, the churches, sportsclubs and choirs, societies of shepherds and farmers, political and development organisations, traditional healers and (saving) societies, the youth, and any other citizen – this is the paper to fill in. Come together in droves to discuss and give your opinions as much as possible.
>
> The pride, peace, dignity and respect of the village are now on your back.'[65]

This is how Mamone citizens were introduced to the process of 'writing a Tribal Constitution', which started immediately after Billy Sekwati Mampuru's festive coronation on 19 December 1998. 'The time has come to go back to our roots', as one villager said. With many others, he felt that the new national and

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[64] Costa 1997, *cf.* Werbner 1969: 270.

[65] Translated introduction to the questionnaire on the Tribal Constitution.

local political order required a restatement of local rules with 'the national constitution as a grandparent'. The writing of the Mamone tribal constitution is, in contrast to what we have seen above, an example of the way in which state law can also be drawn into the local social field: to press local progress, to act on the side of the relatively powerless and to give them a distinct bargaining advantage. Instead of being pulled in to confirm the absolutist power of a traditional leader, common law assists in protecting its subjects against arbitrary rule.

For the Mamone Bapedi, the coronation of Billy Sekwati Mampuru was probably just as important as the inauguration of Nelson Mandela as national president four years before. The community had been ripped apart by a succession dispute for 19 years. Central to the preparation of the inaugural festivities was a special Coronation Commission, consisting of migrants, royals, schoolteachers and others, which organised the sponsoring of the limousine, the dancing groups, yellow T-shirts with Billy's picture, the sound system and the lush dinner for the VIPs that had showed up in large numbers. And after Billy had been inaugurated, it was up to this Commission to 'tell him how to rule us, so that his rule will be ours'.[66]

The reason for creating a local constitution could be that the process of negotiating the national Constitution was well-publicised over the Sotho radio station Thobela FM. Also, constitutions have long been part and parcel of local institutional life, as every self-respecting NGO, village development council or choir has its own, often elaborate, constitution. The Commission felt that the rules drawn up would allow the community to return to 'traditional law and order' within the context of national changes:

> 'You know, our culture is still important. Traditional leaders are symbols of unity and custodians of our culture: without them we would be lost. But our new chief needs the support of the community, just as we need to be ruled fairly. It won't be easy for him to reign over all those literate people who know about the national Constitution. If we draw up these rules, we will be together.'[67]

The Commission on the Tribal Constitution, after having received the blessing of Billy's mother, drew up an elaborate plan for consultation of all the Mamone Bapedi through their wards, and other structures, on how they wanted to be ruled. The list of issues for discussion is instructive of the local concerns: government of the village is a central priority. As the organisers would say during introductory meetings:

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[66] Interviews, 19 December 1998.

[67] Interview family Kgalema, 19 April 1999.

'This is about who should be helping the chief. Are the closest relatives of the chief still important? Can they also be elected? Should there be women? We are living in a new world now.'

Land and nature conservation was second on the list.

'Who should be responsible for giving out fields? Are people allowed to burn a plot of land because it's easier to get wood that way?'

Tradition is also high on the list of local concerns:

'How can we generate income from tourists with our tradition? There was an old woman on television painting a car in Ndebele patterns the other day, can't we do something like that? What taboos do we have and why are they there? Should our children be allowed to go to initiation schools outside? Should we start allowing women at the *kgoro* in these new days?'

One recurrent question on education was whether there should be a local association to see to it that children go to school. Development, the organisers felt, was also a central concern:

'What is the role of the chief in these things?'

The deliberations, the Mamone people were warned, could take a long time:

'We will often come back to you to ask your opinions on certain matters, and only then draw up the draft constitution. The whole thing can easily take a year and a half.'

One meeting took place in the Tribal Office: about forty people had gathered, representing various *magoro* ('wards'), the African National Congress (ANC), the *Ikageng* ('Let us depend on each other') project, the Ararat Apolostolic Church, the Mamone Farmer's Association, the Mamone Football Association, St Johns Faith Mission, Children for Peace, the RDP (Reconstruction and Development Programme) Committee, the Shepherds against Stocktheft, funeral and other saving societies and three different associations of traditional healers. To begin with, one of the Commission members waved a little booklet containing the national Constitution, and asked those present who knew the paper? Most people shook their head. The commission replied:

'You see, we must dance to a music of which we don't know the tune. That is why we must write our own, and give the chief something with which he can rule us. We live a different life now, you don't build a house anymore by drawing a line in the sand with your foot, but you need a plan.'

After a lengthy discussion, the meeting was divided into breakaway groups which each were to look into part of the national Constitution. Studiously as a Bible group, one group read through the Bill of Rights and Chapter 12, on the

traditional leaders. Those who could not read pensively repeated what was said out loud, as they tried to understand the practical implications for life in Mamone. Could the yearly hoeing for the chief for instance, be considered forced labour in terms of section 13 of the Constitution? One young man argued that this was always done willingly. A woman of his age disputed this by claiming that the yearly hoeing stemmed from the days when chiefs did not get paid and that they have enough money now to hire some workers. A blind man found that those words really hurtful: he argued that the Bible says that people should do these things out of love and that the new constitution should include this.

One recurrent theme during the meeting was the so-called 'exit option': the right to refuse. People deliberated over what should happen with people who refused to work for the chief; what to do with youngsters who refused to go to initiation school; what about migrants who refuse to pay tribute to the chief; what to do about people who do not do anything for the chief at wedding ceremonies? The most heated argument however revolved around land ownership. Recently, the palace had reclaimed a number of agricultural plots in order to build a hospital on them. One woman argued that '…for black people a field is just like a bank. If we don't have that anymore, we should at least get a job in the hospital'. Somebody asked: 'To whom does the land actually belong, to us or the chief?' No consensus was reached, but a clear dissatisfaction with the lack of communication by the royal house transpired.

The lack of clarity on customary rules was a manifest key element of the commissions meetings. Moreover, the ease with which some rules were presented as in need of revival while others should best be forgotten, was striking. None of the people involved in the discussions, however, seemed to consider culture or tradition as fixed, immutable. They clearly saw the need for revival:

> 'This is what the African Renaissance is all about, that people start thinking where they come from and what they'll go back to.'

Despite the fact that the turn-out at commission meetings was generally high, not everybody was enthusiastic about the process. Some youngsters felt that:

> 'The chiefs and the Constitution can never be married. These people here will never agree with things as termination of pregnancy, or equal treatment for women. You can talk about transformation until your face is blue, but what should be transformed is the traditional leaders.'[68]

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[68] Discussion notes meeting on the Tribal Constitution.

Nevertheless, the process was essentially about transforming traditional leadership, and about using the national constitution as a tool to negotiate a more secure local order, with less arbitrary power for traditional authority and more clarity about its duties, rules on land allocation and local development. This explains why the attitude of the royal house shifted from enthusiasm to watchfulness to irritation in the course of a few months. Even if the queen-mother had given her blessing to the process, and Billy's brothers had attended some early meetings, they refused to actually join in the discussions on what rules should be. The standard reaction was that the commission should come up this a draft, and that the royal family would comment. This attitude became increasingly hostile once the commission started handing out the questionnaires. During one meeting, Billy's brother furiously waved with the thick booklet. He asked:

> 'What are we supposed to think of questions like:
> - Do you like to be ruled by a chief?
> - If you say no, what rule should we have instead?
> - Is tradition still important?'

The commission tried to assure him that it was a way of getting people's opinions, to show how much support there was for traditional leadership, but it was in vain. The brother asked:

> 'How can you name the functions of a chief? They are obvious. We have just ended our disputes and now these questions can start them again. Are they going to build or break us? This can really lead to war.'

From the perspective presented at the beginning of this paper, the royal reaction is understandable. Instead of fixing rules and divorcing the legal from the political, the royal family prefers the uncertainty of local law, in which their powerful position gives them a distinct bargaining advantage. As one commission member put it:

> 'Of course *mosate* is not happy with what we're doing. They benefit from all this confusion, like the lack of consultation on land.'

The confusion over norms is beneficial to those in power, those who can draw from a whole pool of vague rules, notions, ideas, statal, Biblical and other sources to support their position. To those who rule, there is a sense of logic to the disorder. As Chabal and Daloz write:

> 'Political actors in Africa seek to maximise their returns on the state of confusion, uncertainty, and sometimes even chaos, which characterises most African polities.'[69]

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[69] Chabal & Daloz 1999.

Conclusion

This article set out to answer two main questions:

- what is 'living law' in Sekhukhune; and
- how does it interact with state law in determining the position of traditional leaders?

Far from consisting of a distinct and discernible system of customary rules, living law has (a) a negotiated, (b) a relational and (c) a processual character. By virtue of its being grafted into the social and political landscape, it simultaneously oscillates with it and shapes it. In the negotiations that lead to the (re)production of local norms and thus of living law, actors rely on an infinite number of resources, ranging from political alliances and force to privileged knowledge and access to rules.

Rules thus have a double role: they are both a resource actors draw upon, and the vernacular in which cases are argued. To start with the latter: by framing their position in terms of rules, litigants legitimise it and tie it to the social order itself.[70] Thus, all that is deemed to be the basis of social order can also become a source of rules: traditional authority, culture, the Bible, the state, common sense. As we have seen, the importance of these sources is widely acknowledged, but the contents of the rules they emanate open to discussion. Thus, while respect for tradition is highly valued, the specific contents attributed to tradition can be a topic of vigorous debate. Which version of tradition gets accepted depends on the powers at hand. And while rules are deemed important, and can influence outcomes, they cannot determine them. Instead, the availability of a wide pool of norms, rules, values, often contradictory and drawn from disparate sources, makes it possible for actors to draw on wider resources – force, alliances – in order to get their position accepted, and still legitimate that position by reference to rules.

The Sekhukhune succession disputes demonstrate how people try to couple ascription and achievement and pursue good governance by first selecting – from among a limited pool of candidates – the best candidate, and subsequently legitimising his claim in terms of customary law. For all their disruptive features, succession politics can be considered essential to the local democratic process. The existence of two rival chiefs forces both to gain the support of the populace, through decisions that the public opinion can perceive as wise, and through policies that the public opinion can perceive as acceptable. If support is

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[70] Moore 1978: 210.

not found, people can, and will, change sides. In these subtle processes, the state, for all its heterogeneity, generally supports the candidate whose reign is disputed by his subjects. With the state's emphasis on such formal elements as genealogies, absolute rights and codified customary law, it can give a distinctive advantage to less popular but more 'customary' candidates. The state's 'implementing custom' then amounts to supporting absolutist, ossified positions, and risks to thwart local, more democratic processes.

The Mamone Commission on the Tribal Constitution shows, on the other hand, how state legislation can also act on the side of progress. Here, Mamone citizens used the national Constitution as a resource in debates on local law, in order to create leverage in discussions over what the powers of the chief should be. In itself an illustration of the debated character of customary law, the process showed how people hook onto the global and national human rights discourse in their search for a more just local order. Wide access to state law tipped the scales of power and gave the Commission a distinct bargaining advantage. Here, instead of acting in support of absolutist power for the traditional leader, state law assisted in providing a check on it.

Considered in their ensemble, the cases confirm two important lessons, both recurrent in van Rouveroy van Nieuwaal's work. The first lesson concerns the importance of locality in the appropriation, valorisation and renegotiation of state law.[71] While traditional authority areas are hardly to be considered as bounded and distinct political entities, they do – in the eyes of most inhabitants – form separate spheres in which national law does not automatically apply; instead, national law has to be reformulated in the context of local power relations.

> Once, after a man had been severely beaten up in the Mamone customary court, I witnessed a telling dialogue in which two old men debated the admissibility of corporal punishment in their village. One man drew a circle on his hand and said:
> 'We are not like this, a separate circle in which the laws of the land do not apply.'
> The other retaliated:
> 'Of course we are, why else would we have a chief?'

Naturally, those in power, like the traditional leaders, benefit most from shielding their areas from the laws of the land, and from leaving local law-making firmly tied to their power.

The second lesson concerns the important role of information brokers, as instances of what van Rouveroy van Nieuwaal has called 'intermediarity'.[72] Within the communities discussed, there are often only a few people who have

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[71] Moore 1973 : 324.

[72] Van Rouveroy van Nieuwaal 1999: 34.

access to information on the contents of state law. They are therefore in a privileged position to translate, deconstruct or filter state law, bringing in those elements that are deemed useful and leaving out others. In this way they effectively act as legal brokers. The socio-legal process I described above for the Mamone community was relatively successful because of the simultaneous wide dissemination of the Constitution, in a way that made it impossible for those in power to neglect its contents. This equipped those seeking more legal certainty and less arbitrariness with an extra resource in their endeavours.

A combination of these two lessons points at the best way to support local democratic processes in order to create a fairer local order, within socio-political landscapes in which high value is put on traditional authority and on the moral landscape it embodies. Traditional authority areas are hardly homogeneous entities with accepted systems of customary law; instead, they are the sites of a constant debate over which rules to apply, and both the rules themselves and the knowledge of them are important resources in these negotiations. Under these circumstances, the dissemination of information (e.g. on the Constitution) can critically help democratisation. Conversely, implementing codified custom, often drawn up decades ago in a dialogue between local rulers and anthropologists representing the apartheid state, can lead to a stifling of these processes. State law will always have to be valorised and re-appropriated locally; knowledge of its contents by as many local stakeholders as possible can aid this process.

PART II. PERSPECTIVES ON PRODUCTION, LAW AND VIOLENCE IN AFRICA AND BEYOND

Chapter 8

'Then give him to the crocodiles'

Violence, state formation, and cultural discontinuity in west central Zambia, 1600-2000

by Wim van Binsbergen

Introduction[1]

Although ultimately the state's monopoly on physical violence underlies the effectiveness of African chiefs' role in adjudication and arbitration of conflicts during the colonial and post-colonial periods, violence has for a long time served as an implicit boundary condition of the social and legal processes that are at the heart of the work of Emile van Rouveroy van Nieuwaal. It is mainly in his last few cinematographic contributions to the study of African law that the real or implied violence of the post-colonial state becomes part of the equation. In this respect he reflects a persistent, and pardonable, orientation in legal anthropology: where there is violence, law is not, and the legal anthropologist is at a loss.

Not so the historian of Africa. If twentieth-century African chiefs, who are more or less effectively incorporated in the central state, are the heirs to rulers of earlier centuries, violence plays a major role both in these rulers' performance and ideology, and in the ways in which historians have sought to understand them. For instance, underlying my earlier analyses of pre-colonial state formation in west central Zambia and especially my *Tears of Rain* (1992) is a view of the central role of violence (particularly as surrounding the male kings who supplanted earlier queens and clan leaders) in shaping the states that emerged in this region as from the seventeenth century CE.[2] Violence could play this role since it amounted to formulating, for the royal courts, cultural norms and practices that constituted a radical departure from the norms and practices governing life in the villages which surrounded the courts and which

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[1] An earlier, Dutch version of this paper was published as van Binsbergen 1993a.

[2] Van Binsbergen 1992.

fed the latter with tribute, including food, and with much of its personnel, including slaves. The purpose of the present paper is to make this view explicit and to begin to explore the extent to which violence can be said to underlie any form of state formation in pre-colonial Africa. A vignette derived from a nineteenth-century travelogue will help focus on the main issues, but of course is only meant as an illustration; the substantial oral-historical, documentary and legendary data underlying my argument having been presented elsewhere.[3]

The backdrop to the present argument is the substantial body of literature on state formation in pre-colonial Africa.[4] Even a cursory review is outside our present scope. Let me merely highlight a few themes that will resonate in my subsequent argument.

In the course of the twentieth century, the exponential growth of knowledge of African cultures, studied[5] in their own right and on their own terms, resulted (after initial stress on the *intercontinental* flow of trade goods, ideas and elites in the process of African pre-colonial state formation) in an increased emphasis on *internal* dynamics of African societies and cultures. In addition to archaeology, linguistics, and various ancillary disciplines from the natural sciences, historians of African state formation have greatly relied on anthropo-logical inspiration. The latter enabled them to approach oral data, including myths, with considerable sophistication, and to scrutinise them (by way of source criticism) in the light of a socio-political reading of the contemporary society, in which these sources are produced and in which they are now functioning as charters, as rival versions of the past serving present-day factional competition, etc. Even among historians of Africa there has been a shift of emphasis, from history as a reconstruction of some objective past to the production (by local participants, but in a not essentially different fashion by professional scholars) of myths on the past, with a view to the present and the future.[6] Yet the fact remains that historians, stressing narrative, periodisation and quality of sources over systematic, theoretically-informed patterns, come

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[3] Fieldwork was undertaken in 1972-74, and during shorter visits in 1977, 1978, 1981, 1988, 1989, 1992 (twice), 1994 (twice) and 1995. I am indebted to the African Studies Centre, Leiden, for the most generous encouragement and financial support; and to research participants, assistants and government officials in Zambia, and members of my family, for invaluable contributions to the research. My special recognition goes to the late Mwene Kahare Kabambi I, who for decades welcomed me in his royal establishment, and finally (cf. van Binsbergen in press, ch. 8) adopted me as one of his sons.

[4] *Cf.* Lonsdale 1981; *cf.* Fage & Oliver 1977, 1978; UNESCO 1981, 1984, 1988.

[5] As least , this is what North Atlantic Africanists have claimed. For a critique of that claim, cf. van Binsbergen 1999a, 1999b, and in press, and the extensive literature cited there.

[6] Vansina 1983.

with somewhat different objectives to the study of African state formation than anthropologists.[7]

On the anthropological side, the neo-Marxist paradigm of the articulation of modes of production – now more or less received within main-stream anthropology, whatever the vicissitudes of Marxism and communism since the 1970s – has proved helpful in offering a model for the political economy of statehood and state formation.[8] It juxtaposes,

- on the one hand, a local, 'lineage' or 'domestic' mode of production, of essentially autarkic and egalitarian village communities of commoners (internally ranked mainly in terms of gender and age) based on hunting, fishing and agriculture, with
- on the other hand, exploitative royal capitals or courts; the latter would typically not engage in production but would be dependent, for their reproduction, on the extraction of surplus products and surplus labour from the domestic communities.

This extraction – in the form of networks of tribute, enforced by means both military and ideological/ symbolic/ ritual – enabled the royal courts to function as nodal points of regional, transcontinental and intercontinental trade, further strengthening their dominance over the domestic communities with the material and ideological proceeds from these wider contacts. From this perspective, the study of state formation amounts to identifying the factors and conditions under which the exploitative articulation between local communities and royal courts could arise and consolidate itself. The local articulation process was often concomitant with the further peripheral articulation to a third mode of production: the mercantile capitalism as represented by entrepreneurs (in the last few centuries mainly Europeans), which by the end of the nineteenth century were largely supplanted (in a further side of articulation and capitalist hegemony), on African soil, by local branches of industrial en agricultural capitalism in alliance with the colonial state.

Beyond political economy, various schools of comparative anthropology – all in their own way stressing timeless, paradigmatic systematics over properly historical narrative – have reflected on the *cultural* aspects of state formation in Africa. Of essentially structural-functionalist inspiration has been the *Early*

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[7] For South Central Africa the pioneer publication is Vansina 1966, while his subsequent work (e.g. Vansina 1973, 1978, 1983, 1986, 1990) has exercised great influence in this field. Further see e.g. Roberts 1973; Mainga 1973; Hoover 1980; Schecter 1980; Reefe 1981.

[8] *Cf.* van Binsbergen & Geschiere 1985a, 1985b.

State cluster of studies,[9] which has owed a great deal to the systematising and organisational efforts of Henry Claessen and, initially, Peter Skalník.[10] These studies have stressed the enormous range of variation of cultural and structural traits of polities which were called 'early states'.[11] These studies also formulated useful empirical generalisations with regard to patterns of ideology, kinship organisation, gender relations, and the internal formal organisation of offices at the centre of states of this type. More controversial but perhaps also more profound, the Belgian structuralist de Heusch has for decades been engaged in a project that seeks to assess the 'prehistory of Bantu thought',[12] bringing out, largely in mythical and ritual material, such repetitive patterns as royal incest and puberty rites. This led him to the contention that the cultural material out of which the political culture of pre-colonial statehood in east, central and south-central Africa was forged, had been available for centuries, if not millennia, before the actual materialisation of such states – for which, with notable exceptions in north-eastern Africa (Ancient Egypt and Nubia), we have mainly evidence for the second millennium of the Common Era. Conveniently ignored by the main stream of anthropological analysis outside the German-speaking countries,[13] German diffusionism showed less interest in the internal relations between specific African pre-colonial states and their local communities; instead this school of African Studies concentrated on the distribution and origin of the cultural forms attending statehood. Thus, Frobenius,[14] after earlier work on other parts of Africa, had daringly formulated ideas (not altogether unlike de Heusch's much later) concerning what he referred to as 'the South Erythraean cultural complex',[15] extending over much

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[9] Unthinkable without Fortes & Evans-Pritchard classic collection *African Political Systems* of 1940.

[10] Claessen 1984, 1986; Claessen & Skalník 1978, 1981; Claessen & van de Velde 1987.

[11] Perhaps because of their deviation from the model of the – now somewhat obsolescent – bureaucratic, constitutionally anchored nation state of the nineteenth and twentieth century, which appears to form the reference point of the evolutionism implied in the term 'early state'.

[12] De Heusch 1972, 1982; cf. van Binsbergen 1993b.

[13] Anglo-Saxon equivalents like Perry (1927) and Elliot Smith (1929) were to be completely eclipsed by the emergence of British social anthropology from the 1930s onwards.

[14] Frobenius 1912-1913, 1931, 1933.

[15] Strikingly to the point is still Becker's (1913: 303) characterisation of the weaknesses and strength of Frobenius' work, formulated with reference to the latter's volumes on Nigeria, then recently published: 'I. *Auf den Trümmern des klassischen Atlantis*; II. *An der Schwelle des verehrungswürdigen Byzanz* [volume titles of Frobenius 1912-1913]:

> '...[M]an mag diese Titel dem Verfasser verübeln, man mag sich an dem künstlerisch-persönlichen Charakter seiner Arbeit stoßen, man mag die herkömmliche wissenschaftliche Dokumentierung vermissen, ja man mag über den Schwung seiner Phantasie entsetzt die Hände zusammenschlagen, – eine ernste wissenschaftliche Kritik soll sich dabei nicht aufhalten, sondern auf den Kern der Sache eingehen und die Probleme dieses

of the area between the Congo basin and the Limpopo river, and with such features as ritual regicide,[16] royal incest, firm social control (e.g. through puberty ritual) over female sexuality from which however princesses were exempted, and a strong astronomical/ calendrical element emphasising the consonance between human and celestial (including meteorological) phenomena, with the king as the indispensable ritual link between both. The flight of Frobenius' intuitive comparisons brought him to consider even trans-continental continuities with ancient Mesopotamia and pre-Indo-European i.e. Dravidian South India. Other anthropological studies, more firmly rooted in the ethnography and historiography of South Central Africa and following a more recent methodology, have considered the requisites for legitimation of the state systems that emerged in that region from ca. 1500 CE. These studies have stressed the extent to which military and trading elites, in the process of state formation, have appropriated a presumably much older symbolic idiom revolving on the cult of the land – co-opting or usurping the 'ecological' prerogatives of an older, pre-statal priesthood in the local communities, with such functions as rain calling, the warding off of drought, pests and other natural disasters, and the adjudication of sorcery, incest and murder which were thought to upset the cosmology and to endanger fertility.[17]

Truncated to the point of caricature as this overview is, it may serve to bring out that *violence* has not been given a central place in anthropological arguments on state formation in Africa. Against this background, let us turn to west central Zambia.

Chiefs in west central Zambia: Colonial and post-colonial

For the anthropologist and the oral historian, the local and contemporary setting is the obvious point of departure in the analysis. Today there are no independent states on the fertile, well-watered, only slightly elevated lands that form the Zambezi/ Kafue watershed. Those that existed there in the first half of the nineteenth century now mainly survive in the form of the four chiefdoms of *Mwene* ('King', 'Lord'; pl. *Myene*) Mutondo, *Mwene* Kahare, *Mwene* Kabu-lwebulwe and *Mwene* Momba. These are royal figures recognised, and (in the

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gedankenreichen, unermüdlichen und erfolgreichen Forschers unter die kritische Lupe nehmen. Da wird wohl manches schöne Gebäude zusammenbrechen, *aber immer noch genug übrig bleiben, das unseren Dank verdient.*' (Italics added, WvB)

[16] Ritual regicide has been a theme in comparative anthropology since Frazer's (1957) *Golden Bough*, first published in 1890; for subsequent work, *cf.* Feeley-Harnik 1985. A brilliant recent study of the East African rain-makers whose precarious relationship with their communities (often involving being killed) appears to amount to a rudimentary form of ritual regicide, is Simonse 1992.

[17] Schoffeleers 1979, 1992; van Binsbergen 1981: chapters 3 & 4.

case of Mutondo and Kahare) subsidised, by the central Zambian state established at Independence in 1964. By virtue of a nomenclatural dynamics we shall probe into below, their subjects together constitute an ethnic group which in the course of the twentienth century increasingly identified as Nkoya. In addition, there are dozens of other titles which lack such recognition and remuneration, and which have now been relegated to the status of hereditary councillors to the four royal chiefs, if not to the status of mere village headmen – their former royal prerogatives usurped and eclipsed in the course of regional incorporation processes. As from 1840, the several small-scale states of west central Zambia came to be politically and economically incorporated in the expanding state system of the Kololo. The Kololo were militarily organised South African immigrants who had captured the Luyana[18] state of the Lozi or Barotse. The latter's centre was the Zambezi flood plain between today's towns of Kalabo and Mongu. Although the Luyana state was to be recaptured on the Kololo in 1864, its hold on the states on the Zambezi/ Kafue watershed persisted . It even increased when, with the advent of the colonial state in 1900, the latter had accorded the Luyana state protectorate status. In the process, the colonial state fictitiously assumed the Luyana state's pre-colonial territory to extend over all of the then Northwestern Rhodesia, i.e. the huge area between Angola, the Victoria Falls and Katanga, in most parts of which the Luyana king had been virtually unknown and without effective political power.

But although the Nkoya kings have been largely deprived of their former formal powers, their ceremonial court culture has largely survived. The main exception is human sacrifice, which did not publicly survive, although it is still often hinted at in court circles. The *Kazanga* harvest festival, whose falling into disuse during the colonial period is not unrelated to the central role human sacrifice played in this royal ceremony, was only reinstated in 1988, in greatly altered form. The twentieth-century vitality of most other aspects of local court culture is especially marked at the capitals of *Mwene* Mutondo and *Mwene* Kahare, who were accepted as senior members of the Lozi aristocracy and hence of the colonially-subsidised indigenous administration of Barotseland, even though their ethnic and linguistic identity was not Lozi/ Barotse but Nkoya. The complex, time-honoured organisation of their courts has continued to define such offices as the *Mwene*, his sisters (*Bampanda wa Mwene*), his wives (*Mahano*), princes and princesses (*Babana wa Mwene*, any offspring

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[18] Luyana, Lui, Luyi, are alternative local ethnonyms for the dominant ethnic group which, particularly in the writings of Max Gluckman and in the colonial administration, came to be known as the Barotse or the Lozi. Luyana is also the name of the Central Bantu language (Guthrie number K.31) spoken here before the Kololo imposed their Southern Bantu Sotho language (Guthrie number S.30), now developed into the language called Lozi (Guthrie number K.21). The Nkoya language is classified as L.62, although it is closely related to Luyana.

born to an incumbent *Mwene*), his Prime Minister (*Mwanashihemi*), senior councillors with titled ranks as judicial, protocolar and military officers, priests, executioners, musicians and hunters. In addition, the court houses clients, many obliquely reputed to be of slave descent. If court office has continued to be coveted and contested until today, it is not only because it has offered virtually unique opportunities for salaried employment in the local countryside, but also because the political and symbolic order such office represents is still highly meaningful to the subjects of the *Myene*. As a distinctive physical structure – marked by a royal fence with pointed poles (*Lilapa*), within which the *Mwene's* palace, audience/ court room, regalia shelter and royal shrine are situated – with at a conveniently short distance the sacred grove where the graves of earlier *Myene* are administered by the court priests,[19] these capitals (*zinkena*, sing. *lukena*) have continued to represent the spatial centres of Nkoya political ideas throughout the twentieth century. Nkoya ethnic revival, through the modern formal organisation of the Kazanga Cultural Association as from the early 1980s,[20] has focused on the *zinkena*, and has been saturated with local and regional 'traditional' politics. Significantly, the association derives its name from the ancient harvest festival it has managed to revive.

In the countryside of west central Zambia it still makes sense to apply the notion of two distinct modes of production, one domestic and the other tributary, each with its particular set of productive and power relations, and each with its particular underlying logic which exists *sui generis,* in the sense that it cannot be reduced to the logic of the other mode of production to which it is linked. Formally, slavery and tribute labour (the two main sources of labour at the *zinkena* in the nineteenth century) lost their legal basis in the 1910s, and in practice they ceased to exist in the 1930s. Yet the *Mwene* can and does still command inputs of free labour time when it comes to such tasks as the maintenance of the royal fence, the construction of shelters at the *lukena*, and similar productive labour undertaken either for the upkeep of the *lukena* or in the context of development activities (erection of schools, clinics, maintenance of roads) concentrated around the *lukena*. Interestingly, the traditionalist and *Mwene*-orientated stance of the Kazanga society enables its leaders to draw on this same reservoir of tribute-related labour for the

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[19] This is only a twentieth-century development, caused by the fact that under the colonial state a royal capital could no longer, as in pre-colonial times, be moved over distances of scores of kilometres after the death of the king. However, pre-colonial royal burial sites surrounded by deserted *zinkena* which have returned to bush, have continued to be venerated even if at great distances from the capitals of later incumbents; *cf.* van Binsbergen 1992: 44f, 341f, 451f.

[20] An initiative of relatively successful Nkoya urban migrants living on the distant Line of Rail who there have had access to ideological, political, symbolic and career models very different from those prevailing in the countryside. *Cf.* van Binsbergen 1992-1994, 1996, 1999, 2000.

construction and maintenance of its festival grounds, not only when these were still situated at the *lukena* of *Mwene* Mutondo (until 1992) but also when the festival was subsequently moved to a new site at equal distance from the capitals of Mutondo and Kahare. Formal tribute (*ntupu*) is no longer levied by the *Myene*, but in practice the customary greeting of the *Mwene* by villagers and returning urban migrants tends to be accompanied by gifts (still designated *ntupu*) in the form of cash or manufactured liquor, while in local production by villagers around the *lukena* (e.g. beer brewing, alcohol distilling, hunting, fishing, agriculture) the *Mwene*'s prerogatives are often recognised by a gift of produce.[21]

However, even in this cash-starved rural environment these material prestations cannot be considered anything but minimal. They no longer come close to the order of magnitude of court-village exploitation in the first half of the nineteenth century. Of the military, political, economic and ideological structure of kingship at that time, it is mainly the ideological elements that have persisted, no longer effectively supported by, nor supporting, material exploitation. And, as we shall presently see, even these ideological elements have undergone radical alterations.

Of course, at present it is not very easy for the local villagers to maintain the illusion – which must have rather well corresponded with the realities of the early nineteenth century – that the *lukena*, in a largely implicit but well developed ritual, political and economic spatial cosmology, is the hub of the universe. The *Myene* themselves have been active in the outside world, usually pursuing salaried careers before acceding to their royal office. A *Mwene*'s interaction within the sphere of the Lozi indigenous administration of Western Province (the former Barotseland), and especially within the central state and its institutions at the national, provincial and district level (e.g. House of Chiefs, Provincial Development Committee, District Rural Council), makes it very clear that the *lukena* is now very much a periphery of the world as even the villagers have come to know it. Admittedly, most of these royal activities take place outside the gaze of the subjects. The subordination to external superior political and administrative which they invariably imply for the *Mwene's* position, is seldom made explicit but usually covered under traditionalist decorum with plenty of respectful squatting and hand-clapping on the part of modern state officials and other visiting outsiders. As late as the 1970s many of *Mwene* Kahare's subjects could therefore still cherish the illusion that whenever he was summoned to the national capital Lusaka to attend a meeting of the House of Chiefs (an advisory body to the government

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[21] For an analysis of the *lukena* economy in terms of the articulation of modes of production, *cf.* van Binsbergen & Geschiere 1985b: 261-270. For the court music, cf. Brown 1984.

with hardly any formal powers) he went there 'to rule Zambia'. And even if the *lukena* could no longer count as the centre of the universe, the *Mwene*'s area was scarcely considered a part of the national territory of Zambia. In the Nkoya villages, the national political space, however extending to the local scene at times of national elections, was usually referred to as 'out there, in Zambia'.

Chiefs, in Zambia and increasingly elsewhere in Africa,[22] have managed to maintain for themselves a position of respect, as well as influence and freedom of manoeuvre in the wider national society far exceeding their formal powers as defined by post-independence constitutions.[23] This obviously has to do with the legitimation gap of a modern bureaucratically-organised state based on mere legal authority, in a social context where for most citizens – and especially for those with a rural, traditionalistic outlook – the ideological, symbolic and cosmological appeal of such legal authority is partial and limited. The contemporary heirs to pre-colonial kings are co-opted in order to lend, to the central state, some of their own legitimacy and symbolic power. The actual distribution of power in contemporary African nation-states therefore differs considerably from the blueprint of that distribution as formally stipulated by the national Constitution. By virtue of occupying a pivotal position in the historic cosmology shared by large numbers of villagers and traditionally-orientated urban migrants, the chiefs represent a force that modernising state elites have found difficult to by-pass or obliterate.

This gives the impression that the cultural dimension of pre-colonial statehood has persisted in the face of the colonial and post-colonial decline of the kings' or chiefs' formal powers. However, it is more likely that this cultural dimension of court life, particularly the villagers' readiness to view it as coterminous with (even central to), rather than as antagonistic to, the structure and ideology of village life, arose in the twentieth century precisely as a result of such decline in the context of incorporation in the central colonial and post-colonial state. Let us explore this point a bit further.

Twentieth-century ethnicisation processes did have an enormous impact upon the perception of chieftainship in Western Zambia.[24] 'Nkoya' was the name of a forested area and of a numerically limited ruling group (the clan owning the royal title of Mutondo) prior to its becoming the name of an ethnic group (comprising a much larger number of people) in the process of Luyana and colonial incorporation. And since the main distinctive feature of this newly-emerged group was its 'chief' (during colonial times the heir and lineal descendant of the nineteenth-century ruler), during most of the twentieth

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[22] E.g. van Rouveroy van Nieuwaal 1987; Goheen 1992; Brempong *et al*. 1995.

[23] Van Binsbergen 1987.

[24] This in fact is a major theme throughout *Tears of Rain*. *Cf*. van Binsbergen 1985, 1992b.

century we face a situation where being Nkoya is mainly defined by a person's allegiance to one of the four royal chiefs classified as Nkoya. In the first half of the nineteenth century however, Mutondo's capital, far from being fixed in its present position, found itself in various successive locations a hundred kilometres or more from where it became fixed under colonial rule, And while a collective identifying as 'the Nkoya' owned the title, the Mutondo ruler at the time held sway over an area of thousands of square kilometres. This area was inhabited by people who lived in villages which each were ethnically and linguistically fairly homogeneous (but the kingdom as a whole was highly heterogeneous both ethnically and linguistically). They did pay tribute to the *Mwene*, but in great majority did not identify as Nkoya; they often did not, or did far from completely, share in the forms of what a hundred and fifty years later we have come to call Nkoya culture. They often spoke other languages (e.g. Ila, Kaonde, Tonga, Totela, Luba, Lunda and Lenje) than the language which is classified as Nkoya today. In other words, the culture of kingship in west central Zambia was not specific to any of the local 'ethnic' cultures that are commonly identified in that region today, but was shared whatever the specificities (in patterns of production and reproduction, language, kinship system etc.) of the various local village cultures. And in a way it was shared *only from a distance*. For in many respects this courtly culture was pursued by people who, while living at the court, were linguistically, ethnically and symbolically relative strangers or newcomers in the region. The *Myene* and their courtiers had relatively recently (a matter of decades, one or two century at the very most) implanted a Lunda-derived aristocratic pattern of tributary exploitation from southern Congo, with a selection of its administrative, ceremonial and ritual trappings, upon the local village societies of west central Zambia. The manifest local continuity of the latter (e.g. in terms of linguistic traits and particularly material culture including pottery) over almost two millennia is incompatible with the tradition of recent immigration from the north as maintained in the *lukena* milieu throughout the twentieth century.

It is very likely that the successive incorporation, more or less at minority status, in the wider state systems of the Kololo, Luyana and British, served to blur the cultural and structural distinctions between the 'Nkoya' court and the local villages, since now the court was no longer the exploitative 'other' but, on the contrary, the instance from which the local population increasingly derived their ethnic name and identity amidst the inimical and exploiting wider world. From an exploiting and terrifying stranger, the *Mwene* had become the hallmark of local ethnic identity.

The logic of the village and the logic of the royal court in the nineteenth century

The notion of two modes of production (one defined by kinship, the other by kingship, i.e. the social and symbolic organisation of tributary relations of exploitation) prompts us to explore how court and village initially defined themselves vis-à-vis each other in the local social formation. *Tears of Rain* argues that the sources allow us to trace, in considerable detail, the emergence of states in west central Zambia as the imposition, upon an older local village-based mode of production, of a tributary mode revolving on royal courts – where tribute and the spoils of raiding would be partly hoarded, partly redistributed to the villages, partly utilised in networks of long-distance trade linking this inland region to the very distant Indian and Atlantic Oceans.[25]

In the cultural elaboration of the kingship, we see considerable comparative continuities with other African kingdoms as described in the anthropological literature, with regard to such traits as: court organisation and offices, ritual separation between king and subjects, the frequency of regicide and dethronement, the role of regalia especially royal musical instruments, the prominent political and sexual role of royal women (even the suggestion that the prerogatives of kingship originally belonged to them rather than to their male consanguineal kin), the association with Mvula, 'Rain' (the demiurge from whom the kings claim descent) and with the mythical Tower built into the sky (which was similar to that of Mesopotamian Babel – Genesis 11 – even in that its building was said to be inspired by human insolence, while its downfall allegedly caused a similar multiplicity of languages and ethnic groups),[26] the king's exclusive rights over certain aspects of the natural environment (elephant, eland, leopard; fishing pools), and the vicissitudes of royal association with male puberty ritual.

Whatever these regional and continental continuities, the cultural material out of which the Nkoya kingship materialised in the nineteenth century CE, appears to be more immediately a confluence from basically two origins:

- ritual, women-dominated or at least gender-indifferent clan leadership in the pre-state local society, with pacifist intra-group reconciliation, and the careful ritual and productive management of natural resources; and
- a tradition of male-dominated kingship and fully-fledged statehood locally introduced by aristocratic offshoots from the well-organised,

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[25] Van Binsbergen 1992.

[26] Roberts 1973 (Tower); van Binsbergen 1993b (male puberty rites).

> powerful and (due to new food crops) overpopulated empire of the
> Mwaat Yaamv in Southern Congo from the sixteenth century onwards.

Mwaat Yaamv or Mwato Yamvo is the title of the ruler of Musumba, who throughout the nineteenth century was a major political and economic force in what is today southern Congo. His name means 'Lord of Death'. This title ambiguously refers both to the violence by which his rule was enforced over a very wide area (extending well into present-day Zambia), and[27] to the spectacular manner in which the incumbent was to be butchered to death at the hands of his councillors when his allotted time of incumbence was over.

While the kingship strand has sought to legitimate itself by adopting the symbolic trappings of the egalitarian and ritual clan-leadership strand, there is a strong suggestion of discontinuity here. In the process of state formation, the role of women was re-defined so as to push them to away from leadership, to a periphery of symbolic pollution and political incompetence, and the benevolent cosmological anchorage of the clan leadership in the mediation between human society and nature (imperfectly replaced by a new cult of royal ancestors) was to give way to an increasing emphasis on both physical and mystical violence (sorcery). Hunting, male puberty ritual, warfare and notions of female menstrual pollution furnish the ingredients for the rise of a violent male ideology – the symbolic core of the emergent statehood. Emulating the distant court of the 'Lord of Death' from which they had broken away, the courts in west central Zambia become centres of terror, not only by the implied or real violence supporting tributary networks, but also by a cult of violence surrounding the kingship itself, for instance:

- the human skulls that served as drinking vessels at the court;
- the human sacrifices required, as foundation victims, for the establishment of the *Lukena*, the *Lilapa* and the royal graves, and for the manufacture and inauguration of the major royal drums (*Mawoma*);
- human sacrifice as central part of the original *Kazanga* festival;
- the well-being of the king claimed to depend on medicine prepared out of humans killed for the purpose;
- the executioner's axe (*shibanga*) which, more than the sacred musical instruments, is cherished by *Mwene* Kahare, as the sole regalium to be kept inside the palace (rather than in the regalia shelter outside) and to be brandished in his solo dance at the *Kazanga* festival;
- the court office of the *tupondwa*, the king's executioners and purveyors of human remains…

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[27] Cf. Frazer 1957.

As background to all this we may point to the region's opening up to trans-continental and intercontinental trade, and to a general increase in warfare and entrepreneurship throughout South Central Africa; yet such a perspective in terms of mode-of-production analysis in itself does not seem to explain the emphasis on violence in state formation in west central Zambia.

At any rate, henceforth the kingship will present a Janus face to the surrounding village society: in certain respects and in certain contexts it is in continuity with the pre-statal idiom of clan leadership which used to underpin the cultural orientation of local villages, but in other respects and contexts the kingship is to represent an abrupt and absolute break vis-à-vis that society.[28]

The breaking-points are violence, terror, exploitation, non-reciprocity; and monopoly over material produce, regalia, conflict regulation, ideological production, and indeed over violence. If the emergent polities of west central Zambia in the second half of the present millennium are hard to define as states,[29] towards the end of their existence, in the mid-nineteenth century, they were states at least in this respect that, conform Weber's definition,[30] they sought to exercise a monopoly of interpersonal physical violence within their territory.

Thus when around 1880 Shangambo, the later *Mwene* Shamamano Kahare and grandfather of the late *Mwene* Kahare Kabambi I, took the blood feud to members of the Lubanda ethnic group who had killed his mother's brother Kalumpiteka after rejecting the latter's claims to royal status in their area,

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[28] As I have argued elsewhere (van Binsbergen 1981, 1992a, 1992c; van Binsbergen & Geschiere 1985b) such striking contradictions in the cultural set-up of what pretends to be a unified and integrated cultural system, are useful pointers to structural and historical heterogeneity, often to be interpreted, on the political economy plane, in terms of the contradiction between distinct modes of production, each with its own history and its own logic before and during the articulation process.

[29] Vansina 1993.

[30] *Cf.* Weber (1969: 156):

> 'The primary formal characteristics of the modern state are as follows: it possesses an administrative and legal order subject to change by legislation, to which the organised corporate activity of the administrative staff, which is also regulated by legislation, is oriented. This system of order claims binding authority, not only over the members of the state, the citizens, most of whom have obtained membership by birth, but also to a very large extent, over all action taking place in the area of its jurisdiction. It is thus a compulsory association with a territorial basis, Furthermore, to-day, the use of force is regarded as legitimate only so far as it is either permitted by the state or prescribed by it.'

In a state whose backbone consists of tributary networks, the territorial boundaries are dynamic and shifting, but within that periphery the core area is yet well defined. We have insufficient detail on the amount of specific legislation going on in the states of west central Zambia in the eighteenth and nineteenth century; but there is evidence of some (van Binsbergen 1992: 202f). The remainder of Weber's definition applies fairly well to the mid-nineteenth century phase, when Kololo/Luyana incorporation was imminent.

Shangambo was arrested by the trading ruler *Mwene* Kayingu and was made to pay a slave and a gun for this criminal offence.[31]

The logic of the village and the logic of the royal court systematically compared

In order to substantiate this line of argument, let us systematically juxtapose the cultural logic of the village and of the royal court in ideal-typical form; in order to save space the relevant items are brought together in a matrix rather than in a discursive discussion in the text (Table 1). However, it is important to realise that what is listed is not so much aggregate ethnographic data at the level of concrete, observable interaction, but the analyst's summary reconstruction of the abstracted logic of court and village as implicitly, but often also explicitly, structuring the participants' actions, thoughts and utterances.

	village	royal court
cultural composition	tendency to cultural and linguistic intra-village homogeneity; intra-village minorities of strangers (especially in-marrying spouses) are culturally and linguistically assimilated	rules over a considerable region which displays ethnic, cultural and linguistic heterogeneity; courtly institutions, culture and even language may in many ways differ from the cultural idiom of some or most of the villages in the region
ranking	virtually no ranking between individuals except in terms of age and gender; no elaborate ranking between groups but in stead joking relations stressing complementarity and claims of support between pairs of groups (clans)	elaborate and emphatic hierarchy between individuals and groups at the court: from the king (who is ritually set apart) through royal family, officials/ courtiers, servants to slaves; likewise hierarchical distinction between court as a whole, and villages
production	the actual and recognised basis of social and ritual life is Man's productive contact with nature through hunting, fishing and agriculture	absent, dissimulated, and/or relegated to lowest ranking members of the court (slaves); material reproduction largely or exclusively takes place through extraction of surplus from villages
exchange relations	reciprocity; the items (E_1, E_2, ...) which individuals (I_1, I_2,...) or groups (G_1, G_2,...) exchange are classified as being of the same nature, so that exchange is a two-way traffic: $G_i \rightarrow E_1 \rightarrow G_{i+1}$ alternates with $G_{i+1} \rightarrow E_1 \rightarrow G_i$	interdependence but no reciprocity; both internally (within the court, C) and between court and village (V), exchanges are non-reciprocal and involve items (E_1, E_2,...) which are classified as being of a different nature; e.g. royals gifts, office and honour for loyalty; tribute for protection, adjudication and ritual services; exchange is a one-way traffic: $V \rightarrow E1 \rightarrow C$ never alternates with $C \rightarrow E_1 \rightarrow V$; in stead, its counterpart is $C \rightarrow E_2 \rightarrow V$

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[31] Van Binsbergen 1992: 397 and *passim*.

kinship	inclusive idiom of equality, social placement, and recruitment of labour power; although flexible and manipulative, the kinship system dampens rather than enhances intra-group competition; bilateral descent and endogamy constantly blur the boundaries between groups so that social belonging and rights are subject to an ever shifting perspective	exclusive idiom of privilege and rank, expressing (e.g. in the form of perpetual kinship and positional succession),[32] political rather than co-residential, pro-ductive and reproductive relations; this political, instrumental use of kinship, with firm boundaries and clear definition of roles and statuses, enhances interpersonal competition for rank and power at the court
violence (both physical, and mystical, in the form of sorcery)	not permissible in intra-group inter-personal relations ; open competition is interpreted and condemned as implying physical and mystical violence	taken for granted both in intra-court interpersonal relations (in competition over power and office) and in the relations between the court and villages
conflict settlement	informal, emphasis on reconciliation, no real sanctions	formal, royal prerogative on violent and often capital punishment of major crimes and of challenge of royal privilege; the court is an appeal court for intra-village conflict settlement
ritual	revolves on self-definition of the commun-ity; expels and redresses conflict and violence at the village level, by stressing interdependence and unity of the village; ritual is in the hands of community leaders	revolves on definition of the court in relation to the villages; half-heartedly conceals violent basis of court-village exploitation by presenting king and court as cosmologically indispensable for the villages while at the same time indulging in ritual murder; ritual is in the hands of symbolic specialists including the king

Table 1. Structural differences between village and royal court in nineteenth-century west central Zambia.[33]

The message of Table 1 is clear: whatever the political economy of state formation in west central Zambia in the eighteenth and nineteenth centuries, and whatever the cultural history – the patterns of transcontinental or intercontinental diffusion, transformation, bricolage but also original creation and invention – of the material which went into the structuring of the relation between local village society and royal courts, the emergent states in this region turn out to be characterised by a *virtually total denial of the structural principles informing the village communities* in the region. The state is a state in that its structural principles have been socially and culturally constructed so as to represent in an order *sui generis,* which cannot be reduced to the pre-existing order of the civil society. And when the latter is a South Central

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[32] These terms will be defined in the next section of the text.

[33] Source: van Binsbergen 1992, 1991a.

African village society based on the reduction or expulsion of violence as detrimental to productive and reproductive face-to-face relationships, then the matching state may primarily define itself by a positive relation with violence. To the extent to which the state represents an exploitative challenge to the civil society that it has subjugated and re-organised, there is little premium on totally concealing state violence under thick layers of ritual and myth; the 'communitas' of collective royal ritual involving all subjects and explicitly punctuated by ritual murder appears to serve the functional requirements more effectively. By the nineteenth century, the pre-colonial states of west central Zambia were trying to find a form of their own, not by tuning in to, but by rejecting the village tenets of reciprocity, pacifism, reconciliation, care for the relatively weak (women, the elderly, children) and for nature. It is only when these states in their local exercise of power had been supplanted by other states (Kololo, Luyana, colonial and post-colonial), that the focus of violence could shift, leaving the organisational and ideological remnants of the Nkoya states with the task of re-defining themselves in a non-violent and more continuous fashion vis-à-vis local civil society. It is then, in the process of incorporative transformation, that the pre-colonial king is transformed from a violent and exploitative outsider, into the hub of ethnic identity and of a nostalgically re-invented traditionalist cosmology.

'Then give him to the crocodiles'

Thus in west central Zambia (and, I contend, also in many other parts of Africa, although the space is lacking here for an assessment of the comparative data), state formation entailed the imposition, upon local village communities, of a more or less centralised socio-political structure representing a total departure from the social organisation and ideology prevailing in earlier, pre-state times.

In the specific context of the expansion of the Lunda political culture over much of South Central Africa, the typical form of statehood emerging from that transformation had two salient features as identified by Schecter:[34] *perpetual kinship* and *positional succession*, neither of which corresponded closely with structural themes in local village society. Together these made for the powerful organisational and mobilisational structure of the Lunda-ised states, of which the Nkoya states merely formed the extreme, and diluted, southern periphery.

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[34] Schecter 1980.
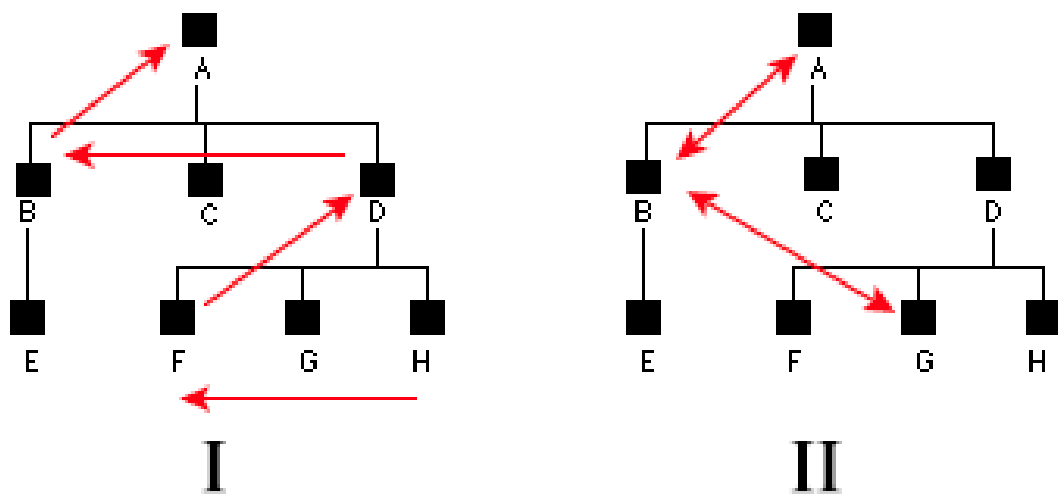
Figure 1. Positional succession (I) and perpetual kinship (II) as principles of Lunda political organisation.

I. The dendrogram is not a genealogy, but shows a hierarchy of political positions within a state, from Paramount Chief (A), via regional chiefs (B, C, D), to district chiefs (E, F, G, H), ordered according to seniority from left to right. If the incumbent A vacates the paramountcy, this will be the sign for a complete reshuffle: he will be succeeded by the incumbent of the most senior regional chieftaincy B, the latter by C, and so on.

II. Again, the dendrogram is not a genealogy, but shows a hierarchy of political positions within a state. However, conceptually it takes on the connotations of a fictive genealogy, in this sense that the incumbent of the Paramountcy (A) is always considered to be the father of the regional chief B, irrespective of the age and of the actual genealogical relationships – if any – between the incumbents. By the same token, the incumbent of the regional chieftainship B is always considered the great or senior father (i.e. paternal uncle) of the incumbent of the district chieftainship G. Such kinship is perpetual in the sense that the relationships it defines are immutable: new incumbents simply assume their predecessor's fictive genealogical position. The combination of devices I and II has a considerable regulating effect on succession, protocol, seniority, jurisdiction etc.

Perpetual kinship expresses the political relationships between rulers and between aristocrats in terms of fictive kinship, so that the incumbent of position A is always identified as e.g. the younger brother of the incumbent of position B; political alliance and difference in rank are distinctly expressed in this idiom, which only uses the kinship idiom metaphorically.

Positional succession, as the complementary device, stipulates a fixed order of incumbency and promotion in office encompassing all the senior political positions within a state 'bureaucracy', by virtue of which all incumbents move one place up when one incumbent in a more senior position dies or otherwise has to be replaced.

The literature on the Lunda realm shows how these organisational formulae have greatly strengthened state organisations; and while these states have seldom been examined from the point of view of a total transformation of the

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pre-state order, dynastic myths of origin at least bring out the element of a historic break, a rupture represented by the advent of statehood.

Particularly among the Nkoya's western neighbours, the Lozi, all these elements are very manifest, and can be gleaned from the works of Gluckman, Mutumba Mainga, Muuka and Prins.[35] But they are perhaps best brought out in the following anecdote that was told by the famous big-game hunter F.C. Selous about the encounter between a White trader and Sipopa, the Lozi king (1864-1876) who restored the Luyana dynasty after a quarter of a century of Kololo occupation:

> 'In Sepopo's [Sipopa's] time many people were executed for witchcraft and other offences, and their bodies thrown to the crocodiles. (...) One day, as he [Mr T., a trader, and friend of Selous] was drinking beer with Sepopa, a very old man crept up and begged for food. The king, turning to some of his men, asked who he was, and learned that he belonged to one of the slave tribes. He then said: "He's a very old man; can he do any work?" and was informed that the old man was quite past work, and depending upon charity – a very, very scarce article in the interior of Africa. Then said the king: "Take him down to the river and hold his head under water", and the old man was forthwith led down to the river. Presently the executioner returned. "Is the old man dead?" said Sepopa. "Dead he is", they answered. "Then give him to the crocodiles," said the king, and went on drinking beer and chatting to my friend T.'[36]

This is more than a simple tale of royal cruelty, although – in line with our argument – Sipopa's reputation as a tyrant is well-established.[37] We see the Lozi king negotiating between three different social spheres:

- the state, defining relations between the king, his court officers, an animal species (the crocodile) as a royal emblem, and his subjects including 'slave tribes';
- peripheral mercantile capitalism whose penetration brings the king in contact with European traders, in the pursuit of mutual benefits; and
- the kinship-based social order at the village level, where commensality rules and where the elderly (to whom all juniors are linked by ties of real, putative or fictive kinship including joking relations – whose standard expression is in terms of the grandparent/ grandchild relationship) are to be supported and honoured, but at the same time are feared for their obvious powers of sorcery (also considered a form of 'work') without which they could never have attained their advanced age.

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[35] Gluckman 1943, 1951, 1967, 1968a, 1968b; Mutumba Mainga 1973; Muuka 1966; Prins 1980.

[36] Selous 1893: 249f.

[37] Holub 1879.

Seeking to entertain and impress the representative of mercantile capitalism, Sipopa's action celebrates the absolute supremacy of his state over the village order, and the absolute rejection of the latter's principles of seniority and commensality. The specifics of the episode are revealing and decidedly ironic: it was with a Nkoya-speaking 'slave tribe' that Sipopa had found refuge during Kololo rule, and it was among them, through ties of fictive kinship with specific senior hunters acting as his mentors, that he had received his training and initiation as a hunter and thus membership of the ritually powerful hunting guild. It is quite possible that precisely on the basis of this shared past the old man confidently dared present himself at the court. The king's action amounts to a rejection of all this. Sipopa confronts the kinship etiquette, sorcery connotations and his personal obligations of reciprocity vis-à-vis a subjugated ethnic group, with the physical and symbolic power invested in the Lozi state: a power not only manifestly superior to the old man's but deriving, as it were, from a different logical universe – the state – and implying yet a third logical universe: peripheral capitalism and European penetration in general. As such, the anecdote is similar to standard tales of Lozi arrogance circulating among contemporary Nkoya. If told before a twentieth-century Nkoya audience the tale would immediately summon the resentment that Nkoya have built up in over a century of domination by the Lozi state under conditions (from 1900 onwards) of outside, European support. Twentieth-century patterns of Nkoya ethnicisation are to be understood in the light of this resentment.

The underlying model is by now well-defined, and in the Lozi case rather perfectly executed. Although Sipopa was certainly a Lozi king, with all the Nkoya connotations in his biography including his uncontested mastery of the Nkoya language, one could argue about his being equally a Nkoya king as well. Similar tales of cruelty are told about other kings who were indisputably Nkoya: *Mwene* Kayambila (ca. 1820), whose self-chosen praise-name (Kayambila means 'Thatcher') refers to head-hunting;[38] *Mwene* Liyoka (ca. 1850), the terror of the Nduwe ethnic group in the Kataba area; *Mwene* Shamamano Kahare (ca. 1880-1913), who gained his kingship under direct protection of Sipopa's successor the famous Lubosi Lewanika I (1878-1884, 1885-1916), but was deprived from his royal orchestra (the principal public mark of kingship) by the same Lozi king when in drunkenness Shamamano had murdered his musicians. But these exemplary incarnations of the violent male model as prevalent at nineteenth-century Nkoya courts should not deceive us. Despite the ideal-typical representation in Table 1 the important thing for an understanding of Nkoya political history is that such total departure from the

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[38] Either through the display of enemy skulls on the thatched roof of his palace, or by metonymically conceiving of the cranium as the roof of the head.

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social and symbolic order of village society was never fully attained by the states, which, in the eighteenth and nineteenth century, sought to come to full fruition on the Kafue/ Zambezi watershed.

For these Nkoya states failed to make full use of the Lunda heritage of perpetual kinship and position succession; and they equally failed to build, out of the social and symbolic material available, a result that radically deviated from that material, transforming it into the basis for a viable new domain of exploitation hinging, not primarily on kinship or the economy, but on the political structure. The Nkoya myth of state origin hints at transformation of the pre-state society, but at the same time stresses considerable continuity with the past. Nkoya states did erode the gender-indifferent, pacifist and reciprocity-based cosmological framework and the kinship structure that informed the constituent village communities. But they did not fundamentally surpass nor eradicate that ancient, pre-statal cosmological framework, and hence – despite nominal proximity to Weber's state definition – remained *inchoate* states, always subject to the internal kinship dynamics of the dynastic group, and to the vicissitudes of tribute and external pressure. It was therefore, probably, that in the second half of the nineteenth century the Nkoya states proved to be no match, not for the Kololo, the Lozi or the Yeke, nor indeed for the colonial state. Not unlikely, the geographical position of Nkoyaland in the far interior, where trade routes from east and west fizzled out into ever smaller capillaries carrying only a small trade volume, was an additional factor in this ultimately thwarted state formation.

Conclusion

Let us end by identifying the wider implications of the views presented in this paper on the basis of my study of merely one remote corner of rural South Central Africa.

Instead of discontinuity, the assumption of basic continuity (in terms of cosmology, organisation, and personnel) between state and civil society (i.e. between indigenous African states and the village communities they dominate) has been one of the implicit tenets of political anthropology in this part of the world. Was not the Lozi king as depicted in Gluckman's classic studies the very embodiment of the land, to the extent of even deriving his title, *Litunga* (which – like in Nkoya – literally means 'land' in the Luyana court language which has survived Kololo/Lozi language imposition), from that identity?[39] Did not the principles of justice (i.e. 'the reasonable man' – since Gluckman a catch phrase of legal anthropological textbooks), kinship, reciprocity, shape court-

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[39] Gluckman 1969a.

village relations as they did relations within and between villages? Thus considered, the pre-colonial African state in South Central and Southern would be mainly a village at an exalted scale – and this is a (highly deceptive) cliché; it underlies much classic anthropological description and has also been adopted as valid by numerous colonial and post-colonial political actors on the African scene.

A restatement of the same idea of continuity is found in Jeff Guy's somewhat mechanical application of Marxist modes-of-production analysis of the pre-colonial societies of Southern Africa, to the effect that

> '…differences between chief and homestead-heads were differences in degree and not differences in kind', [so that the only real] subordinate class consisted of women and children, the product of their labour being appropriated by their husbands and fathers'.[40]

If it is possible to generalise in these terms about the well-documented kingships of the Zulu, Swazi, Sotho, Tswana etc. (which of course are not in all respects comparable to their Zambian counterparts), one wonders what would happen to the picture if violence, state-village discontinuity and state-village exploitation were re-introduced into it. I have been enough of a Marxist myself to insist that Marxism, which Guy invokes as his theoretical frame, does not necessarily imply shallowness for the cultural dimension of our analysis.

The history of ideas suggests various possible reasons why, with reference to pre-colonial African states, state-village continuity would be stressed by the scholarly analysts at the expense of violence, exploitation and discontinuity. Let us limit ourselves to the Gluckman case. In colonial, Protectorate Barotseland (the fact of its colonial domination was taken for granted and scarcely explicitly discussed in anthropological discussions of internal, 'tribal' power relations at the time), Gluckman identified strongly with the Lozi indigenous administration, which accorded him almost princely status and which, moreover, was highly favoured by the colonial administration. As a legal anthropologist, his window on the society of Western Zambia around 1940 was that of formal courts of law in the Lozi heart-land of Mongu-Lealui district;[41] as an economic and political anthropologist, his window was simply the Lozi king's court at Lealui. Building up professional respectability was still high on the agenda of the young anthropological discipline when Gluckman's career was at its peak, but of comparable priority – and laudably so, in the face of blatant racism and colonial arrogance – was the vindication of the colonial African subject as capable of creating and governing responsible, well-ordered societies based on philosophical and cosmological principles not inferior to

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[40] Guy 1987: 24; also approvingly quoted in Gulbrandsen 1993.

[41] On the limitations of this perspective, *cf.* van Binsbergen 1977.

those of Europe. African social systems had to be described as integrated structures, and even if Gluckman was a pioneer of the introduction of conflict in that setting,[42] conflict to him still did not imply a fundamental and lasting structural cleavage or discontinuity, but a passing stage to a new equilibrium. Moreover, there is no doubt that the Lozi aristocracy's political ideology considered itself as continuous with the (Lozi) village life-world; but such a claim needs to be deconstructed as part of political strategy.

Finally, Protectorate Barotseland, where tribute labour and slavery had gradually disappeared since their formal abolition in the 1910s, had a well-functioning indigenous administration, whose violence (apart from the occasional flogging or expulsion of convicts, and cases of ritual murder only very sporadically seeping through to the colonial administration and thus to the current Zambia National Archives) was largely structural (e.g. in terms of humiliation of the outlying ethnic groups including the Nkoya) and moreover could hardly be told apart from the violence of the colonial state itself.

All these considerations would converge towards a view stressing cultural and organisational continuity both between colonial present of the 1940s and pre-colonial past, and between indigenous 'state' and village, in Barotseland. In many ways, moreover, Gluckman, a South African whose PhD research had been on Zululand,[43] shared the ideological position of other radical White South African intellectuals vis-à-vis Black Africans and their societies. His vindicative, positive approach may have a rather direct link with for instance Guy's position almost half a century later. If pre-colonial African kings are merely an elaboration of the people's ideology and social organisation, these kings' contemporary significance for the oppressed descendants of the same people could be viewed in a far more positive light than if these kings, in their own way, represented forms of cultural discontinuity, exploitation and violence not entirely incomparable to those of the apartheid state. The struggle for a balanced assessment of violence in pre-colonial Africa as against the colonial situation has understandably been a major theme in modern African literature since Stanlake Samkange's *On trial for my country*,[44] and Yambo Ouologuem's *Le devoir de violence*.[45]

And these are not just fine points of scholarship or *belles lettres*. The issues, intimately related, of violence and the socially constructed and cherished images of pre-colonial African society have become crucial in the

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[42] *Cf.* Gluckman 1955, 1963.

[43] Gluckman 1940; it cannot be ruled out that he did project Zulu models – with perhaps more intrinsic continuity – onto Barotseland.

[44] Samkange 1966.

[45] Ouologuem 1968.

transformation of South Africa today. In the decade before majority rule was established in South Africa, the main Zulu ethnic organisation, Inkatha, dreamed of Shaka's Zulu's state nearly two centuries ago, and found there the inspiration for a type of inter-ethnic and inter-racial violence which were no longer abhorred but appeared as hallowed by tradition or identity.[46] In such a present, where the image of past chiefly violence leads to simulacra of violence on the contemporary political scene, a fresh look at historical contradictions may be helpful to come to terms with the future.[47]

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[46] *Cf.* Maré & Hamilton 1987; Golan 1991; and for more optimistic view (note the date of publication) Schlemmer 1980. For recent re-evaluations of the *mfecane* image (the chain reaction of conflict and dispersal in Southern Africa allegedly started by Shaka in the first quarter of the 19th century), *cf.* Eldredge 1992; Hamilton 1992.

[47] POSTSCRIPT: In retrospect, one further consideration should have been addressed in my argument. I sketch a sociology of knowledge by virtue of which Max Gluckman, almost an honorary Lozi prince, appears to have had no option but to insist on non-violence, and on cultural continuity, between the Lozi indigenous state and commoner villages. In footnote 3 of this paper, I reveal myself to be an adoptive Nkoya prince; yet, considering my argument, I apparently have no qualms at presenting a picture of the violent pre-colonial past of my adoptive royal relatives, and stressing two forms of cultural discontinuity: (a) between royals and commoners, and (b) between the pre-colonial and the (post-)colonial situation. Am I suggesting to be governed, decades after Independence, by a different sociology of knowledge than Gluckman was half a century before me, writing in the heyday of British colonialism? That is a distinct possibility. Meanwhile, considering Mudimbe's (1997) stress on the Freudian Oedipal scheme in the context of the liberation of African difference, it would not be totally absurd to suggest that an Oedipal transference from my personal life onto my historical research has rendered me rather enamoured with the image of pacifist, clan-based female ritual leaders who were subsequently ousted by violent men; or that such a subconscious orientation made me identify too much as an Nkoya, against Gluckman (an obvious father figure to me) as the Nkoya's hereditary enemy, a Lozi. But perhaps we need not delve so deeply, and so individually. In Kaoma district in the last decades of the twentieth century, village–court cultural continuity, and non-violence, have become facts, so there is little left any more for me to be secretive about. From a point of view of the global and universalist human-rights discourse of the late twentieth century, or, alternatively, from a point of view of self-censoring political correctness commonly imposed on Northern representations of South social realities (as part of the politics of knowledge attending African Studies), the unpleasant sides of pre-colonial royal power in Africa are generally expected to be bowdlerised, aestheticised, or concealed. But these universalist and academic discourses do not necessarily coincide with the particularist discourse of Nkoya royal circles today. To boast of their pre-colonial forbears' violence and excessive contempt of slaves, even in the face of resentment expressed by locals from commoner or slave descent, has remained a trait of Nkoya royals to this day. Naïvely, or in a half-deliberate attempt at intercultural identification, I may simply have emulated this trait in my argument. Whatever the case, in the decade since this argument was first conceived in the Dutch language, I have resigned myself to the contradictions of prolonged participatory social research in Africa by someone, like myself, hailing from the North Atlantic region; cf. van Binsbergen, in press. And in my subsequent Nkoya research I have concentrated, more than on the violence theme (however, cf. van Binsbergen 1996), on the exploration of the transregional and intercontinental strands of the history of South Central African kingship first hinted at in this paper (cf. van Binsbergen, forthcoming).

Chapter 9

Historical perspectives on changing livelihoods in northern Togo

by Leo de Haan

Introduction

Nowadays, it is often proclaimed that by linking up with globalisation (i.e. getting connected to the global flows of information, capital, goods etc.), people in developing countries will be more successful in organising a decent livelihood. The neo-liberal consensus wants us to believe that poor communities need to be opened up in order to profit from globalisation and thus to develop. This paper does not question the supposed advantages of globalisation. It rather seeks to explain, by means of a historical analysis of northern Togo, that successful or unsuccessful linking up with the world system is not a matter of simply opening up, but the result of a delicate articulation of external economic and political forces and local livelihoods. This paper reflects van Rouveroy van Nieuwaal's work both geographically – the northern savannah region of Togo proved a field that inspired him time and again – and in topic: from a different perspective, this paper articulates the same process that triggered van Rouveroy van Nieuwaal's academic attention throughout his research in Togo; it has found a lasting expression in his publications on legal pluralism, with regard to, for instance, land tenure and chieftaincy.[1]

   People in developing countries, and poor people in particular, undertake manifold activities that give them access to food, housing and a monetary income. The most common of these activities are the production of crops, livestock, clothing and housing for home consumption; the production of crops and livestock for sale; trade; handicrafts such as basket weaving, pottery, carpentry; seasonal or permanent wage labour (including that of children);

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[1] Van Rouveroy van Nieuwaal & Améga 1979; Van Rouveroy van Nieuwaal 1985c; van Rouveroy van Nieuwaal & van Dijk 1999.

remittances by kin who have emigrated; loans, alms, gifts from patrons or benefactors; and sometimes corruption. Maintaining a livelihood is however not necessarily the equivalent of having a job. It is not even inevitably related to work. Moreover, although obtaining a monetary income is important, it is not the only aspect of significance. It is for instance quite conceivable for somebody with a low monetary income to be better off than someone with a higher monetary income.[2]

To maintain a livelihood, people make use of various means, which are alternately referred to as assets, resources, or capitals.[3] Depending on their strategies, people apply various blends of these capitals, which generally result in different livelihoods. Although the actual proportion and mixture varies per livelihood, generally the following capitals are distinguished:

- human capital such as labour, but also skills, experience, creativity and inventiveness;
- natural capital such as land, water, forests, pastures and minerals;
- physical capital such as food stocks, livestock, jewellery, equipment, tools and machinery;
- financial capital such as savings at a bank or in an old sock, a loan or credit;[4] and
- social capital, meaning manifestations of mutual engagements with other people.

Capital does not necessarily have to be held in private property: land, water and forests, for instance, may be owned communally. Essential however is one's access to the resource when needed and wanted. Chambers and Conway have therefore made the distinction between 'tangible assets' – which consist of general resources and what they refer to as 'stores' (cattle, equipment, stocks) – and 'non-tangible assets'.[5] Non-tangible assets consist of 'claims', the ability to be able to call upon moral and practical assistance, and 'access', having or getting the opportunity to use the resource in practice. The concept of non-tangible assets refers to the *real* opportunity for e.g. women to gather firewood in the forest or for men to use water for irrigation from the village well.

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[2] De Haan 2000: 343.

[3] See Ellis 2000; Blaikie *et al.* 1994; Carney 1999. In this paper, I prefer to use the term 'capital' although I am aware that this implies the 'old' contention that economics can rightfully claim precedence over the (other) social sciences.

[4] De Haan & Quarles van Ufford 2001: 285.

[5] Chambers and Conway 1992.

According to Chambers,[6] it refers, in addition, to the *possibility* for women to obtain food from the compound's granary, or for men to obtain information about cattle prices or to get temporary wage labour elsewhere in the region.

Blaikie has built on this aspect of access by creating an 'access model of maintaining livelihood'.[7] According to him, every household, and every individual member of it, has a certain access profile to capital. This profile depends on individual rights, such as property rights, by tradition or by law. These rights differ per individual and per household and they may also change over time. Each actor (household, individual) chooses a set of livelihood strategies on the basis of this access.

Livelihoods are affected by shock and stress. Sen, for instance, has pointed out that livelihood does not merely depend on direct access to capital, but also on how the use of capitals is embedded in a wider social, economic, political and natural context.[8] Various contextual factors such as the labour market, market organisation, and price policy contribute to, and may even cause, stress in livelihood. The concept of livelihood thus not only refers to access to, and processing of, local capitals, but also to the interaction of social groups, households and individuals with their wider context. Livelihood is a dynamic concept because people process capitals not automatically, but with an eye on opportunities offered by the wider context. People are thus sometimes forced to resort to distinct strategies in a more or less identical context. Rather than having the opportunity to outclass certain contextual influences, such as drought, war and inflation, people in their livelihoods have to cope with them.

Moreover, capitalist market organisation and social norms and values do not change overnight. Thus, people are neither powerless objects nor free agents who can become whatever they choose.[9]

Livelihood and colonisation in northern Togo

Pre-colonial Gourma society in the savannah region of Togo was predominantly agricultural. Gourma society was built on subsistence farming, but part of its surplus production was levied by Anufom warriors, who had settled in the region in the eighteenth century after a period of turmoil and warfare. As the result of superior military organisation and exclusive access to European firearms – as mediated by the Ashanti – the Anufom dominated the other peoples in the region and the Gourma were thus made to pay yearly

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[6] Chambers 1995: 24.

[7] Blaikie *et al*. 1994: 46-60.

[8] Sen 1981; Drèze & Sen 1989.

[9] De Haan 2000: 350.

tributes in the form of millet and poultry. Moreover, Gourma chiefs seem to have been nominated only by Anufom consent.[10]

Gourma agricultural activities were organised on a lineage basis. The lineage was and is a unit of production and consumption, occupying a compound of its own and its surrounding fields. Duties were organised by the lineage elder, and clearly divided according to gender and age: whereas the lineage elder could claim the labour of all men and women in the compound, all other men could only call upon their wives and children. Young people could only get assistance on a reciprocal basis with other youth.[11] Women spend considerable time on domestic duties, child-care and the collection of firewood, some women brewed beer and old women made pottery. Hut building was a collective activity, but the men did the actual construction, while the women did the laborious collection and transport of materials. For comprehensive activities, such as the construction of a new compound, the clearing of a new field or a harvest, lineages living in neighbouring compounds were asked for assistance.

Agricultural production was a collective activity, organised along clear gender lines: men cleared the woods for new fields and prepared the soil; women sowed and weeded (with the exception of the remote fields, whose weeding was a men's job); men cut the millet and sorghum stalks when the crop was ripe; women cut the cobs and transported then to the compound; men threshed; women looked after the vegetable gardens. Fields and vegetable gardens around the compound were cultivated every year. They were fertilised with household garbage and small-livestock manure, and planted with fast growing millet. Fields further away were cultivated with millet and sorghum. They were left to the woods again after a few years of cultivation. In the dry season cattle roamed the stubble-fields, leaving some manure on the soil.

In this pre-colonial livelihood, land and labour were the key capitals, and access to these capitals was clearly embedded in power relations. Given the low population density and the simple production techniques, land was abundant and held on the level of the clan as a common property resource. Upon their arrival in the region, all Gourma clans had established their own claim on land in a particular part of the savannah region by installing local shrines.[12] All lineages of a particular clan had free access to the clan's land in their particular area, but they needed permission to cultivate land of another clan. This permission had to be granted by the land chief (who ensured the

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[10] Van Rouveroy van Nieuwaal 1976: 13-15; de Haan 1993: 89.

[11] BDPA [Bureau pour le Développement de la Production Agricole] 1964: 60.

[12] We are avoiding the commonly used term 'fetish' at this point, because of its problematic status in anthropology.

sacred relation between the clan, the ancestors and the god of the land). Such permission was occasionally refused, not because of land shortage, but because of social conflict between the clans. Permission to cultivate another clan's land was easily obtained, even by other ethnicities such as the Fulani, in return for extra labour obligations. Labour was thus considered a more important capital than land. This corresponds with the general condition attributed to many pre-colonial African societies, i.e. that, given the low population densities, land was abundant and labour was scarce.[13]

Consequently, access to labour was at the core of power relations in traditional Gourma society. As power relations were predominantly determined by status and marriage, labour as capital was so too. Status was closely linked to marriage, but getting married was difficult. The Gourma clans were exogamous, marriage was arranged and women were only exchanged for other women. Moreover, marriage occurred in a strict age sequence, starting with the oldest man of the oldest generation. This system made young men highly dependent upon their lineage elder, because only he had the authority to provide one of his daughters or nieces as bride in exchange. Moreover, polygamy was generally accepted, with the result that lineage elders could arrange an additional young bride for themselves or for one of the other married men in the lineage instead of for a bachelor. As a result, young men had to wait a long time before they could get married and enjoy the ensuing rise in status. Although this system of connubial reciprocity offered some leeway – e.g., at times brides were given away as a token of friendship, respect or gratitude and sometimes men could, as last resort, work for a number of years on the field of another lineage in order to earn a bride – all marriages had to be officially sealed by the exchange of one woman for another.

Put within the framework of livelihood, access to capital in pre-colonial Gourma society thus relied heavily on the marital system: both human and natural capital were closely linked to social capital. Human capital could only be obtained through marriage and natural capital, i.e. land, was not scarce, but its access was in the hands of elders.[14]

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[13] *Cf.* Meillassoux 1960.

[14] Virtually everyone was bound to this structure of dominance, because other job opportunities were not available in the region. The German explorer Doering for example hardly found any craft in the region in 1895 (de Haan 1993: 106). Moreover, slave trade was monopolised by the Anufom and not accessible to the Gourma. Only some petty trade existed with the passing long-distance Hausa caravan trade, but that opportunity was too meagre for a specialised livelihood.

Colonial occupation: A change in livelihood

In the first decades of the twentieth century, the relatively stable Gourma lifestyle changed. Through influences from outside, their livelihood framework underwent some structural transformations. First, during German colonial rule, an official tax system was introduced. As financial security was a main objective of the colonial authorities, colonial revenue had to equal, and preferably even exceed, colonial expenditure. Taxes became the most important source of colonial revenue,[15] and the regular tribute payments to the Anufom were replaced by tax labour for the Germans. As a result, the relationship between the Gourma and the Anufom changed considerably. Although the yearly tribute payments continued for a long time, they became gradually more symbolic: surplus extraction was taken over by the colonial administration, and political dominance too.

Under German occupation, taxes were mostly in the form of labour. From each village, groups of men were forced to work on the construction of roads, railways and bridges, on administrative posts, and as porters. Because tax labour mostly took place during the dry season, it hardly interfered with the Gourma agricultural production. It was however regarded as an additional burden for young men, who were the first to be recruited. All over the region young men therefore occasionally fled to neighbouring French and British colonies, where colonial tax collection was less efficient.[16]

Later, in the first years of French colonial rule, Gourma society underwent further transformations. The French clearly realised that, although they did have a much larger physical presence in the region than the Germans had ever had, they could only rule with the aid of local chiefs.[17] The French thus actively interfered in the nomination of these chiefs and local chiefs became pillars in the collection of taxes, the recruitment of forced labourers, maintenance of roads, health control, justice and the introduction of cash crops. As a result the power of local chiefs increased: backed by the colonial administration they exploited their new tasks for their individual and family's benefit.

Under the French administration, personal taxes were no longer paid in labour, but in money. As a result, monetary income became imperative in Gourma society, and livestock and food from the savannah were increasingly sold to the neighbouring Gold Coast, a more prosperous colony as a result of its successful cocoa export production. At the same time however, forced labour

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[15] It is important to note that, when in 1911 a German commander claimed that between 84% and 98% of those subjected to taxes, i.e. all adult man, actually paid the tax, this could only have been achieved with the help of local chiefs.

[16] De Haan 1993: 101-103.

[17] ANT [Archives Nationales du Togo] 2, APA [Affaires Politiques et Administratives], 35.

for construction continued. Officially the labourers worked for a wage, but in practice this was exceptional. In addition, trade became taxed, amounting to 40% of the total tax income in 1930.[18]

The indigenous population of the Togo savannah became increasingly discontented: reports about unrest and resistance were numerous, and ever more people fled to adjacent colonies. One source of unhappiness was that road maintenance by forced labour increasingly occurred at the end of the rainy season, when roads and bridges were in need of repair. This coincided with the harvest season, putting a high demand on labour. Despite the fact that villages had the unintended advantage of not having to feed a large proportion of their population any longer – between 1929 and 1933, for instance, many young men were sent to central Togo to work on railway construction – they were increasingly forced to sell their surplus crops against low prices. In addition, taxation pressure was worsened by local chiefs. Some chiefs, for instance, did not hesitate to levy higher taxes than had been imposed by the colonial government, in order to fill their own pockets;[19] this in turn resulted in growing discontent with the chiefs.

In the 1920s the phenomenon of migrant labour was introduced in the Togo savannah. Many men, in order to earn money to pay their taxes, started migrating for short periods of time to the Gold Coast, where the booming cocoa export production had brought fast economic growth. However, the economic crisis of the 1930s put an end to this opportunity and between 1929 and 1933 (the same years when others were working on railway construction inside Togo) many migrants returned from the Gold Coast. As the sale of livestock and food to the Gold Coast also became increasingly difficult, the French colonial administration introduced export production of groundnuts as a means to strengthen the tax base. All local chiefs were instructed to create so-called *plantations cantonales*, communal fields where groundnuts were cultivated by villagers under the supervision of the local chief and colonial officials. Despite all rhetoric about modernisation of production,[20] the main objective of this regulation was the production of a cash crop which the colonial administration or the villagers themselves could sell to European trading companies. The regulation became relatively successful in so far as it motivated individuals to produce exportable groundnuts; it did however never manage to inspire a communal or co-operative type of production. Almost everywhere in the savannah region the *plantations cantonales* were considered to be the personal

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[18] De Haan 1993: 116.

[19] It should be noted however that some chiefs refused to collect taxes or to recruit forced labour if resistance from their villagers became too risky for their own position.

[20] De Haan 1993: 127.

fields of the chief, where villagers cultivated his groundnuts. Even the meals and beer normally provided for a traditional (reciprocal) working party were lacking. The chiefs handed over part of the yield to the colonial administration in order to settle the tax target for his area, and sold the other part to trading companies as if this were his private produce. The distinction between the 'communal' groundnut fields and the chiefly lineage fields thus became blurred, and villagers eventually did the work that had traditionally been done by the chief's younger brothers, his sons, and his women. According to some colonial officials the system developed feudal features.[21] In the late 1930s another variety of groundnuts was introduced, this time to eliminate the problems caused by the *plantation cantonales*; every adult man was ordered to cultivate 0.25 ha of this new variety of groundnuts on an individual basis, and to sell at least one bag of the yield through the chief to the colonial administration. But despite this new development, the local chiefs persisted with the *plantations cantonales* and managed to maintain a hold over their people.[22]

Interpreting colonial Gourma society through the livelihood framework, a number of interrelated structural changes and local responses become clear.

First, as a result of taxation, forced labour and the system of *plantations cantonale,* on the one hand, and the persistence of the marital system and power vested in elders, on the other hand, the workload for young men rose considerably. But there were also benefits for young men: they were given the opportunity to escape from their inferior position and its related workload without placing themselves outside their community. In the past, a young man may have had the option to refuse to perform his duties, but in order to ensure his continued livelihood he would have had no option but to leave his village. It would however have been very difficult for such a young man to find a family elsewhere in Gourmaland, and outside his own ethnic region it would have been plainly impossible. Through forced labour, young Gourma men got acquainted with foreign areas: migrant labour in the Gold Coast, which had initially been seasonal work to earn money for tax purposes, soon turned into an important opportunity to acquire a more interesting livelihood. With saved money, taxes in Togo could be paid and their position in the community could be restored. The tax system and labour migration, combined with the traditional local power relations, thus developed as a new activity to Gourma livelihood.

Secondly, colonial occupation changed traditional power relations. Due to its weak physical presence in the region, French colonial administration was forced to use local chiefs as intermediaries. Through the increased power

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[21] ANT 2APA/27: 2.

[22] De Haan 1993: 120-130.

vested in them, and the considerable margins they had in shaping their role, these chiefs and their lineage were able to control more key capitals, labour and land, which yielded them considerable wealth. As a result, power relations in Gourma got a new dimension. In addition to age and gender, they became dependent upon a person's ties with the administration.

Thirdly, decision-making processes based on lineage reproduction were transformed through the introduction of new crops. Initially, new means of production through the *plantations cantonales* led to increased chiefly authority and decreased lineage power. Later, the obligation for every adult man to cultivate 0.25 ha of groundnuts on an individual basis, led to the complete undermining of the traditional authority of the elders, and of communal livelihood production. For instance, it became increasingly customary for men of a compound to have a small field with cash crops and the monetary income from the sale of the yield served their personal purposes. Gradually, decision making with regard to agricultural production became an individual matter. Despite the fact that personal fields were long denied to women and young men – no doubt because the latter would otherwise gain too much independence, which would result in a decrease of their labour input on the family's communal fields – individual cultivation became increasingly popular. At the end of the colonial period, it was even common for young, unmarried men to have their own personal fields.[23]

Migrant labour and livelihood independence

After an initial boom in the late 1940s, groundnut production generally collapsed in the area of Gourma for a number of reasons. Lower world market prices made groundnuts less attractive; a plant disease wiped out the crops altogether; and a new, more resistant variety became available too late. At the same time, migrant labour experienced an increased impulse. As the result of very successful cocoa production, the Gold Coast witnessed an unparalleled economic growth, providing ample opportunities for Gourma labour migrants. Many young, unmarried Gourma started migrating to the Gold Coast for increasing periods of time. Most were away for at least a year, and those that were successful in finding a job through family networks, or even setting up their own plantations, sent money back home on a regular basis. With their income, and as a result of the custom of bride prices in the traditional marital system of the cocoa areas – as opposed to their own tradition of connubial reciprocity – and thanks to the monetarisation of this bride price system, many were even able to marry local women, despite the fact that they were

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[23] De Haan 1993: 130, 151.

foreigners. Some migrants never returned to Gourma. They regarded their opportunities abroad as a way to escape from weighty obligations. Others only returned to take over their fathers' or brothers' position once they had passed away. They perceived their labour migration as a way to supplement local earnings. Those that returned completely penniless generally took up their subordinate position as if nothing had changed: at least they enjoyed the admiration of others for having travelled.[24]

However, local surveys indicate that not all Gourma were cocoa labourers.[25] Peak periods in cocoa production, for instance, partly coincided with peak periods in agricultural production in the savannah region. Migration to the cocoa production zone was therefore impossible for men heading a compound. According to local norms, absence should never be longer than a few weeks, perhaps some months, and then only if it was during the agricultural slack season. Longer absence would be perceived as negligence, and could easily result in divorce, or a man would lose such power in the village and family as he had had before leaving. Theoretically, a man could temporarily hand over his responsibilities to a *younger*, married brother who lived in his compound, but such an arrangement would result in a struggle over competences upon the migrant's return. Alternatively, putting a compound under the responsibility of his father or *older* brother would amount to accepting once again a subordinate status. Older, married men could only migrate for short periods and were mostly involved in trading and in casual jobs.

In the scholarly literature, a debate has been waged on the principal factors that made a man migrate in Togo during the colonial period. Was it mainly age? Or was a man's kinship position also a factor? Some researchers have argued that land shortage induced young men of non-landowning lineages to migrate more than others.[26] Elsewhere, I have however argued that this is certainly not the case for the late colonial period:[27] higher labour claims on these lineages might occasionally provide a better explanation. At the end of French colonisation, kinship position did emerge as a factor in the sense that people of certain lineages were more prone to migrate to the Gold Coast then others, but for a completely different reason. The *Union des Chefs et des Populations du Nord* (UCPN), the political party from the north based on patron-client relationships of local chiefs and their villagers all over northern Togo, had supported pro-French governments ever since the elections of 1951. However, they were swept out of government in 1958 by the nationalist, pro-

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[24] De Haan 1993: 156.

[25] De Haan 1993: 155-160.

[26] *Cf.* Pontié 1986.

[27] *Cf.* de Haan 1993.

Independence *Comité d'Unité Togolaise* (CUT). Although the Gourma had massively supported the UCPN, they turned against their chiefs once a CUT government came into power. The period until Independence in 1960 was troublesome: one chief was killed and other chiefs were chased away, their compound and stocks plundered and their land and livestock divided. Many sons and younger brothers in their lineages did not await these troubles but fled to the Gold Coast after 1958.[28]

Looking at late-colonial Gourma society through the lens of the livelihood framework, the link between labour migration, colonial taxation, and the way in which access to capital in the village community was regulated, once again becomes clear. Opportunities for migration depended on economic growth, and a subsequent demand for labour, in the Gold Coast. However, this opportunity was closely related to taxation pressure and groundnut prices in Togo. Ultimately, the manner in which the local community regulated pressure on labour and access to other capital, particularly land, determined how this opportunity was seized. At the top of the pyramid was the compound elder, who, by virtue of the fact that his social capital consisted of the management of local kin relations, could never venture a chance in the Gold Coast cocoa production without losing his position within the family. Moreover, of all community members he would have had the least reasons to become a labour migrant: as family elder he was in the powerful position to have the young men working for him and thus further their future marriage. Moreover, the family elder could profit from the emerging market for cash crops by allocating part of the communal fields as his personal field, using the labour of youth (which until 1950 was not too difficult), and still provide himself with a personal income. Younger, married brothers and sons of the compound elder could more easily, i.e. without loss of social status, explore the opportunities in the Gold Coast for a longer period. However, as soon as they got a chance to obtain personal fields, they stayed home as well. Unmarried men on the other hand had nothing to lose by leaving: they had no power, no say, and had had to work on the communal fields, on the *plantations cantonales*, on the elder's new personal fields and, occasionally, as forced labourers for the French. Their departure for the Gold Coast had only positive consequences: it brought them independence.

Conclusion: The livelihood framework examined

Livelihood studies are actor-oriented and generally do not look upon people as passive victims of exploitation but rather as active agents making use, though

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[28] De Haan 1993: 149.

often with very limited means, of opportunities, and sometimes even creating these opportunities. In this paper, the Gourma were not portrayed as passively suffering from the supremacy of colonialism. Instead it was shown that, although both German and French colonialism was exploitive and oppressive, the direction in which the Gourma developed depended very much on local circumstances and local responses. Thus, it was shown that linking up with the world system was not a simple matter of opening up, but the result of delicate articulation of external economic and political forces in regard with local livelihoods.

That is not to say that every articulation is successful. Success from the Gourma perspective very much depended on the sustainability of their livelihood: it had to provide them with a decent living in the long run, and according to their own standards. Success from the perspective of the colonial administration depended on financial sustainability. It is not difficult to conclude that from both perspectives success was doubtful, or at least marginal. Gourma living conditions were not significantly and persistently above the level of sheer survival, although at the end of the colonial period the health situation was much better than ever before. Financially, the savannah region was more a burden than an asset to the colonial administration: pure geographical factors such as distance to markets, transportation costs, and lack of mineral deposits can be indicated as causes. The lack of success in linking up with the world system should rather be attributed to these geographical factors than to the exploitative nature of colonialism.

From the analysis it has become clear that access to labour and land, constrained by social capital, was crucial in understanding Gourma livelihood.[29] This induces the question what social capital actually means and how it relates to what is usually called social structure. Carney distinguishes various views on social capital and identifies the following core elements:[30]

- relations of trust, reciprocity and exchange between individuals;
- connectedness, networks and groups, including access to wider institutions; and
- common rules, norms and sanctions mutually agreed or handed down within societies.

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[29] It was explained that to achieve a livelihood, people make use of five capitals, i.e. human, natural, physical, financial and social capital. For the analysis of colonial Gourma society it was sufficient to focus only on labour (human capital), land (natural capital) and social relations (social capital). Of course, physical capital such as food stocks, livestock, jewellery, equipment and tools, is not to be overlooked, particularly not in an analysis more focused on agriculture than the present one. Financial capital (savings, loans or credit, hardly played a role because monetarisation) was still in its infancy.

[30] Carney 1999a: 1.

While all three elements amount to a resource upon which people can draw for their livelihood, especially the third element seems synonymous with social structure beyond individual strategy. It is clear that social behaviour, including colonial Gourma livelihood, cannot be understood exclusively in terms of individual motives, intentions and interest. Individual behaviour is socially constructed. Agency is embodied in the individual, but embedded in social relations, through which it can become effective. Individual choices and decision-making are embedded in values and norms and institutional structures. From this perspective, social capital is more a device to link livelihood with social structure, than a useful concept of its own accord. In this paper, the notion of social capital soon gave way to attention for social relations governing access to labour and land. It was demonstrated that the social structure of Gourma society, and especially the way in which power relations were institutionalised in the marital system and the allocation of land, was decisive for the way it responded to colonialism and the manner in which opportunities were perceived and grasped. Given the particular geographical circumstances of the savannah region of Togo, land was less of an issue, and the colonial administration and traditional authorities were only left with labour to struggle over. Labour seized the opportunity, created but not imposed by colonialism, to migrate to the Gold Coast.

In the long run, migrant labour was more harmful to the Gourma elders than to the colonial administration: while it catered for at least part of the taxes which the colonial administration levied, the lineage elders lost part of their labour and could only compensate for this loss by permitting young men the use of personal fields, in other words by in fact allowing the latter more individual decision-making in livelihood. This clearly shows that Gourma social structure induced particular livelihoods to develop under colonialism, and that those very livelihoods induced changes in the original social structure of Gourma society.

Finally, the analysis of the colonial Gourma situation indicates an important, by now well-established trend in modern livelihood studies: diversification. Gourma lineages, responsible for group production, did not attempt to specialise in one livelihood – migration *or* groundnut production – but rather preferred to exploit both opportunities. As compared with pre-colonial society, not only livelihood itself became more diversified, but also families tended to combine more types of livelihoods. At present, this diversification is even more manifest than in the period under scrutiny. It should be noted that in academic livelihood debates, diversification does not necessarily imply higher incomes. It is often argued that poverty induces people to exploit all possible means and niches to survive, and that therefore

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the poor tend to engage in multiple activities. However, notions of diversification should also be understood on the individual and the family level. Although individuals may admittedly follow multiple income strategies simultaneously, families that do so do not necessarily have a collective decision-making process, i.e. deliberations about costs and benefits or advantages and disadvantages do not always take place at the collective level. Individual objectives and family aspirations are thus sometimes conflictive and specific activities, such as labour migration, may in fact weaken family cohesion. From the framework of the livelihood debate, this paper has thus indicated that diversification is not necessarily planned at the family level. What is more, the argument's historical approach has revealed that the increase of livelihood diversification already took place in early colonial times, even in the most peripheral regions of the world system.

Chapter 10

The environment of disputes

by Keebet von Benda-Beckmann

Introduction

The study of dispute and disputing processes has always been at the core of legal anthropology. Over time however, there have been changes in the reasons advanced for the significance of disputes within this type of study. The work of van Rouveroy van Nieuwaal reflects these shifts: starting out with his doctoral dissertation on marriage and inheritance disputes among the Anufom,[1] his work, especially that on chieftaincy in West Africa, has been a reflection of the more general move away from an interest in institutions of dispute management to the wider political contexts in which the validity of various normative orders are reconstituted, contested, and merged.[2] The present article traces this general development in the study of dispute behaviour in legal anthropology.

Disputes in a social setting

The traditional academic viewpoint was to regard disputes as the most important sources of knowledge concerning substantive unwritten rules inherent in legal systems. For authors such as Llewellyn, Hoebel and Pospisil,[3] the study of dispute was thus the methodological solution to the problem of studying oral legal orders which could not be studied on the basis of written material.

However, at an earlier stage (known to the authors mentioned: Hoebel translated ter Haar into English) it had already become clear that the study of dispute could only provide a very partial insight into the workings of

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[1] Van Rouveroy van Nieuwaal 1976; van Rouveroy van Nieuwaal & van Rouveroy van Nieuwaal-Baerends 1981.

[2] Van Rouveroy van Nieuwaal 1987, 1996, 1998; Ray & van Rouveroy van Nieuwaal 1996a.

[3] Llewellyn & Hoebel 1967; Hoebel 1954; Pospisil 1971.

legislation: anthropological studies carried out in the Indonesian archipelago and the Pacific, for instance, clearly indicated that the dynamics of a legal system should in the first place be studied in ordinary social life, not in disputes. Taking on board the very strong tradition of conflict prevention, and the consequent paucity of disputes, in these cultural regions, the study of dispute was hardly viable.[4]

British and American anthropologists were in general not very interested in the study of disputes until South African social anthropologists such as Schapera, Gluckman, and Leo and Hilda Kuper engaged in these issues.[5] Gluckman pursued this line of enquiry initially as researcher, subsequently director, of the famous Rhodes-Livingstone Institute in what is today Zambia. When he subsequently moved to Manchester, the study of dispute became and remained a distinctive feature of the Manchester School which Gluckman initiated and vigorously led. Within the British landscape of social anthropology, with its predominance of kinship studies and a general lack of interest in normative aspects of social behaviour, the study of dispute reached unprecedented heights. Perhaps it was because African societies generally had far higher levels of dispute-proneness than Southeast Asian and Melanesian communities; perhaps it was because British and American legal scholarship was dominated by the case-law approach. Whatever the reasons, in British and American social anthropology the study of norms was almost identical with the study of disputes for a long time.

Gradually, the study of dispute became more sophisticated, and in this process the Manchester School (with such exponents as Gluckman and van Velsen) continued to play a major role. In the 1960s and 1970s, the interest within the study of dispute shifted from a focus on substantive rules to the processes of disputing themselves and the reasons for dispute. Rather than continuing to accept that people carry out disputes because they simply wish to settle them, it became clear that people have a variety of reasons for taking their particular dispute to a particular institution. It was pointed out that some people have, for instance, political motivations for going to court; others may have more personal reasons; and yet others simply wish to have their day in court and be publicly heard, whatever the outcome of the trial; and some, indeed, wish to settle their dispute. On the whole it was no longer taken for granted that the role of courts and court-like institutions was dispute settlement.

Instead, the terms 'disputing behaviour' or 'dispute management' came into use.

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[4] Malinowski (1926) pointed this out for the Trobriand Islands and Dutch scholars such as Holleman (1927), Logemann (1924) and van Vollenhoven (1931) for the Dutch East Indies.

[5] Schapera: 1938; Gluckman: 1967, 1969b; Kuper 1947, 1969.

Moreover, anthropologists started investigating more closely the different factors that were relevant in dispute management, and the outcome of disputing processes. It was thus discovered that the types of social ties among disputants were of crucial importance, whether they were related as mediators, arbitrators or adjudicators. Authors like Gluckman and Gulliver[6] pointed out that people who have multi-stranded and enduring social ties, tend to carry out their disputes by means of mediation and negotiation, whereas people with single-stranded relationships more readily submit their dispute to adjudication. This was confirmed by, for instance, Macaulay, who, in a study of disputing behaviour in industrial societies, pointed out that in the 1960s, very few disputes in the automobile industry were settled in court,[7] precisely because those involved in the disputes did not want to sever the ties with their opponents. Subsequently, it was determined that the social ties among disputants are continuously subjected to change. Macaulay showed in re-study of the same automobile industry during the 1990s that enduring ties no longer prevented parties from going to court. Court procedures were no longer considered as a complete breach of trust and did not necessarily result in the cut of commercial ties.

Moreover, it became clear (especially through Gulliver's study of the Ndendeuli) that the social relations that people have before they get involved in a dispute are of crucial relevance for the way they will operate once a dispute arises.

Within the framework of this newly realised importance of relational ties between disputants, it became important to look at the wider social network of both those parties involved in a dispute, and those who could potentially become involved as mediators, arbitrators, or adjudicators. Rather than simply looking at the confined context of an institution of dispute resolution, van Velsen thus proposed to broaden the case method into an *extended* case method for the study of disputes.[8]

Rather than being studied as a source of insight into something else (notably, into rules), the actual disputes themselves came under scrutiny. By following them from their first manifestations, it was discovered that disputes did not always remain the same throughout the dispute process. It became clear that people reflect on their disputes and that in due course they obtain a different perception of the conflict. When more people, especially public audiences and professionals, become involved in a dispute, the perception of what the dispute is actually about tends to change for both the parties involved

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[6] Gluckman 1967; Gulliver 1979.

[7] Macaulay 1963: 55-67, 1977: 507-528.

[8] Van Velsen 1967: 129-149.

and for onlookers. Depending on the institution which deals with the dispute, the dispute moreover tended to be formulated differently in order to make it acceptable to a particular institution. Authors like Felstiner, Abel and Sarat thus spoke of the 'transformation of disputes'.[9]

This insight was once again formulated for disputes in the USA, where dispute resolution before a court was compared with more therapeutic ways of disputing.

My own research in West Sumatra led me to go beyond the notion of the transformation of dispute, and to argue that the disputing process is not to be considered concluded after the final decision. After the final decision, the transformation process, far from being concluded, enters into a new phase in which the dispute leaves the confined context of the institution that has dealt with it, and goes back to the social environment from which it originated. That environment may have changed however while the dispute was being dealt with in court, and even in response to what happened in court. In this new (or old) setting, the decision on the dispute becomes one of the bargaining chips with which social and legal relationships are renegotiated. In some cases it is a valuable chip, but research has shown that this cannot be taken for granted. Even in industrial societies, 50 to 60 per cent of decisions in civil cases are not put into effect in the way the court decided. In Indonesia this percentage is even much higher.[10]

Legal pluralism

In the settings in which anthropologists have typically conducted research, i.e. colonial and post-colonial societies, the transformation processes have been even more complex. There, traditional institutions of dispute resolution have existed side by side with state courts, allowing disputants to choose between them. This situation has brought about what came to be referred to as 'forum shopping'. Forum-shopping behaviour occurs among different institutions of one legal system and is more prominent in situations of legal pluralism.

A closer look shows that institutions of dispute resolution themselves often take an active part in the forum-shopping process. This is perhaps not so clear for those institutions of adjudication that can make authoritative decisions. But mediators whose authority depends heavily on their ability to successfully mediate in disputes, have an interest in being selective in the kind of disputes they accept to take up. They tend to avoid disputes where mediation is unlikely to be successful. They are interested in attracting disputes that have a high

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[9] Felstiner, Abel, & Sarat 1980: 631-654.

[10] Von Benda-Beckmann 1984.

political profile, but only in those cases when they think they can successfully mediate. Further inquiry into shopping behaviour showed that there is a related phenomenon, that of 'idiom shopping'. Spiertz,[11] analysing Balinese water disputes, was the first to suggest that a situation of legal pluralism provides people with a range of idioms, in which they may choose to formulate their relationships and problems.

Disputing behaviour and legal pluralism are not power-neutral, as Galanter has shown in his famous paper entitled 'Why the haves come out ahead? Speculations on the limits of legal change'. Some actors are far better capable than others of selecting and defining the normative repertoire or idiom that promises the most favourable solution. And some parties are better equipped than others to select the institution that seems to be most favourable to him.[12]

Customary legislation reconsidered

The study of disputing processes in plural legal systems also led to a reconsideration of the concept of customary legislation. Earlier scholars who had conducted research in Africa, notably Gluckman, fought a fierce battle. This battle took place on both a political and a theoretical level: it raised the question whether customary legislation and customary legal orders were essentially different from, and therefore incomparable with, state legal systems, or whether they had fundamental characteristics in common.

Similar debates were carried out half a century earlier by Dutch scholars with reference to the terms '*adat*' and '*adat* law' in Indonesia. Indonesians themselves used the term *adat* in reference to a way of life, a set of customs in the broadest sense of the word. Dutch legal scholars studying *adat* systems coined the term '*adat* law'. They, *inter alia*,[13] used it as a political motivation, to convince colonial authorities of the fact that the *adat* systems were different from, but comparable with, Western notions of legislation. *Adat* thus became a major issue in the conflict between two schools of legal thought. The modernists, mainly at the University of Utrecht, the Netherlands, were of the opinion that only a good state-controlled legal system based upon existing Dutch legislation could lead the colony of Indonesia towards economic development and modernisation. The Leiden school on the other hand, headed

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[11] Spiertz & Wiber 1996.

[12] Galanter 1974: 95-160.

[13] The system of *adat* was also used out of purely scientific interest in the comparison of normative or legal orders and modes of dispute resolution, and for the creation of a new practical legal scholarship that would serve the needs of the judiciary and administration when dealing with disputes based on *adat* (ter Haar 1939, 1948).

by international lawyer van Vollenhoven and later by ter Haar, argued that discarding the indigenous system of *adat*, and replacing it with a Dutch-based Western legal system, was disrespectful and harmful to local populations, and would lead to dispossession and disruption of the social organisation. They believed that the modernists based their beliefs on a gross misunderstanding of what *adat* was. For van Vollenhoven and ter Haar there was no doubt about what *adat* amounted to: a perfectly capable legal order. They moreover argued that economic development was hindered, not by any inherent characteristics of *adat* in itself, but by colonial policies which put the indigenous population at a disadvantage.[14]

The battle over the recognition of customary legislation within the colonial legal system was fought in such as way as to lead some of the champions of customary legislation to neglect the role of the colonial state in the shaping of customary law. In a later generation, this myopia vis-à-vis the state was severely criticised by people like Moore, Snyder, Fitzpatrick and Chanock.[15] They spoke of the 'making', 'creating' or 'inventing' of customary legislation. According to them, customary law was not, as had been implicitly assumed previously, a body of norms existing since time immemorial, unchangedly and uninterruptedly transmitted from the pre-colonial period. Instead, these authors maintained that what was called customary law had been a construction of the colonial administration itself and that it existed by virtue of the colonial power.

One important point that came out of these more recent debates was that there is an obvious distinction between customary law and customary legal orders, on the one hand, and colonial or state legislation, on the other. It became clear that customary legislation had different 'levels': on a grass-root level, we find sets of normative regulations that are different from the interpretations by state officials, and that are valid outside the context of state institutions. Despite the fact that this type of customary law also often became deeply affected by the colonial experience, it was not so affected to the same degree as what could be called the 'state customary law'. The grass-root level of customary legislation was certainly not a mere creation of the colonial state:

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[14] Burns 1989: 1-127. Even today, this debate has not been settled and the misunderstandings surrounding *adat* still persist. Most officials in the state administration would thus for instance like to do away with *adat*-based land titles, because they believe that they hinder economic development. Of late the argument that *adat* legislation stems economic development has intensified: *adat* is now additionally held responsible for harming the environment and hindering sustainable development. In this viewpoint Indonesia is not unique: many international debates on sustainable and economic development have become are alive with this line of reasoning. There is however also a counter discourse, equally problematic, in which indigenous peoples and their normative systems are considered to be inherently good for a sustainable environment.

[15] Chanock 1978: 80-91, 1982: 63-67; Moore 1989: 227-301; Snyder 1981: 49-90.

it was based on time-honoured local tradition, however distorted by the colonial and post-colonial local experience.

Therefore, although it was claimed that customary legislation was deeply affected by, or even an invention of, the colonial administration, the critique was somewhat overstated. Careful analysis of disputing processes showed that the validity of law was context-dependent. In other words, the critique to the effect that customary law was an invention by the state, was mainly valid for the contexts of the state courts and other state institutions of dispute settlement. And even so one should not forget that such invention usually build upon pre-existing normative orders which the colonial administration had encountered.

To make the picture even more complex, many researchers have reported that not all norms which are not state law or religious law are captured under the terms custom, or traditional legislation. In the 1970s, Holleman thus indicated the phenomenon of unnamed law that was created in urban migrant communities.[16] De Sousa Santos also analysed such newly created law in squatter areas in Rio.[17] More recently, research in Malawi by the Dutch legal anthropologist Anders[18] showed that people make a clear distinction between 'customary law' (which is associated with kinship, burials, land law and traditional authority), on the one hand, and 'principles and rules' related to the care of the elderly, children and sick people, on the other hand. These local sets of norms are not part of customary law; they are *unnamed local norms*.

Similar findings have been reported in relation to religious law. My own research in West Sumatra and on the Muslim part of the Moluccan island of Ambon has shown that there are local interpretations of Islamic law which are in sharp contrast to the official, learned Islamic law. Both on Ambon and in West Sumatra, the common interpretation of Islamic inheritance rules, for instance, is that daughters and sons inherit in equal parts from their fathers and mothers, which clearly defies basic Islamic teaching. Of course, official Islamic law allows room for local custom. But that should not obscure the fact that local interpretations of Islamic law exist irrespective of whether the official Islamic law recognises them as valid.[19]

Finally, it is commonplace, though often forgotten, that many state institutions operate according to informal norms which have little to do with the official law. The normative orders of clientelistic systems, and the norms of corruption, are but the more conspicuous manifestations. Studies of service

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16 Holleman 1973: 585-609.

17 De Sousa Santos 1977: 5-126.

18 Anders, forthcoming.

19 Von Benda-Beckmann & von Benda-Beckmann 1993.

bureaucracies in industrial societies have shown that this phenomenon is not reserved for developing countries only, but that it is universal.

Context creation

These findings all suggest that there is no neat distinction between the different legislative and normative orders. In the perception of the legal anthropologist today, the normative field has become more complex, fragmented, interrelated, and its constellation is shifting. What distinctions need to be made, very much depends on the specific context in which people operate, on which particular set of norms is considered applicable, and by whom these norms are being invoked.

This insight poses new problems for the study of disputes. We have seen that what is considered the relevant environment of disputes has greatly expanded, in the study of disputing behaviour. The expansion took place at both ends of the treatment of disputes in specific institutions. The debate on forum shopping and idiom shopping has called attention to the fact that actors involved in disputes create the normative and cognitive environment of their disputes out of the possibilities available in the different normative repertoires. Add to this the insight that a wide variety of purposes may be pursued by disputing behaviour, and we have indeed come a long way from the original preoccupation with court decisions only.

But we have to take the study of disputes a step further yet, and look more carefully at how the contexts are created in which disputes are being dealt with. Not only does the context of disputes often change throughout the process; it is often not clear precisely what the contexts are in which parties operate. This point is strongly borne out by my own research in West Sumatra. When persons involved in whatever capacity (be they parties or other interested persons), argue and negotiate how the dispute is going to be treated, much of the context remains implicit. This is not a problem in situations where the normative repertoires are clearly demarcated and well defined. But the more complex the configuration of possible normative repertoires becomes, the more parties have to rely on the explicit definition of the context in which they operate, or, alternatively, the more they will have to live with uncertainty. For example, a dispute about *hibah*, usually a gift of land by a father to his son shortly before the father dies, may be defined in terms of Islamic law or in terms of *adat*. Using the institution of *hibah* could mean that the father, as a very devout Muslim, rejects all *adat* rules of inheritance. But it may also mean that only such Islamic rules at variance with *adat* are invoked as pertain to the institution of *hibah*, and that for the rest *adat* rules regarding inheritance are accepted as valid. Or it could mean that the father has used the *adat* notion of

hibah, which has other prerequisites and consequences. As a dispute about *hibah* usually involves disagreement about whom the appropriate heirs of the inheritor are, the issue is usually quite important because of its far-reaching implications. That does not mean, however, that parties always make their choice explicit; nor does it mean that it is always clear whether reference to rules of *hibah* does or does not imply the wider context of *adat*, or of Islamic law. Even though in disputes the contexts and normative repertoires tend to be made more explicit than in conflict-free legal transactions, parts of the context in which parties operate do remain implicit.

The disagreements and struggles about the reorganisation of the village administration in West Sumatra are another example in which the context of disputes is highly unclear. Indonesia's 1999 Law on Decentralisation triggered a debate about the possibility of returning to a structure of village administration such as existed until 1983. That earlier structure had been an adaptation of the pre-colonial village structure in Minangkabau. The question arose whether going back to the old villages merely meant going back to the old village boundaries, while creating a new administration; or, as some wanted, going back not only to old boundaries, but to old administrative structures as well. And if it meant going back to old administrative structures, to which ones would they go back: pre-colonial, colonial, or the administration as it existed in the early 1980s. The dispute was especially complex because each position involved its own mixture of

- what was regarded as truly *adat* and
- later creations of the state administration.

The complexity was further enhanced because it was connected with old claims on village property that had been expropriated in the past by the colonial administration or by circles around the Suharto regime. Now that the repression by that regime had been diminished, people were quite eager to claim these expropriated lands back. Their claims were based on *adat* notions of village property. Taking a position in the question of the proper boundaries and form of village administration could have serious implications for these land claims as well. However, the different parties in this mainly political dispute had very different ways in which they defined the context in which they argued. Some clearly set the context very wide. By arguing for the old boundaries they argued for the whole *adat* legal order. They wanted a village administration based on *adat* principles that would be entitled to control the village land. Others were also clear, arguing that the territory within the old boundaries would clearly become part of the new administration, and therefore part of state law. Arguing for a new village administration under state regulations did not imply that all

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rights to the village territory would also be defined according to state law. These village territories were property of the village on the basis of *adat*. However, they argued that it would be the new village administration under state law, and not the old *adat* council, which would be entitled to control these lands. There were also many who did not make clear what the scope of the repertoire was they were referring to, or rather, what their mix of repertoires was.[20]

What this example suggests is that *adat*, Islamic law, and state law have become highly intertwined. Yet it would be a mistake to say they can no longer be distinguished. At an ideological level they are still distinguished. On the more concrete level of regulations and institutions, there is no consensus about what belongs to which normative order. This does not mean that everything is in flux. Many parts of a legal system are uncontestedly part of one legal system and not of another. But for those parts that are contested, such as the complex related to the village administration, the village territory and the role of the *adat* council, it becomes problematic to determine what exactly the context is in which people act and argue at any particular time. People are more and more inclined to take parts of different repertoires and combine them in their own way. Some are more successful than others in getting their combinations accepted as the context in which disputes are being carried out. What is more striking is that most people seem to be quite at ease in moving back and forth between legal systems and between contexts. Many have learned to argue in terms of more than one context alternatively; and to do so with such competence that an observer might lose sight of what is going on and may even wonder if they are observing a form of schizophrenic behaviour. My experience in Indonesia has been that many people have become quite used to move back and forth between contexts. But this requires a high level of flexibility, some would say of cynicism. Those who do not have this flexibility have become utterly frustrated, or have long ceased to be interested and have retreated from action. However, there is an amazing number of people who manage to operate effectively in such an ill defined and shifting legal environment.

Conclusion

Over time the environments in which disputes are carried out have been increasingly recognised to be important for the understanding of disputing behaviour. Over the past thirty years the analysis of disputes has become increasingly sophisticated. These environments have a temporal and a local

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[20] Von Benda-Beckmann & von Benda-Beckmann 2001.

perspective. They also have normative and cognitive aspects. The contexts in which people operate in disputes and outside them, are made up of persons, who explicitly or implicitly argue and operate in different idioms referring to normative or legal orders that often are highly fragmented. The combinations in these plural settings are often contested and are not always fully understood by the participants of disputes themselves.

Chapter 11

Legal anthropology, legal pluralism and Islamic law

by Franz von Benda-Beckmann

Introduction[1]

It was the common interest in legal pluralism in Africa that brought Emile van Rouveroy van Nieuwaal and myself together at a conference in Bielefeld for the first time, about thirty years ago. Although my personal research interest later underwent a shift from Africa to Indonesia, the contact was maintained through, *inter alia*, our shared membership of the circle of scholars interested in Third World legal processes, which van den Steenhoven had established in Nijmegen.[2] After my move to the Netherlands in 1978, our contact intensified and, although we never co-operated closely, van Rouveroy and I continued to share our thematical interest in the issue of disputing and the relations between traditional authorities and the state in complex legal situations,[3] in our respective areas of research, Togo and Indonesia.

The present paper is ethnographically rooted in Indonesia,[4] but it takes a comparative view. It looks, from a legal anthropological perspective, at the role of Islamic law, and indicates the consequences of serious attention to Islamic

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[1] This contribution builds upon a lecture held at the Institute for the Study of Islam in the Modern World (ISIM), Leiden, 16 November 2001.

[2] This so-called Folk Law Circle was established in 1976. It published its own newsletter until 1986, when it merged with the newsletter of the legal sociologists called *NNR*, forerunner of the socio-legal journal *Recht der Werkelijkheid*.

[3] *Cf.* van Rouveroy van Nieuwaal 1976; Ray & van Rouveroy van Nieuwaal 1996a; van Rouveroy van Nieuwaal & Zips 1998.

[4] My wife Keebet and I conducted research in Islamic villages in two very different regions of Indonesia, in the mid-1970s for 16 months in Minangkabau in West Sumatra, and in 1985 and 1986 for 11 months on the Island of Ambon, in the Central Moluccas in Eastern Indonesia. Our research topic focussed on how a complex legal situation, of which Islamic law was part, entered into and became socially significant in certain domains of social life, such as inheritance and family relationships, village politics, and the use of civil and religious courts in disputing. On Ambon our interest went mainly out to rights to natural resources and the social (in)security of the rural population.

law for any scholarly analysis in terms of legal pluralism. Although a few years ago an important contribution was made with regard to these issues by Dupret and his associates,[5] there is still a paucity of legal anthropological perspectives on plural legal situations that have Islamic law as one of their components. Religious law, and Islamic law in particular, has largely been neglected in discussions of legal pluralism.[6] In Indonesia for instance, most attention has been given to the discrepancies and struggles between the local, regional and/or ethnic laws, usually called *adat* or '*adat* laws', and the law of the colonial and post-colonial state Indonesian state.[7]

Indonesia, the state with the largest Muslim population worldwide, provides interesting counterpoints to the history of Islamic law in African and Arab countries, and indicates additional variations of plural legal constellations within one state. This paper is based on research conducted in two very different regions of Indonesia: Minangkabau in West Sumatra, and the Island of Ambon, in the Central Moluccas, Eastern Indonesia. In these two areas, Islam and Islamic law have different meanings in the daily life of villagers.[8] At a general level of social organisation, the relationships between state law, *adat*, Islamic law, and on Ambon also Christian law, are quite different. In fact, they are counter-intuitive. For despite the strong cultural basis rooted in the common *adat* of both Islamic and Christian villages on Ambon, the relations between *adat* and the religious life differ considerably. The relation between *adat* and Islam in Minangkabau is quite different from that on Ambon, and in fact much more resembles the relation between *adat* and Christianity as found in the latter context.

Adat and Islam in Minangkabau

When Islam and the *sharia* (in the Indonesian language: *syarak*) came to West Sumatra, probably in the fourteenth or fifteenth century CE, it encountered a local political and legal system that was quite different from the *syarak*'s blueprint for social, economic and political relationships. In the rather autonomous Minangkabau villages, the principle of matrilineal descent was dominant for structuring social, economic and political organisation. Descent in

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[5] Dupret *et al.* 1999.

[6] Exceptions: Rosen 1989, 1999; Dwyer 1990; Messick 1988.

[7] While research on traditional legislation and works of anthropology and sociology of law in the Arab world seem to proceed from an over-determination of Islam (Dupret 1999: 39), the opposite seems to be the case in Indonesia, where, in legal anthropological or traditional law studies, *adat* law has been overemphasised (von Benda-Beckmann 1993b).

[8] Von Benda-Beckmann & von Benda-Beckmann 1988.

the female line thus determined group membership for both small matrilineal family segments, and for the larger matrilineal clans whose heads formed the village government. Moreover, the inheritance of property and the succession to political offices followed matrilineal inheritance rules, ideally from mother's brother to nephews and nieces. While some degree of kinship was recognised between Ego and Ego's father (and the latter's lineage), patrilateral links did not have important economic or political functions. Post-marital residence for men was uxorilocal, the couples living in the house and on the inherited property of the wife's lineage. The *adat* of matrilineal heritage, the *adat pusako*, was dominant in ideology, in legal institutions and in social practices.[9]

The relationship between *syarak* and Minangkabau *adat* was destined to be problematic and some form of accommodation had to be found, both at the level of ideology and theoretical reflection, and at the level of pragmatic arrangements. It proceeded on the cultural basis that 'being Minangkabau' implied that a person was true to *adat* and to Islam. When Islam came to West Sumatra it was initially mainly accepted as new religion, gradually merging with, and suppressing, *adat* conceptions of the supernatural and sacred world. In secular matters, *adat* remained largely intact. Many Arabic words and Islamic legal concepts, however, were incorporated into *adat*, but their meaning was '*adat*ised'. For instance, the concept of *warith* – which in Islamic law refers to the Qur'anic heirs and agnates – was utilised in Minangkabau to refer to the matrilineal relatives; *hibah* – under Islamic law a contract that becomes effective during the donator's lifetime – became revocable in Minangkabau *adat*, and was effective only after the giver's death. Moreover, religious offices were adapted into the *adat* system of matrilineal descent: the mosque officials Malim and Chatib became positions of religious authority within the matrilineal clans, and succession to office was according to matrilineal succession.

At the beginning of the nineteenth century, open conflict broke out between the Padri, an orthodox Islamic movement, and the traditionalist *adat* majorities in Minangkabau villages. Some of the Padri leaders had been to Mecca, had served in the Ottoman army, gained military experience, and had then come under the influence of the Wahabi in Saudi Arabia. Having experienced 'true Islam', they intended to convert their countrymen and establish a theocratic state in West Sumatra. In the ensuing civil – or religious – war, some *adat* leaders called upon the Dutch, who at the time had a trading post at the coast, for help. The Dutch entered the Padang Highlands, intervened in the war,

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[9] On the relationship between Islam and *adat* in West Sumatra, see Abdullah 1985; Prins 1954; von Benda-Beckmann 1988. For more comprehensive accounts of Minangkabau social organisation, see *inter alia* von Benda-Beckmann, F., 1979; Kahn 1993; Kato 1982; von Benda-Beckmann, K., 1984.

defeated the Padri forces, and incorporated Minangkabau into their colonial empire. Although the Dutch were quite at a loss with the matrilineal *adat*, they built their system of indirect rule on the *adat* system and supported *adat* leadership and values against Islam: Islam with its universalistic and trans-ethnic claims was regarded politically much more troublesome than *adat*.

Towards the end of the nineteenth century, the more orthodox versions of Islam had thus lapsed again: travellers' tales tell of cockfights, alcohol consumption, gambling, and immodest dressing of women.[10] Around the turn of the century however, Syeh Ached Chatib, a teacher of many of the following generation of Islamic leaders, launched a new orthodox movement. His main concern was the concept of *adat pusako*, according to which inheritance followed matrilineal lines. According to Chatib this was *adat jahiliah*, 'pagan *adat*', and thus completely unacceptable in line with Islamic inheritance law, *hukum faraidh*, according to which property had to pass to the Qur'anic heirs, in particular to a man's children, of which male offspring received twice as much as daughters. *Hukum faraidh* proved difficult to implement, and Minangkabau reality and Islamic idealism clashed. Inherited lineage property thus became reinterpreted as part of Islamic law. The frontal attack however was directed at the inheritance of self-acquired property, and was mainly supported by urban merchants and traders.

From the 1960s onwards, the issue of the inheritance of self-acquired property lost some of its drama. It became gradually accepted in villages and in state courts that Minangkabau *adat* had changed, and that a person's self-acquired property was inherited by a man's (or a woman's – but that was never the issue) children, rather than by his nephews and nieces. The classical inheritance conflicts between the children and the matrilineal nephews and nieces of a man thus receded. The conflict over inheritance law remained however. For although both Islam and new *adat* both brought inheritance to the children, the contested question was: according to what law? According to Islamic law or to *adat*? In many local interpretations, *hukum faraidh* was reduced to 'inheritance by the children', and the change was attributed to Islamic law. Others saw it as a change in *adat*. In a decision of the Supreme Court of Indonesia in 1968 it was stated that self-acquired property was inherited by the children according to changed *adat* law.[11]

In the highly politicised discussions, the inheritance issue became regarded as a *pars pro toto*. It no longer merely served to determine single inheritance cases, but increasingly to address the issue of what law should govern the issue of inheritance, and which was to be the superior legal and legitimating universe

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[10] *Cf.* Bickmore 1869.

[11] On the development of inheritance law in the courts, see von Benda-Beckmann, F., 1979: 335-360.

in general. A clash of ideologies, one could say, but it was more than that. For at stake in this clash was – and still is – the authority of the masters of the respective symbolic universes, of *adat* and religious leaders, whose authority was constituted and legitimated through the respective legal ideologies.

These struggles took place at different levels of organisation, and were highly contextual, depending on the arena and issue at stake: who had authority to give a person into marriage, to confer a title-name, to succeed to an *adat* title or to property? Given the diverging directives of *adat* and *syarak* in some of these matters, compromise – even if wished for – was sometimes difficult. It was easier to confirm the harmony between *adat* and Islam in general discussions on Minangkabau identity and assert that '*adat* is based on *syarak*, *syarak* is based on *kitabullah* [''Allah's book'', i.e. the Qur'an]'. However, ideology and reality were two separate entities: for where few had difficulties in maintaining that there were hardly any differences between *adat* and Islam in the morning, many would mobilise pure *adat* or Islamic law in an inheritance conflict in the afternoon.

In 1968, a broad consensus was eventually reached when local politicians, *adat* leaders and Minangkabau religious scholars come together to discuss the issue of inheritance. It was decided that inherited property should continue to be inherited according to *adat* and matrilineal lines, but that self-acquired property should be inherited according to *hukum faraidh*.[12] Members of the Association of Judges also participated in the discussions and agreed to the consensus. Yet no judge subsequently applied *hukum faraidh* in issues of inheritance of self-acquired property; they all employed the new *adat* law.

Since the mid-1970s, the pendulum has swung back again. Increasing state domination and suppression of *adat*, increasing media presence and modern education have done much to diminish the significance of *adat*. The political basis of *adat* was further weakened by the reform of village government in 1983, when the traditional Minangkabau villages, *nagari*, which had been the territorial and political units on which the Dutch and Indonesian administration had built their indirect rule system, were divided into several smaller and purely administrative villages. In that period, Islam became reinforced, not so much as a legal system but more as a social and political ideology superior to the corrupt political New Order regime.

Since the fall of the Suharto regime in 1998 this situation seems to have been transformed again. Current decentralisation policies and national and international NGO activities have been focusing on community and community rights, and the concept of community is generally conceived in *adat* and not in Islamic terms. The current reform of local government, the 'going back to the

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[12] Naim 1968.

nagari', is regarded as an important victory for *adat*. In the field of rights to natural resources in particular – an important economic domain that Islamic law does not address – *adat* has been quite successfully mobilised against the state and state law.[13] Over the last few years a more assertive *adat* seems to have evolved, not only in relation to the state and state law but also in relation to Islam, drawing issues that at face value appear to be Islamic issues into their own discursive realm. Proponents of *adat*, especially the League of *Adat* Councils of West Sumatra (LKAAM), for instance emphasise that religious authority is for religion only, while *adat* and *adat* authority comprise both *adat* and religion. *Adat* proponents have even gone as far as to issue what they have called a *fatwa adat*, 'an authoritative statement on *adat* law', on land rights problems in a conflict between village rights and a cement factory, a state enterprise.[14] In this conflict, a concept exclusively associated with religious authority, *fatwa*, was used to assert the correct interpretation of *adat* law.[15]

Variation in Indonesia

Minangkabau, of course, is only one region in Indonesia, and its *adat*-Islam-state relationship is just one of many variations within the state. In Southern Sulawesi, Aceh, and parts of Java, a different situation exists. Bowen has, for instance, recently indicated that in the Gajo Alas region in Northern Sumatra there have been quite significant changes towards a more frequent use of religious courts, and that within the courts a greater emphasis has been put on Islamic law in its purer interpretation, which is less inclined towards compromises with *adat* principles.[16] This followed the reform of the Indonesian judicial system of 1989, in which Religious Courts were given wider jurisdiction. This development seems to be quite different from West Sumatra.[17]

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[13] Von Benda-Beckmann & von Benda-Beckmann 2001a, 2001b.

[14] LKAAM, i.e. League of Adat Councils of West Sumatra, 2000.

[15] Von Benda-Beckmann & von Benda-Beckmann 2001a: 30.

[16] Bowen 2000.

[17] Part of a current research project is a long-term study of court use in West Sumatra. My wife and I have not yet fully analysed our data, but it is already clear that there do not seem to be major changes in court use between the 1970s and the present. That is: comparatively speaking, little use is made of state civil courts, and when they have been used, the appeal rate is higher than 50%. In matters of inheritance, donations and testaments, Islamic courts are hardly ever used. This process is interesting, for without doubt changes in the social and cultural significance of Islam have taken place over the past three decades. We may say that we have observed a development in which social and cultural values became much more differentiated from legal values.

Research conducted by my wife and myself on Islamic Ambon in the mid-1980s also showed striking differences with the situation in Minangkabau. In Minangkabau, *adat* and Islam were different symbolic and legitimatory universes, their interrelations constantly discussed and their relative superiority in different fields of social life contested. From the Islamic side, *adat* was differentiated into

- an *adat* that was in line with Islamic prescriptions, in other words *adat islamiah*, and
- an *adat* that was pagan, *adat jahiliah*.

This resembled the situation of Christian Ambonese villages, where rivalling political organisations based their differences on *adat* and on the church, and where Christian proponents had the same urge to distinguish between 'good Christian' and pagan *adat*.

In Islamic Ambonese villages on the other hand, the *adat*-Islam relation was largely a non-issue, not frequently talked about and not mobilised in village politics.[18] This was largely the result of the different way in which the religion and religious leadership had been incorporated into local political constitutions, and how this relation was influenced throughout history by external forces, the establishment of a state being one important factor. When Islam was brought to Ambon, Ambon had not yet been brought under the territorial control of the Dutch East India Company, and Islam thus had already been integrated into Ambonese socio-political organisation, without any linkages to an external organisation. When the Dutch landed on Ambon, both Ambonese *adat* and religious leaders put up resistance and the reality of a shared enemy contributed to the development of a rather conflict-free relationship between *adat* and Islam. On Christian Ambon on the other hand, Protestant Christianisation took place much later and the development of the church as a religious institution occurred simultaneously with, and with the support of, colonial rule. In order to gain political authority, the church had to rely on religion as its exclusive normative basis of legitimacy, and had to establish an alternative hierarchy in competition with *adat* with the support of the state. Christianity, notably the Protestant church, thus became closely linked with external forces, which were particularly strong because, unlike in Islamic villages, church officials literally came from outside the communities in which they worked.

The development in Islamic Minangkabau structurally resembled the situation on Christian Ambon. When Islam came to Minangkabau, it met with a

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[18] Von Benda-Beckmann & von Benda-Beckmann 1988.

well-developed political organisation based on matrilineal *adat*, which it found difficult to penetrate. While initially Islam was accepted relatively well, the religious war at the beginning of the nineteenth century dramatically changed the relation between *adat* and Islam. As Islamic fundamentalists forcefully tried to abolish the *adat* system, the Dutch intervened, supporting the *adat* forces, upon which they subsequently established their Indirect-Rule system. Dutch intervention at the time when the rift between *adat* and Islam was at its worst, gave shape to future development of that relationship: while Islam became an internal factor in the village, it never became a full partner in village organisation, as the latter was defined in terms of *adat* and colonial rule. The parallel between Christian Ambon and Islamic Minangkabau thus lies in the fact that religion came from outside into a conflict situation, while on Ambon Islam had the chance to become rather peacefully incorporated before Dutch colonial domination.[19]

The extent of external linkages, transcending the most relevant socio-political space, the villages, and the incorporation of village internal power hierarchies into organisational networks or hierarchies operating at a wider socio-political space, seems to explain the different relationships between *adat*-Islam and *adat*-Christianity on Ambon, and the differences between the *adat*-Islam relationships on Ambon and in West Sumatra. This hypothesis was confirmed by examination of the *adat*-religion relationship of Moluccans in the Netherlands.[20] Surprisingly, the relationships between *adat* and religion in the Netherlands were more or less reverse. While *adat* and Christianity on Ambon were sharply distinguished, and Islam and *adat* regarded as similar, the contrary was the case in the Netherlands. This was counter-intuitive, since Ambonese Christians came to live within a larger Christian population, while Ambonese Muslims were a small minority in the Netherlands. However, a re-evaluation of this state of affairs seemed to be quite in line with the hypothesis. For in the Netherlands important change came about with regard to the way in which ethnicity-based religious authorities were linked to external organisations. Christians and their religious authorities became encapsulated within their own community, and *adat* and Christianity became much closer. Ambonese Muslims, on the other hand, were increasingly drawn into the wider Muslim networks in the Netherlands and became part of a trans-ethnic religious community which resulted in the increased deterioration of the previously close bond between *adat* and Islam. The stronger this external linkage, the more Islam was dissociated from *adat*.

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[19] For more details, see von Benda-Beckmann & von Benda-Beckmann 1988.

[20] Von Benda-Beckmann & von Benda-Beckmann 1993a.

Let me add that the hypothesis also fits more recent developments on Ambon, where Islam, Christianity and *adat* are drawn wider apart, largely as a consequence of the integration of formerly, mainly village-based, internal Islamic organisation and politics into a wider, regional sphere, with a bureaucracy increasingly manned by Muslim civil servants, largely from outside the Moluccas. Lastly, the direct involvement of an external organisation such as the Laskar Jihad, with its Hanbali-Wahabi inspired religious-political agenda, drew Islam on Ambon apart from its relatively supple integration with *adat* and tradition.[21]

Lessons for legal pluralism

What lessons can be drawn from these accounts of Islamic law in some Indonesian regions?

First, in many regions of the world, Islamic law was present, and had to find an accommodation with pre-Islamic and non-Islamic laws, *before* the introduction of a state and state law of the European, colonial type. Legal pluralism usually antedates the establishment of a modern state. We should consider this when reading the often sterile and unhistorical discussions about the concept of legal pluralism.[22] The crucial issue in these debates, and the one distinguishing it from the common discussions over the concept of law, is whether one is prepared to admit the *theoretical possibility* of more than one legal order within one socio-political space, based on different sources of ultimate validity and maintained by forms of organisation other than the state.[23] If law is linked to the state by definition, as is common in certain academic circles, then the existence of law other than that made or validated by the state is inconceivable. From this perspective, divine revelation, tradition or practice cannot serve as an independent foundation for 'legal' rules; rules and sanctioning mechanisms based on them are regarded 'merely' as social norms, conventions or customs, and they often fade out of analysis.

In contrast to such state-connected definitions of law, research should be based on an analytical concept of law that is to function as a conceptual tool for looking at similarities and differences in legal orders across cultures and history. As a concept, it does not tell us anything about any empirical legal order, nor about the extent to which there are plural legal constellations. It is

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[21] Meuleman 2001; Noorhaidi 2001.

[22] For an overview of these discussions, see von Benda-Beckmann, F., 1979; 1997; Griffiths 1986; Merry 1988.

[23] Von Benda-Beckmann, F., 1988, 1997.

not a theory or explanation,[24] but a useful starting point for building up a more encompassing set of analytical categories and assumptions for looking at the complexities of cognitive and normative orders, their similarities and differences, and the increasingly complex ways in which they become involved in human interaction. There should be no preconceived connection between law and the state. Other organisational structures and sources of validity, such as old or invented tradition or religion, can also match the analytical properties of the concept of law. To what extent such claims are accepted as valid and become effective in social life, is a matter for empirical research and should not be answered by legal or social science doctrines. The establishment of the state, the assertion of political dominance of state law and its selective recognition of religious law are historical developments that have complicated, but not created constellations of legal pluralism.

Secondly, Islamic law has its own ideology of legal centralism. This ideology or doctrine allows for what has been called 'weak' or juridical legal pluralism,[25] setting the legal conditions under which custom or customary law may be used as relevant, valid sets of criteria to evaluate the permissibility of behaviour, or the validity of contracts and other legal actions such as gifts or testaments. Similar to state law systems, Islamic law largely denies the legality of such legal systems and relegates them conceptually to custom or culture. It should therefore be taken into account that in plural legal conditions there can be a plurality of legal constructions that demarcate the respective spheres of validity of legal systems.[26]

Thirdly, Islamic law appears to be a wide umbrella encompassing quite different constructions of what Islamic law is. This not only is the case with respect to the different schools of Islamic law, or its development in different states, but also within one society or state. In Berger's description of Syria, for instance, [27] it is indicated that besides authoritative interpretation in classical books and by Islamic scholars, there may be interpretations of local religious leaders and by ordinary people's constructions of Islamic law, and reinterpretations and codification of Islamic law in the form of state law. The law concerning *zakat*, the obligatory alms, in the village of Hila on Ambon

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[24] Von Benda-Beckmann, F., 1988, 1997; see also Rosen 1999: 95. For legal pluralism as theory, see Berger 1999: 113.

[25] Griffiths 1986.

[26] See von Benda-Beckmann, F., 1988, 1997. This shows the one-sided bias in anti-ideological critiques of legal centralism as e.g. in Griffiths' 1986 paper.

[27] Berger 1999.

may serve as a particularly interesting example.[28] Rules about *zakat* and the Islamic categories of rightful beneficiaries are well known, but in due course, people have added two additional categories – marriage guardians and the village midwife – to the existing categories of *zakat* 'according to *adat*'. The Indonesian government has entrusted a section of the state-regulated village government as *zakat* collectors, replacing the 'Lords of the Mosque', and has issued regulations over the redistribution of the *zakat* revenues. Under the wider category of Islamic law, there is thus in itself a kind of plurality, which at times may exist *ad hoc* in incidental interpretations and decision, but which may also be institutionalised as in the case of the *zakat* rules in the village of Hila on Ambon.

There is a clear parallel between *adat* or *adat* law, and the so-called customary laws in the colonies in general. Local legal orders have been interpreted and restated through Western – and later Indonesian – lawyers, administrators, judges, and legal scholars. The substantive content of local legal rules was often transformed and changed in such operations, wilfully or by jamming them into European legal categories. Moreover, in state court proceedings, decision-making processes of by village leaders were substituted by a bureaucratic court process. In Indonesia, the subsequent problems were discussed much earlier than the debates with regard to the invention or creation of history and customary law in Anglo-American anthropology and social history.[29] Already in 1909, van Vollenhoven analysed and criticised these 'misinterpretations' of *adat* law and used the analogy of jamming one language into the grammatical categories of another, which was later taken up in the Gluckman-Bohannan controversy.[30] Dutch *adat* law scholars consequently distinguished '*adat*-folk law' from '*adat*-lawyers' law', similar to the way in which Woodman would later speak of 'lawyers' customary law' versus 'sociologists' customary law'.[31]

From a legal anthropologist's perspective, the question of what the 'true' or 'real' *adat* or Islamic law is, is not useful. As legal anthropologists are not engaged in normative choices but in description and analysis, they need to move away from one-dimensional categorisation. They have to embrace multi-dimensional categories to characterise these legal forms, and distinguish *adat* as interpreted and operated in village life from *adat* as constructed by courts

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[28] See von Benda-Beckmann, F., 1988.

[29] Starting with Asad 1973. See also Chanock 1985. For an analysis of these transformations in Minangkabau, see K. von Benda-Beckman 1982; von Benda-Beckmann & von Benda-Beckmann 1985.

[30] See Gluckman 1969c; Bohannan 1969; both in Nader 1969.

[31] Woodman 1988.

etc. Similarly, they have to distinguish scholarly statements of Islamic law from statements in courts or in legislation or by common people, and do the same when they examine reinterpretations of state law by non-state actors.[32] It is not useful to characterise such differences by the dichotomy of formal and informal *sharia*, as for instance Berger does,[33] labelling all *sharia* that is being applied but not promulgated as law by the legislator as informal. One could easily argue that it should be the other way round. *Sharia* is Islamic law as understood and applied by Muslims, deriving its own formality from its sources and systematised elaborations by Islamic legal scholars, while *sharia* incorporated into legislation is only a truncated and transformed Islamic law, 'informalised', one could say. One should speak of a duality, or plurality, of formalities and treat them as analytically equal.

This brings us, in the fourth place, to the many legal forms that combine elements of different legal sources, and that are referred to as combined legal forms, hybrids, or compounded legal forms. Many classical texts, such as Coulson's,[34] already provide quite a wealth of examples of such various forms of accommodation in the Islamic world. To some extent, local traditional ideas about family relations, inheritance or contracts could be incorporated into Islamic law by creating new legal forms or fictions that gave Islamic legal validity to originally non-Islamic forms of contract. The above-described case of Minangkabau, where matrilineal property inheritance was reinterpreted of inherited, illustrates nicely how Islamic legal concepts were '*adat*ised'.

Fifthly, Islamic law is transnational law.[35] Inspiration by the earlier transplanting of law in the colonial period, or by recent debates on the transnationalisation and the globalisation of law, is not needed to look at the different ways in which legal ideas have been exported and accepted in various parts of the world. Hybridisation, creolisation and glocalisations of transnational law have been frequent phenomena throughout the legal histories of those societies and states in which Islamic law has been present.

Further implications for the anthropology of Islamic law

What does all this mean for the anthropology of Islamic law? Various tasks lie ahead.

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[32] Von Benda-Beckmann, F., 1984.

[33] Berger 1999: 113.

[34] Coulson 1964.

[35] See von Benda-Beckmann, K., 2001.

One important task is to discover, along the lines also suggested by several contributions in Dupret and his associates,[36] the various forms of existence of Islamic law in its purer forms and in different forms of accommodation. This is essential in the discussion of 'really-existing Islamic law'. The concept of Islamic law, or the constellation of legal pluralism, is contextual. By which agents and through which social practices specific forms of law are generated, by whom and for what purpose they are used, maintained and changed, is not to be defined *a priori* by legal doctrines, but must be posed as questions to be answered by empirical research. Studies of singular context, such as national legal politics, procedures in courts, or urban and rural daily life, are important. But generalising from any single type of context should be avoided: one of the challenges for theoretical and methodological development in legal anthropology is the elaboration of the kinds of contexts and types of events in which constellations of legal pluralism develop, are maintained, and change.

Legal anthropologists are interested in the significance of various types of law in different domains of social, economic and political life. This presupposes a theoretical understanding of possible interrelationships between law/legal pluralism and social action. For analytical purposes, I have always made a distinction between two major modes in which legal phenomena can become involved in human practice:

- the *use of law* as a resource in social interaction; and
- the ways in which orientation towards law influences social interaction, including uses of law.[37]

Uses can be manifold. They comprise the use of legally structured modalities of action or transaction, such as testaments, marriage forms, contracts or procedures of dispute management. They also encompass the use of law to construct and evaluate, rationalise and justify (situation images of) occurrences, actions, conditions, aims and decisions.[38] Such studies, however, should not be confined to viewing Islamic law as a discursive resource in social and political interaction, a tendency that is dominant in Dupret's analysis.[39] Moveover, they

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[36] Dupret *et al*. 1999.

[37] Von Benda-Beckmann, F., 1983, 1989.

[38] Geertz's (1983) often quoted statement of 'law as one way of imagining the real' correctly draws attention to the fact that law also consists of cognitive conceptions, and that with the help of, amongst others, legal conceptions 'facts', or as I have said 'situation images' are established (1979). But this should not let us forget that legal conceptions also provide standards of evaluation of permissible and valid action and transaction, and that others indicate what should be done rather than imagine what has been or is being done. Also see Dupret 1999: 32.

[39] Dupret 1999: 34.

need to consider the other mode of law involvement and have to look at law or legal pluralism as a potential source of positive or negative motivation for social interaction, including uses of legal forms and procedures.[40]

We should certainly be aware of the dangers of simply inferring motivations from rationalisation and justification, as Dupret warns us and as Moore did earlier, and which I have also emphasised.[41] It needs to be established whether, and to what extent, orientation at law enters into people's motivations and shapes their actions. In doing so, it is essential to consider the totality of the legal plural repertoire: the choice for an *adat* legitimation may not so much indicate strong adherence to *adat*, but a stronger aversion from state law or Islamic legal alternatives, or *vice versa*. Research should thus turn its attention to the extent to, and the ways in which, people's orientation towards Islamic law, or towards a specific interpretation of Islamic law, provides actual motivations, or in reality functions as constraints on people's intentions and courses of action in the context of legal pluralism.

The above-mentioned example of *zakat*, the obligatory alms, on Ambon is again illustrative. The basics of the different rule complexes concerning *zakat* are quite well known and people are aware of them when deciding whom to give their *zakat*. The decision not to give *zakat* to government authorities is clearly motivated by not wishing their *zakat* to go outside the circle of Ambonese villagers, since they expect there will be no redistribution by the government. The decision to give, or not to give, *zakat* to the mosque is motivated by admiration or mistrust, respectively, of the mosque leaders.[42]

The focus on these law-related questions should by no means proceed from the assumption of the centrality of law,[43] or from the presupposition that people's actions can be understood by solely looking at the relations between law/legal pluralism and behaviour. Our own lives demonstrate that human interaction is often not strongly and consciously informed by our orientation at law, and even when it is, the kind of use we make of it, or the extent to which we let ourselves be influenced by it, always goes hand-in-hand with, and is influenced by, other factors – social, economic, political ones, relations of power and economic and social dependence. Human action is also influenced by features of our personal mind-set, our temperament, our knowledge and intelligence, our ignorance and stupidity. But we can be interested in 'the social

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[40] Von Benda-Beckmann, F., 1983, 1989, 1997.

[41] Respectively Dupret 1999: 32; Moore 1970; von Benda-Beckmann, F., 1989.

[42] I doubt whether Dupret's shift from law to (prescriptive) rules and (classificatory and evaluatory) norms, and then to justificatory and prescriptive norms, is really helpful (Dupret 1999: 32). The differences are largely in the specific use of legal conceptions: rules that pre- or proscribe certain activities can also be used in the construction of relevant situation images or to justify decisions.

[43] Hunt 1978.

life of law' and legal pluralism, and eventually conclude that for the processes of maintaining and changing law, law is only a rather unimportant factor.

The study of processes in which law, or constellations of legal pluralism, are reproduced, indicate to what extent law, or different laws, can be said to form part of common and individual cultural understandings or local knowledge. To what extent this is the case needs to be investigated empirically, not to be assumed. It has to be established whose knowledge and cultural understanding is at stake. Rosen's admirable description of Moroccans thus indicates one extreme of a continuum of cultural homogeneity of Moroccan society, and of congruence or coherence between the legal, and the cultural and psychological, domains.[44] This nearly sounds too good to be true, and Rosen himself adds that there are countervailing strains against these unifying aspects of Moroccan law.[45] Elites tend to 'naturalise' the divisions between legal realms, and people do not find it difficult to move back and forth between legal systems as well as to continue to embrace cultural commonalties. So in Morocco, co-existence and joint occupancy of different legal bodies in the same social fields may take a variety of forms: struggle, mutual disregard and other forms.[46]

The situation in Minangkabau is different in any case. Certainly, it may be said that in Minangkabau both *adat* and Islamic law are part of Minangkabau culture, but this is not useful when trying to ascertain the differences in the constellation of general cultural understandings in Minangkabau, the differences between individual cultural understandings and the ways in which they shape people's views on the plurality of legal forms which they live with, and even less the ways in which they selectively let these influence their ways of dealing with law.

Last, but certainly not least, it is the anthropologist's task to develop theoretical explanatory propositions that help us understand:

- under which conditions – social, economic, political etc. – certain patterns of plural legal constellations emerge, are maintained, and change;
- under which conditions Islamic law is maintained in a pure form, and merges with traditional or state legal forms; and
- under which conditions individual actors, groups, social movements or the state engage in which patterns of forum shopping.[47]

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[44] Rosen 1999: 93.

[45] *Ibid*.: 94.

[46] *Ibid*.: 92.

[47] Von Benda-Beckmann, K., 1981.

Franz von Benda-Beckmann

Chapter 12

Wars of defeat

From Hiroshima to 9.11

by Trutz von Trotha

Introduction

Two events took place more, more than half a century, and over 11,400 kms, from one another. One occurred on 6–9 August 1945 over Hiroshima and Nagasaki, when the atomic bombs 'Little Boy' and 'Fat Man' (as they were nicknamed in the euphemistically naïve and virile military style) exploded, immediately killing around 170,000 people, and bringing the officially registered total number of dead to around 340,000 within the next five years. The other, known by its date, '9.11' in North American parlance, took place in 2001. Of four passenger aircrafts that were intended to be turned into bombs by their hijackers, two hit the twin towers of the World Trade Center on the southern tip of Manhattan within twenty minutes of each other, a third hit the Pentagon in Washington, and the fourth crashed into the ground southeast of Pittsburgh. About 3,000 people lost their lives.

In this paper I investigate the relationship between these two events in the light of Spittler's theory of dispute settlement,[1] showing their similarities and their differences, and thus offering a broad outline of the future of war in the twenty-first century. The point I argue is that in the future, war will be shaped by 'wars of defeat', by interaction between the thermonuclear war of extermination and the *global small war*.

In investigating war, it is useful to look at a sub-discipline of the social sciences which is concerned with disputes, and in particular dispute settlement, as one of its core areas: legal anthropology, a field to which my friend van Rouveroy van Nieuwaal has made a life-long contribution. Here we find in Spittler's theory an observation that is of great importance for an understanding of the reality of modern wars. Spittler's theory argues that every society has a

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[1] *Cf.* Spittler 1980; also see Hanser & Trotha 2002.

variety of forms of dispute settlement. These forms are institutionalised and legitimised to different degrees, from the private discussion within the four walls of one's house, to blood feuds and appeals to official legal authorities. The forms of dispute settlement are connected with each other in a number of ways, of which two are of interest here:

- Every form of dispute settlement is influenced by its alternatives. In Western societies, for example, in the case of serious conflicts with strangers, we typically threaten to call the police in order to add force to our own attempt to settle the dispute in the absence of the police. I call this circumstance 'the interdependence of the forms of dispute settlement'.
- The interdependence of the forms of dispute settlement is characterised by the supremacy of legitimate violence. All forms of dispute settlement are overshadowed by legitimate violence. In stateless societies it is violent self-help that throws this shadow; in state societies it is the institutions of the state monopoly on violence, in the first instance the police and the army.

The anthropologist Colson has argued that people who live in societies that have an apparent culture of violent self-help, 'walk softly because they believe it necessary not to offend others whom they regard as dangerous'.[2] This may also be applied, in a modified form, to societies where the state monopolises the use of force: people are freed from the threat of violent self-help, and as a result they may be ruthless and reckless to the other, from which they have nothing to fear. They dispute incessantly, because the dispute is taken out of their hands by the various mechanisms of the state legal system, the legal profession, and today even by a comprehensive private system of legal expenses insurance.

What is held to be true for domestic dispute settlement may also be true for armed conflicts, at least since the use of the atomic bomb against Japan in World War II: forms of war are interdependent. Any war belongs to an order of wars, in which each form of war is influenced by existing alternative forms. In terms of space, today these alternatives can cover the whole world. The supreme form in this order of wars is determined by which agent has the greatest destructive potential both militarily and in terms of its technology of arms. Today this potential lies in the thermonuclear war of extermination.

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[2] Colson 1974: 37.

The nuclear war of extermination: A war of defeat

In a radio broadcast on 12 September 1945, about five weeks after the dropping of the atomic bombs on Hiroshima and Nagasaki, the reporter Edward R. Murrow said:[3]

> 'Seldom, if ever, has a war ended leaving the victors with such a sense of uncertainty and fear, with such a realisation that the future is obscure and that survival is not assured.'[4]

From the perspective of conventional war and the unique rise of the United States of America to become the supreme victor and superpower, this comment appears strangely low-spirited, made as it was just over three months after the unconditional surrender of the German Third Reich and ten days after the surrender of Japan. This is not the kind of comment usually made by the victor. Still less is it the commentary of one belonging to a power that has just emerged victoriously from the largest and bloodiest military conflict in history, won the status of unassailable superpower through the combination of a uniquely productive war economy and sole ownership of atomic weapons, and that was busy setting up a new world order according to its own ideas. But like many of his contemporaries, Murrow – still uncertain, and more suspecting than knowing – expressed what was to become the logic of the Cold War, at least after 1949, when the Soviet Union also acquired the atomic bomb. Nuclear war dissolved the apparently indissoluble link between war and victory in a new war of defeat. Once both sides have the atomic bomb and particularly the so-called 'second-strike capacity', a nuclear war can no longer be won.[5] It is a war with no victor and no victory.

The power of nuclear war to exterminate is so boundless that the word 'apocalyptic' has justifiably and repeatedly been applied to it. This term has been even more appropriate since nuclear war was upgraded to thermonuclear war on 1 November 1952, with the hydrogen bomb becoming operational.[6] The destructive power of the bombs used in thermonuclear war is measured not in kilotons but in megatons TNT. The destructive potential of one of these bombs

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[3] Murrow was one of the most influential American war reporters and commentators working for the Columbia Broadcasting Service (CBS) in the 1940s and 1950s.

[4] Quoted from Lifton & Mitchell 1996: xv.

[5] Moreover, the far-reaching effects of the reactor disaster in Chernobyl in 1986 made it unmistakably clear that under certain conditions (e.g. immediate geographical proximity of two relatively small territories) even in a war in which only one of the parties has atomic weapons and uses them, the effects of atomic destruction involves such high risks for the population of the power using the atomic weapons, that they can hardly be justified.

[6] On 1 November 1952, the United States exploded a hydrogen bomb for the first time, on the Eniwetok Atoll in the Marshall Islands in Micronesia.

is greater than that of all other weapon systems that man has used in all his wars since the beginning of history, put together. The devastation it permits is almost beyond what the human imagination can conceive of.[7] A thermonuclear war is not a war in any known sense. The very expression to 'conduct' a thermonuclear war seems empty of any meaning. Everyone knows that in addition to wiping out the warring parties, total thermonuclear war threatens the existence of the human race itself. But no one can conduct the apocalypse; it can only be brought about or triggered. Through its complete inability to admit compromise, nuclear war leaves nothing to be said. Robert Jay Lifton wrote:

> 'You can say everything about, and nothing. [It is] a kind of "last journey together" along the path of terror. (...) No statement on nuclear aggression is anywhere near adequate.'[8]

This turn in the history of the human capacity for violence had, and still has, so many consequences that even after half a century of scholarly research they are still not completely clear. Among the most obvious are the history of the Cold War, the history of the arms race and disarmament since the beginning of the first atomic bomb trials in the desert of New Mexico, the growth of the 'Nuclear Club' (the cosy name used in the Anglo-Saxon academic world for the increasing number of actors possessing the power of extermination), and the history of the surreal – not to say insane – attempts to make it feasible to conduct a total thermonuclear war.

Among the less obvious consequences of nuclear war we should mention, in line with the expanded version of Spittler's theory, the fact that the base of society has been completely replaced. More than a quarter of a century apart, few have made this so impressively clear as Anders, in his despairing study of the *Antiquiertheit des Menschen* (i.e. *The Obsoleteness of Man*), dating from 1956, and especially Lifton, in a book already referred to above and entitled *The broken connection*, from 1979. Lifton takes up Anders' conclusions:

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[7] Some comparative data shows the enormous change in man's destructive capabilities, which came about with the invention of the A-bomb and H-bomb. Normal aircraft bombs in World War II weighed between 200 and 250 kg. The big bombs of the dive bombers (*Stuka*) weighed 500 kg. The heavy allied bombers dropped aerial mines that weighed over a ton. A V2 rocket carried a warhead weighing 1000 kg. But the bombs that fell on Hiroshima and Nagasaki had an explosive force of 15,000 tons TNT and 21,000 tons TNT respectively. An H-bomb on an intercontinental rocket usually has the explosive force of 1.5 million tons TNT. H-bombs of over 50 million tons TNT have been tested. The B-52 bomber of the early 1960s carried H-bombs with a power of destruction greater than that of *all* bombs and shells used during World War II by *all* warring powers, put together. In the 1970s, a single United States aircraft carrier was in a position to completely raze to the ground a large country like present-day Germany.

[8] Lifton 1986: 432. Retranslated from the German edition.

'Up to 1945 we were just the frail actors in an unending play, at least in a play where we did not worry ourselves about its ending or not-ending. Now, the play in which we act a frail part is itself frail. (...) [U]p to 1945 we were just the mortal members of a race which was thought to be timeless (...). Now we belong to a species which is in itself mortal. (…) We have changed our status from *genus mortalium* [mortals] to *genus mortale* [moribunds].'[9]

Lifton investigates how the appearance of nuclear war brought about a radical change in our ideas of death, the history of which before that appearance can be understood as a 'struggle to achieve, maintain and repeatedly reconfirm a collective feeling of immortality under constantly changing psychological and material conditions'.[10] However, thermonuclear war radically changed the struggle for immortality and thus redesigned the whole base of society, by placing human attitudes with regard to death and continuation of life within the context of an absolute, final threat. In the context of this paper, my primary argument is that the invention of nuclear war and the presence of the thermonuclear threat have also led to changes in the alternatives to nuclear war: the 'conventional' war and the small war.

The end of the predominance of conventional war

It is not necessary to agree with van Creveld's provocative thesis, which argues that in the future conventional war will have at best marginal importance.[11] The wars between China and Taiwan (1954, 1958), India and China (1962), India and Pakistan (1947–49, 1965, 1971), in the Falkland Islands (1982), and in the Middle East up to the Second Gulf War (1948/49–1991), provide a basis for such scepticism. Nevertheless, Creveld is unquestionably right when he emphasises the decreasing importance of conventional war in the face of the atomic threat. Conventional war always meets its limits when it directly involves atomic powers, or when it threatens the direct interests of, above all, the nuclear superpowers, United States and Russia. Since 1945 no superpower has engaged in conventional warfare against another, and at the same time none of the non-nuclear armed allies has been drawn into a conventional war by an opposing superpower. War planners and chiefs of staff have fantasised about the concept of 'flexible response', which would allow for a greater interval between a 'conventional' attack by the opposing superpower, and the triggering of a nuclear war.[12] Fortunately, it has never been necessary to test the

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[9] Anders 1960: 171.

[10] Lifton 1986: 353.

[11] Van Creveld 1998: 30-38.

[12] They have also spent an incredible proportion of the national income on this fantasy.

soundness of this response. Most military analysts were convinced that a massive conventional attack by the USSR could only be stopped with 'tactical atomic weapons'. A defence of this kind, however, would have turned Germany, for example, into uninhabitable land. In contrast, when relatively small countries, such as Israel and its Arab neighbours, have declared war on each other, the superpowers have watched more or less calmly. They have however been more zealous to end the fighting as soon as their vital interests became threatened, even marginally. The best example of this is the fourth Israeli–Arab war of 1973, the Yom Kippur War, when Egypt and Syria joined forces to attack Israel, and President Nixon in the course of the war declared the state of nuclear alarm for the American forces to counter a suspected Soviet threat to Israel. Neither Syria nor Egypt attempted to advance beyond the ceasefire lines in the Sinai and the Golan Heights. Probably they feared that the Israelis might actually use the atomic bomb.[13]

Conventional war has become overshadowed by nuclear war, and within the immediate spheres of interest of the atomic powers, it has lost the logic of war, notably the idea

> 'that war is not a mere act of policy, but a true political instrument, a continuation of political activity by other means'.[14]

Standing at the foot of a ladder of escalation, of which the last rung is the self-destruction of the two sides and the extermination of the human race, conventional war takes on the existential logic of thermonuclear war, in which every interest literally evaporates.

In the context of Spittler's theory it must also be emphasised that conventional war has developed a historically unique destructive potential and therefore also throws its shadow over other forms of war, even if this shadow is shorter and does not, as with the prospect of atomic winter, threaten to freeze everything. The destructive potential is so great that a conventional war between highly industrialised countries would also seem to evaporate the category of interest. However, a conventional war between a highly industrialised country and a country without the same degree of industrial and military organisation must end up as a bloodbath for the latter. The Second Gulf War was a clear example of this: on the American side 148 soldiers were killed in action, 458 soldiers were wounded, and 132 died outside direct

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[13] Van Creveld 1998; also see Insight Team of the London Sunday Times 1974: 399-420.

[14] Von Clausewitz 1980: 34. I used the not quite literal translation of Howard & Paret 1976: 207.

combat. Official American estimates of Iraqi losses state over 100,000 soldiers killed and 300,000 wounded.[15]

The rise of the small war

In the shadow of the nuclear threat, and of the destructive potential of conventional war, a form of war has flourished all the more which has been referred to by many different names because of its many different forms and legitimations. Among the names for these wars are 'guerrilla' or 'partisan war', 'limited war', 'war of low intensity', 'civil war', 'tribal' war, or, in the self-justifying language use of warring parties, 'national liberation war', 'liberation struggle', 'police action', or 'fight against terrorism' (from the perspective of justifying one's own violence), or 'terrorism' (denouncing the other party's violence). Despite the fact that this type of war is moreover often referred to as a 'small war' – a term I will stick to in this paper – it is a bloody kind of war, and the total number of dead in all *small wars* since 1945 is estimated at 20 million; whether it was many millions more or a few hundred thousand less no one really knows.

The small war represents a far-reaching break with conventional war and has some important features in common with total war. Conventional war, also called 'Trinitarian war' by Creveld,[16] involves – like the theological concept from which it derives its name – three elements:

- state sovereignty,
- an army maintained and organised by the state, and
- 'people' who have to participate in the military operations of the state sovereignty by providing soldiers, and by supporting the pursuit of war in many ways, not least by demonstrating and having to demonstrate their patriotic loyalty.

Conventional war is conducted by states against other states in the 'interest' of the state. None of this applies to the *small war*.

The actors in a *small war* are as varied as the term 'irregular forces', a conception belonging to conventional war, suggests. They are the 'partisan', 'revolutionary', 'liberation' and 'people's armies' of the twentieth century. The more successful they are, the less they can be distinguished from the conventional army, yet the nuances are of tactical, strategic and symbolic importance. They are violent and mobile groups and organisations of differing

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[15] Human rights groups claim that Iraqi losses were even higher; *cf.* Heidenreich 1993.

[16] *Cf.* van Creveld 1998: 64-74.

sizes and with different degrees of organisation; they are the rebels', 'militias', bands of mercenaries, 'death squadrons', or just gangs of thugs, who are only out for their own interests and are not very much different from the *écorcheurs*, who devastated rural France in the One Hundred Year War.[17] They are led by the national and social revolutionary resistance fighters, the visionaries and ideologists of the twentieth century, or the *condottiere* of the twenty-first century consisting of militant charismatics, real or self-appointed tribal leaders, militia generals, drug barons and other warlords from all kinds of origins. The opponents of the revolutionary and liberation armies, of the rebels and militias, are often state or quasi-state actors. Accordingly, conventional armies also play a key role in the *small war*. But typically, the state actors are supported by armed security and secret services, by special police units, and, in many places, by an obscure collection of paramilitary and clandestine groups; the boundaries between 'regular law enforcement agencies' and 'irregular' police units become blurred to a point where they are indistinguishable.

What is true of the actors in a *small war*, applies in the same way to the interests that are at stake in a *small war*. The supposed interests of the state in conventional war are a highly equivocal phenomenon, giving rise to endless disputes between contemporaries, and above all between historians of war, concerning the causes of the outbreak of wars. The reason is that wars cannot be reduced to a question of interests, and especially not in the case of those who commence a war. As long as *small war*s approach conventional war in accordance with the models of the partisan, revolutionary and liberation wars of the nineteenth and twentieth century, the national and social revolutionary or territorial interests can well be said to have the same force as the interests which are involved in conventional wars. The more multifarious the actors in the *small war* become, and the more they separate themselves from the predominance of the interests of conventional war (as has been the case at the end of the twentieth and the beginning of the twenty-first century), the more varied will be the interests and the more complex the spectrum of goals that are pursued in *small war*s.

Actors in *small wars* fight for 'national liberation', for the rights of 'their' people, against oppression and slavery, or in order to die in a holy war. They fight, like the Chechnyan commander Babrudi in Itum-Kali, a remote village somewhere in the mountains along the Georgian border, for the return of traditional institutions such as blood vengeance and the right of hospitality. But ultimately they all fight for that which constitutes the heart of politics, a share in power, and above all undivided power. However, on the contemporary violence markets, where the *small war* takes on the form of a 'neo-Hobbesian

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[17] *Ibid.*: 99.

war',[18] something else comes to the fore, which is also part of all military interests and especially that of power: grabbing booty and women, and a growing enjoyment of violence which develops into a cult of cruelty.

The biggest warlords build their power base by trading in raw materials, precious stones, and valuable timber. Savimbi, head of the União Nacional para a Independência Total de Angola (UNITA), went in for diamond smuggling; his Congolese colleague, Kabila (the former head of state of the Democratic Republic of the Congo), rounded off on the business front with gold smuggling; and Charles Taylor of Liberia became rich on the violence market of Sierra Leone by dealing in precious tropical woods, diamonds, and ores. Drugs and arms dealing not only fill the war chests, but also the pockets of the warlords and their soldiers. 'Taxes', protection money, and abductions all help to ensure that the financial fountainheads of violent conflicts do not dry up and that there are many paths to private enrichment. Today, enslavement and its variant, the White slave trade, as well as the misappropriation of humanitarian aid, can be added to the list. The *small war* is an opportunity for the armed 'young entrepreneur' to become rich and accumulate economic power. Not infrequently, the opposing sides even do business with each other. For a great number of 'simple' paramilitaries, militiamen, or rebels, who have no work or who have to live on an income which scarcely reaches subsistence level, the maintenance and pay of the 'soldier' may be a sufficient incentive. In the Bosnian war many volunteers topped up their meagre wages as 'weekend fighters'. One of the protagonists of the cult of cruelty in the Bosnian war, the militiaman Zeljko Raznatovic, known as Arkan, recruited his men by paying them the equivalent of €50, instead of the €6 that soldiers in the Bosnian government army had to content themselves with.[19] In addition to maintenance and pay, looting is the main path to (usually modest) enrichment. For some it is the starting capital for founding enterprises and for returning to civilian life. Many young combatants in the Somali conflicts, for instance, gained possession of trucks by means of looting, and used them to try and become ordinary business people. Others were able to gain so much booty that it was enough to set up a profitable business. Some even managed to establish themselves as international middlemen.[20]

Closely linked to these economic opportunities are the social opportunities available to those who join armed movements. Occasionally, individuals may

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[18] Implied in this term is the 'war of all against all' as a social condition first postulated by the seventeenth-century English philosopher Hobbes (1962; first published 1651) in contradistinction from ordered human society and the state.

[19] *Cf.* Calic 1995a: 27-28.

[20] *Cf.* Marchal 1995: 45.

rise to become not only warlords, but, as in Kabila's case, heads of state. Of course, such spectacular careers are reserved for the few, but the majority have opportunities for rising to the middle class and to the political and administrative elites through the political and military hierarchies of the armed movements and organisations. This applies from Bosnia to Somalia.[21] To modify and expand the title of a newspaper article by the historian Englund: *violence not only provides a living, it is also a means of social advancement.*[22]

There it no doubt that the economic and social entrepreneurship promoted by violence is risky. Its founding capital is the readiness of the entrepreneurs to take the risk of becoming victims of the cult of violence, of being killed or maimed, of landing in a jail where the rules of the constitutional state do not apply, or of finding themselves social outcasts after a few years. The *small war* on the violence markets links entrepreneurial with social and existential risks – deadly risks. And many losses are suffered, entrepreneurially, socially and existentially.

If the violence of peoples' armies and national liberation armies is directed by the rules of conventional wars, *small war*s show a spectrum of violence, from the regulated violence of a warrior ethos (such as in the case of the greater part of the Tuareg rebellion in Niger and Mali in the first half of the 1990s, which carried on the traditions of violence of aristocratic societies), right down to the cult of cruelty on the violence markets of the warlords. For decades the routine on the violence markets of Africa and Asia has been what so horrified the European public on the violence markets in the Balkans: the massacre of defenceless people, men, women and children alike, mutilation of the living and of the dead, sexual humiliation through excessive practices of rape and torture in which boundless human fantasies of violence are practised on the victims.

In short: the interests involved in a *small war* can range from the political power interests of national and social revolutionary movements to extreme privatisation of all political and collective interests, and their replacement by a lust for violence and a cult of cruelty.

The unleashing of violence on the violence markets reveals the typical dynamics of all violent processes. However, more important in the context of this paper is the fact that this unleashing of violence radicalises a feature of the *small war* which it shares with other forms of war, genocidal wars of pacification, total wars, and above all the nuclear war of extermination: *abolition of the separation between soldier and civilian.* This abolition has many aspects, but its core is the manner of conduct of the war: the abolition of

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[21] *Cf.* Calic 1995b: 143; Marchal 1995: 45.

[22] Englund 1998.

the separation between soldier and civilian in the 'fighter'. In line with the manner of conduct of the partisan and guerrilla war, the military actor in the *small war* is civilian and soldier in one person. The fighter is a militant civilian and a soldier camouflaged as a civilian, with the result that the combat against the partisan and guerrilla fighter by conventional armies also abolishes the distinction between civilian and soldier, and institutionalises the massacre. Added to this transformation of soldiers into fighters is the fact that – again related to total war – more or less large parts of the population are mobilised for the war. Typically, mobilisation of the population also involves the use of force and terror. In the centres of rebellion and the strongholds of the warring parties, civilian and military life are mixed together and this contributes in a *small war* to removing the spatial order which separates soldiers from civilians, and, unlike in a Trinitarian war, the boundaries between war front and hinterland become blurred or disappear altogether. The *small war* takes place within the same space as normal day-to-day life. It does not keep to fronts, even if it has spaces that are vaguely called 'rebel area' or 'area controlled by the government'. On the contrary, the *small war* prefers to strike the enemy from behind, to carry out 'actions' where the opponent thinks he is most secure, i.e. in the spaces of everyday life, which would seem to be far removed from the war. The *small war* turns the everyday life of civilians into a life in the shadow of terror. The inability to predict events, an essential element of war, is shifted from the front to people's daily life.

The abolition of the separation of civilian and soldier, civilian life and front life, is particularly dramatic since the 'civilian' becomes a direct target of violence – and here, too, there is no difference between the *small war* and the forms of war mentioned above, especially nuclear war. In certain phases of a *small war*, as in the carpet-bombing of total war, and in nuclear war, the civilian is not only the preferred, but even the exclusive target of attack, with no regard for sex or age, and even relatively irrespective of social status and political power. Bomb attacks blow up innocent people, not 'by accident', but deliberately. As in total war and nuclear war, there are no 'innocent' people in a *small war*.

Because the *small war* is overshadowed by conventional and nuclear war, it reverses two elements of these wars. The *small war* usually covers a more or less small area and it is a war of simple and cheap weapons. With the exception of desert areas with very low populations, the leaders, groups, networks and organisations which conduct *small war*s are not normally in a position to control large territories. They content themselves with rebel areas or, in urban regions, with areas known by the names of the parts of the town which are under the control of this-or-that militia, this-or-that general or this-or-that drugs baron. Nor is a *small war* a war of highly developed weapon technology. It is

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conducted with weapons which people in even the poorest countries can afford and which anyone can learn to handle within a short time. *Small wars* are characterised, not by the weapons technology of professional soldiers, nor by the high-tech arsenal found at the front in Trinitarian and total wars, but by convenient caches of arms in the civilian hinterland. The standard weapon in *small wars* today is the Kalashnikov gun. Unlike in modern conventional war and in nuclear war, this simplicity of the weapons places the fighter and the fight at the centre of the armed conflict. What is true of every war is especially true of the *small war*: it stands or falls with the willingness of the fighters to kill and be killed. The technological development of Trinitarian war can be understood as a process of robotisation, of which the epitome was the use of cruise missiles in the Second Gulf War of 1990/91. The drone projects of industrial arms manufacturers are leading the way. The *small war* clings to the primacy of the fighter. It is a culture and an expressive cult of violence, while the Trinitarian war has produced a culture of the technology of violence and a cult of functionalism.

As a war of simple weapons and logistics, the *small war* is not a war of battles, which are avoided by its 'generals' unless the circumstances are particularly favourable. Examples of the latter are the successful battles of General Vo Nguyen Giap at Dien Bien Phu in the spring of 1954, which sealed the fate of the French in Indochina; and the Tet Offensive in 1968, which was in fact a military failure, but a great psychological success for the Vietcong. It is a war of partisan and guerrilla struggles, of ambushes and 'actions', of abductions and attacks. With the exception of the successful final stages of many a national liberation struggle, in which the *small war* takes on the character of a conventional war, as in Indochina, Vietnam or in the Israel of the War of Independence, the basic categories of conventional war become meaningless or vague in a *small war*. For instance, there is no declaration of war as defined by international law. This means that the categories of a beginning and an end to the war are equally vague, just as the time structure of a *small war* is quite different from that of a conventional war. *Small wars* usually begin with some kind of violent action, and, characteristically, it is usually only historians who can with hindsight affirm when the war really began. It is a war of ups and downs; phases of intense military conflicts are succeeded by times of reduced violence, and sometimes both observers and participants may be deceived into thinking that the war has ended, only to suddenly see it return with full intensity. It is a *war of small wars*, like a Russian nesting doll, although in this case the unit in which the Russian nesting doll represents the biggest and outermost doll is more a product of memory and historical reconstruction. It is a war that is counted in decades rather than in years, from the war of secession on Bougainville and the 'civil wars' in

Columbia, to the 'civil war' in the Sudan, which has now been going on for almost half a century. It is frequently a war that, just as it has no beginning, does not end with the conclusion of a peace treaty. It is a war of ceasefires and peace agreements, but without peace. Its peace is the exhaustion of the warring parties, and the hostilities break out again when the warring parties have got reorganised and have mobilised new forces, both economically and in terms of personnel, which often means no more than that a new generation takes up the war again.

In the *small war*, a central feature of conventional war undergoes a transformation, and this transformation reaches completion in nuclear war: the categories of military victory and defeat change their meaning. The *small war* is a war of victories, and perhaps still more of defeats. The condition that its victories are usually expressed in *political* and not in military terms,[23] reveals the transformation of the categories of 'victory' and 'defeat' in the *small war*. The political success of one of the warring parties, notably of the non-state actor, is a result of military success only in exceptional cases; the wars in Indochina and Vietnam are examples of such exceptions. However, where political success is a primary concern in the *small war*, despite Creveld's assertion of the irrefutable political success of *small wars*,[24] the contribution of the *small war* to political success is usually very controversial among historians. The debate on decolonisation and its critique of the 'myths' of the struggle for freedom are evidence of this.[25] The fact that the *small war* can frequently be measured in decades is also a sign that it is a war of military *and* political defeats rather than a war of victories. In distinction from van Creveld, it should not be forgotten that even political success is repeatedly denied to the *small war*. The *small wars* in Latin America, sub-Saharan Africa, and in the Pacific Islands (from Irian Jaya to Bougainville), and the rise of violence markets, are depressing examples.

The *global small war*

There is no doubt about where the *global small war* was invented. This place is specifically located between the extremely complex problems of the Middle East and Arab Northeast Africa, with its history and its violence markets, and the history and present situation of the violence market in Afghanistan. The connection between the Middle Eastern and the Afghan world is provided by

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[23] Van Creveld 1998: 49-52.

[24] *Ibid.*

[25] *Cf.* Mommsen 1990.

the members of a *jihadist* entrepreneurial and migration movement – if we accept the official announcements of the Western governments to the effect that Osama bin Laden and the al-Qaeda network were responsible for the attacks of 9.11. But as a new form of war, the *global small war* points beyond the conditions in which it emerged, and back to the economic, social, cultural and political circumstances in which violence markets are also embedded. Above all, it points to nuclear war, and can be understood as its direct counterpart.

The *global small war* is a war that consists of a new combination of different forms of violence of a terrorist and military kind. Embedded in the history of assassination attempts, of terrorism, and of *small wars* in general, it operates with carefully planned terrorist attacks of warlike quality, which increase the shock that such attacks are meant to cause. The acts of violence are intent on producing general uncertainty and deep-rooted fear, on the one side; and to elicit sympathy and support from those for whom the *global small war* combatants see themselves as an avant-garde, on the other side. Above all it aims in three ways at the foundations of the attacked society, its everyday world:

- It is intent on making the state of emergency a basic, generalised experience of the citizens, and for this purpose it uses the means on which everyday life in *high-tech* societies is dependent to a scarcely conceivable extent.
- It is an attack on everyday technologies, using them as its means.
- It is a combination of severe material damage, the massacre of defenceless people, and an armed attack on the opponent's political and economic power centres.

Like the *small war*, the *global small war* does not have the usual declaration of war, it has no easily identifiable beginning, no end and no concluding peace treaty. But unlike the *small war*, it is a war in which the attackers do not seek to conquer the territory in which they carry out their massacres, and they cannot and do not wish to take over power. The same applies to those who are attacked, those who consider their task to be the destruction of networks – and who resort to the desperate, costly and bloody solution of attacking states instead of networks. The *global small war* has no war zone, because in principle any place in the world can become a war zone, if the actors see a physical, economic, political or symbolic link between a particular place and their opponent. What was New York yesterday, may be Frankfurt, London or Moscow tomorrow.

The *global small war* is an anonymous war on the part of the attacker. The attacking power remains more or less unidentified. It is given a face only through secret services and police, who claim to have 'reliable information' on the identity of the attackers. It is a war in which the central political institutions and the public do not decide who the 'enemy' is, against whom they must 'conduct a campaign'; this decision is made by the secret services and police investigating agencies. Defining the enemy is made more difficult by the fact that the enemy is not a formal organisation, or even a group of organisations. The *global small war* radicalises and globalises the principle of the supreme autonomy of the fighting units, the principle of networks and 'cells', as in the *small war*. Its actors form a global network of groups and political movements, which are involved more or less independently in terrorist activities or wars. These networks cover relations with states, state agencies, secret services, actors in organised crime, the business world, and active supporters from the world of political movements and conflict regions. The network has nodes and centres which depend on ethnic, religious and political loyalties and on the conflicts connected to them (such as the conflict between Israel and its neighbouring Arab states), and international conflict constellations.

Among the most important innovations of the *global small war* is a weapons revolution which, as mentioned above, consists of nothing other than abolishing weapons in the traditional sense. The 'weapon' is the opponent's everyday technology, converted into a deadly trap for the opponent. In this sense the *global small war* is an absurdity, a war without weapons – if one does not count the gun which might be required to force pilots or others to comply with the orders of the attackers. However, global war opens up a gloomy prospect: it could become a war of high technology and a direct descendant of nuclear war, with its nuclear proliferation dynamics, if the combatants gain possession of atomic bombs and turn the *global small war* into a *global nuclear small war*.

Until now however, the most important weapon in the *global small war* has not been a technical tool, but rather that predisposition that has been at the basis of any war: *the willingness to kill and to be killed.* With the invention of the terrorist suicide attack, which turns human beings into living bombs, willingness to be killed has even become the most important predisposition required of combatants. It has thus introduced a further apparent paradox into the forms of conducting war: the war of aggression as self-victimisation. Willingness to die was always a part of the inseparable duo of victorious survival and deadly defeat. But a suicide attacker has no prospect of victory in the immediate conflict. Death is certain. This also applies to suicide attacks of the *kamikaze* model, but unlike the *kamikaze* model, suicide attacks in the *global small war* are not the fruit of defeat, and they are not directed against an

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armed enemy, with soldiers and weapons. Rather, the suicide attack is aimed without distinction at both the armed and the defenceless. It desires a massacre, and typically it is one. Just as nuclear war has carried to the extreme something which belongs to the nature of total war, i.e. the abolition of the distinction between soldiers and civilians and the replacement of battles by the massacre of civilians, in the same way, by applying the technique of the suicide attack using the opponent's everyday technology, the *global small war* has radicalised those features of the *small war* which it shares with total and nuclear war, not caring about the distinction between civilian and soldier, and making massacre the rule.

While the *small war* renders unclear the categories of victory and defeat as they apply to conventional war, the *global small war* again goes a step further. Like nuclear war, it does away with the category of victory. In its nearest relative, the *small war*, at least in certain cases such as the national liberation war, victory can still be defined politically as the 'assumption of power'. The *global small war* has no such goal. For the attackers, its goal is no more than perhaps the fantasy of bringing about the collapse of a civilisation in accordance with Huntington's ideas of 'fault-line wars'.[26] At best its goal is the hope of establishing limits for an international political actor, which are as unclear as the hopes of the fighters are vague. The category of victory can be applied to a successful terror attack, but this is only the beginning of a series of defeats. The carnage in the inferno of American cluster bombs and petrol bombs over the Afghan mountains; the flight of Taliban and al-Qaeda fighters from British and American troops; or the cages, sensory deprivation and largely non-existent rights of the prisoners at the Guantanamo military base – these are the experienced realities of these defeats. The situation of the attacked is just the same. They know only fear, which increases as 'victory' becomes a fantasy of power in declarations of war against international terror.[27]

The turning point that global war seems to represent in the history of war, can be seen above all when the narrow perspective of military theory is left behind, and when we look for the changes which it brings about or could bring about in the societies of those involved and in international relations, and at the

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[26] Huntington 1996.

[27] In his speech 'Freedom at war with fear', President George W. Bush declared before both Houses of the American Congress on 20 September 2001 :

> 'We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.' (Quoted from: http://www.whitehouse.gov/news/ releases/2001/09/20010920-8.html)

same time consider the relationship which we used as the starting point of these observations: the dropping of the atomic bombs on Hiroshima and Nagasaki.

Like many other observers, I think it is not wrong to assume that the *global small war* will have far-reaching effects on societies and on international relations. 11 September 2001 and the hunt for bin Laden and *jihadist* networks are the writing on the wall, the warning of a new world order in which van Creveld's speculation seems to have become a real possibility: the differences between governments, armies and peoples will vanish; armies will be substituted by security forces having some resemblance to the police and gangs of thugs; and national frontiers will collapse or become irrelevant while rival organisations try to hunt each other down.[28] The apparently rapid victory over Afghanistan, the Taliban and the human and logistic centre of the al-Qaeda network has not yet done anything to lessen the speculative character of van Creveld's fantasies of the future. But other consequences of the *global small war* can already be clearly foreseen. In addition to the fast and generalised use of control technologies, these include growth of the 'hard state' and its complement, massive erosion of the classical constitutional state.

The massacre in New York has already brought about dramatic changes in the democratically controlled state monopoly on violence in international relations, with regard to decisions concerning war and peace. Definition of the enemy has become a matter for criminal prosecution agencies, especially the secret services or a network of secret services, which include friendly and co-operating states, in addition to the national services. Definition of the enemy is based on suppositions, suspicions and uncertainties – and the whole affair took on a positively surreal air, when, about two months after the first attacks against Afghanistan by the United States, the American government tried to convince the world at large by means of a video tape that bin Laden was responsible for the New York massacre, and this attempt was met by doubts concerning the genuineness of the tape. The security measures and legislation following the New York massacre have led to changes of constitutional principles in both the United States and West European states, which before 11 September, particularly in the United States, did not appear conceivable. Prantl, the liberal law reporter and legal commentator for the *Süddeutsche Zeitung*, named a few of these changes in the weekend edition of this paper dated 8-9 December 2001, under the ambiguous heading 'The terrorist as legislator'.[29]

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[28] Creveld 1998: 328.

[29] In December 2001, at the time of Prantl's writing, 1200 people of Arab origin were in custody in the Unites States without any concrete charge against them. At least 5000 Arab Muslims were questioned in 'voluntary' interrogations. The Bush administration ordered that alleged terrorists and their helpers should be sentenced by secret military tribunals appointed by the minister of defence, in which three judges in uniform could impose the death penalty by majority decision, without the convicted persons

The connection between atomic and global war, referred to at the beginning of this article, is more than just a historical and analytical observation. The Disaster Management Team created this connection itself by choosing the name 'Ground Zero' for the mountain of rubble in south Manhattan; it is the term used to refer to the point at which a nuclear explosion occurs. Hiroshima, Nagasaki and 11 September 2001 are the end of an age, and the beginning of a new age. Hiroshima ended the era of two World Wars, established the United States as one of two superpowers and ushered in the era of the Cold War. At the end of the era of bipolarity and the Cold War, there were no longer any competing systems, instead there was one superpower and one system that, in the triumphal advance of neo-liberal philosophy and the ideology of globalisation, was felt to be binding for almost the whole world. But just as the arms race of World War II was continued by the irreconcilable conflict between communist totalitarism and liberal democracy, between the socialist and capitalist economic systems, and the military and political answer of the Soviet Union to 6 August 1945 needed only four years, the undisputed victory of the United States in the Cold War lasted little more than a decade before it was challenged by 11 September 2001. It is a challenge in which for the first time in the several hundred years of United States history, a war of aggression has reached the continental territory of the United States. And just as the explosion of the Russian atomic bomb in August 1949 reflected the rivalry between the competing systems militarily and politically, 11 September 2001 reflects the multiplication of centres of power in addition to the superpower USA, as well as the shifting of the East-West conflict to a North-South conflict. In this North-South conflict, the extremely heterogeneous antagonisms and conflicts between the First World and the Third World, and within in the Third World itself, have replaced the comparatively clear antagonism of the East-West conflict. The superpower is faced with a war that starts from violence markets on the margins of the international political and economic centres of power. The enemy cannot be clearly identified and cannot be defeated in a military sense. It is a war that, in the words of the Declaration of War by President George W. Bush on 20 September 2001, promises to be a 'lengthy campaign, unlike any other we have ever seen', in which the war techniques of the opponent are based on attacking the everyday foundations of a high-tech society and forcing a situation which a highly industrialised society can probably not endure for a long time.

Of the twentieth century it has rightly been said that it was the American century. In the sense of van Creveld's oracle, it would not be out of place to speculate that 11 September 2001 was a beacon announcing a twenty-first

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having any right of appeal. In the official discourse on security in the Unites States, voices were heard speaking with little restraint about the reintroduction of torture during interrogations.

century belonging to the fighters, in which, in the shadow of the atomic war of extermination, the challenges to state governments posed by the *global small war* will determine the character of international relations and of domestic order within the states. The link between the two centuries is the interdependence of wars and the predominance of thermonuclear war, whose most recent product is the *global small war*. The link is the polarity of wars of defeat.

PART III. REFERENCE MATERIAL

Bibliography of the writings of Emile Adriaan B. van Rouveroy van Nieuwaal

NOTE: Unless otherwise stated, E.A.B. van Rouveroy van Nieuwaal is the sole author of the publications listed below. Because in the cumulative bibliography to this book (see below) written works and films have been pooled together, in the rubricised listing below the letters indicating multiple publications by the same author(s) in the same year may not be consecutive per rubric, nor start at 'a' for each rubric.

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NOTE: In accordance with time-honoured Rhodes-Livingstone Institute/Manchester School conventions, names of ethnic groups, languages, and territories of Bantu-speaking peoples are reduced to their root form, without the prefixes *Ba-, Bo-, Se-, Ci-, I-*, etc. Hence e.g. Kwena, Kalanga, instead of Bakwena, Sekwena, Bakalanga, Makalaka, Ikalanga. An exception is made for the word Botswana, i.e. 'Tswana-land', which has gained international currency as the proper name of a national state. In accordance with International African Institute conventions, African names are not divided in surname and given name, unless the distinction is obvious (i.e. one of the names derives from a world religion and is not a patronym). In principle, names of authors *whose works are cited in the present book* exclusively appear in the *Author index* (below), and not in this *Index of proper names*. In principle, adjectives are implied under the corresponding noun, so for 'African', see 'Africa', etc.

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NOTE: Only those authors are listed below whose works are explicitly cited in the present book; other authors are included in the *Index of proper names* (above)

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