

EVOLUTION OF POWER STRUCTURES IN BASUTOLAND UNDER
THE BRITISH PROTECTORATE

Master's thesis presented by

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FOREWORD

The choice of subject for this dissertation was motivated both by my personal interest in the region studied and by the presence of sources in Paris, but also by the existence of another work, dealing specifically with the period 1824- 1884 - S. Pouillet's dissertation presented at Paris 7 in 1989, c.f bibliography. The present dissertation is a kind of sequel to this one, although two restrictions need to be added.

On the one hand, in order to form a coherent whole and make intelligible the evolutions that took place during the period that interests me most specifically, I had to take up the period dealt with by S. Pouillet, which I present more briefly in the first part. As the disproportion between the two parts indicates, I have of course focused more on the era of the Crown Protectorate - until around 1938 - which forms the core of my study.

On the other hand, I have concentrated more on purely political issues.

I have chosen to focus on the late 1930s - 1938 to be precise - because it was then that the British government introduced the first of a series of reforms designed to alleviate the political problems that had developed since it took over the territory. The measures taken specifically in **1938** addressed only part of these problems, and their impact was not immediately obvious, but they were nonetheless representative of the evolution of British attitude - which culminated in the promulgation of a new constitution in 1959, hence the choice to stop my study at this point.

The first part of this dissertation therefore describes the traditional power structures in Sotho societies, the changes brought about by Moshoeshoe - with the advent of supreme chieftaincy, and the impact of the policy of the Cape Colony - to whose authority Basutoland was subject from 1871 to 1883, and of the Rifle War.

The second part deals with the evolution of power structures from 1884 to around 1938, from two angles: firstly, from the point of view of the various holders of power, both traditional and new ones, whose functions and relative importance we shall see evolve; secondly, from the point of view of the various powers, in order to define their new distribution and new forms.

Appendices include the first and final versions of the "Laws of Leretholi", discussed in Part 2, as well as a collection of customs illustrating the need felt at the time to write down customs, and finally the constitution of an organization, also discussed in Part 2, the Basutoland Progressive Association.

Most of the sources I used for this thesis came from the library of the Société des Missions Evangéliques de Paris (SMEP). I also used sources - fewer in number but essential - belonging to the Centre de Recherches Africaines and the Musée de l'Homme.

The first were written by missionaries sent to Lesotho by SMEP. The first of these missionaries were also the first Europeans to enter Lesotho. Eugène Casalis in particular, mentioned several times at the beginning of this trail, was with T. Arbousset one of the first in this field, being there in 1833. D de'fait was one of Moshoeshoe's advisors and thus played an important political role.

More generally, SMEP missionaries founded numerous stations from which they influenced a sizeable proportion of the population, including those in positions of authority. For a long time, they were the only ones to play this role, before gradually losing out to competition from other denominations - as was already the case when the British protectorate was established.

The other sources used are mainly the work of British civil servants, whose approach to the issues is primarily legal, and rather remote from the day-to-day realities of the population. They can certainly be suspected of having a favorable bias towards the British government; nevertheless, writing most often towards the end or shortly after the period studied, they often describe the problems that had arisen up to that point partly as a result of British policy. They do not, however, allude to the feelings of the population towards the government.

NOTES ON SOTHOS NAMES

Like all Baitou languages, Sesotlio is a language whose nouns are divided into different classes - six in this case - which play a grammatical role comparable to the two genders of French. Nouns are composed of a radical and a prefix, which varies according to the number and class to which the noun belongs. Aisi. the term *mosotlto* is used to designate an individual member of the sotho group, and *basotho* to designate all the individuals in this group. Formed from this root, we find the term *Lesotlio*, which refers to the traditional space occupied by this group, and *sesotho*, which primarily designates the language, but also more broadly the culture of the basotho.

11 It should also be noted that the spelling of the radical varies: here, I've used the spelling most commonly used today, but in the sources quoted, we'll also come across the spelling "suto" in British sources in particular, and in quotations from French missionaries, "ssouto" - they frequently use the form of "bassoutos", marking the plural with a final "s" whereas the initial "ba" already marks it.

For the sake of convenience, I'll sometimes use the radical "sotho" as an adjective, treating it as such from a grammatical point of view.

LEXICON OF SESOTHO TERMS USED

Akhente	Professional pleader
Banna ba klotla	Men of the court
Bofebe	Adultery
Bohali	Dower paid to the fiancée's family by the future husband to contract marriage.
Bokhina pere	Place under the direct control of a chief
Cliobeliso	Rapture
Hlapa (dildapa)	Insult; curse
Ketseletso	Defamation; slander
Lekhotla	Enclosure where public affairs are conducted; court.
Lekliotla la mabosana	Council formed of territorial chiefs and of their advisors under Moshoeshoe
Letona (pl. matona)	Councillor
Letsena (pl. matsena)	Comœiuiutory work performed for a chief; corvée Wars of the 1820s-1830s
Lifaqane	
Maboella	Denver pastures
Mabotiio	Regiment
Mafisa	Loan of livestock to a person who consumes its products
Matalenyane	First version of the Laws of Lerotholi (Litt. "Le petit vert", after the color of the collection's cover)
Maqosa	Messengers
Mophato	Home for boys undergoing initiation; initiation school initiation school
Morena (pl. marena)	Chief

Morena e nioliolo	Chief su}'rén e
moreiialia (pl. niarenana)	Sons-chef
Peto	Rape
Pliutunu	Serious assault Asseiiiblée
Pitso (pl. lepitso)	iublique Homicide
Polao	Chief of inllage (Litt. pere de ' illage)
Ramotse	Tax levied by a chief on all of
Sethabatliaba	population
	Comiption; bribe
Tjotjo	Defamation (Litt. dishonor of a name)
Tlotlolio ea lebitso	

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PRESENTATION OF LESOTHO

Lesotho is today a country of 30,355 km² and a population estimated at 1,500,000 in 1990.

As an independent nation-state, it is one of two states in the South African Republic - the other being Swaziland, further to the northeast.

It is an inundated country, with the Maluti range in its eastern part, and a plateau in its western part - less than 20% of the total surface area - where agriculture is practicable - on 13% of the country's surface area.

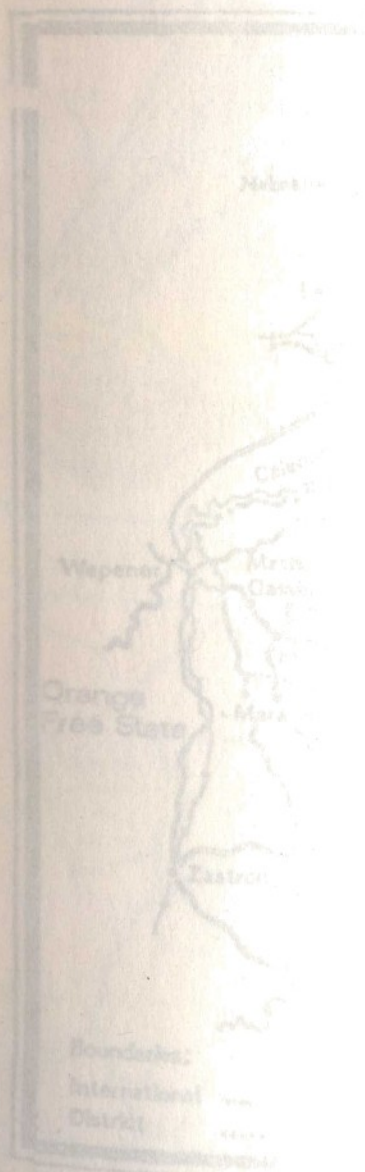
From 1868 and throughout the colonial period - whether under the authority of the Cape Colony or the direct rule of the British crown - Lesotho was known as Basutoland. Its borders were the same as today's. While its population was 150,000 in 1865 and 256,000 in 1898, it reached 562,311 inhabitants in 1936.

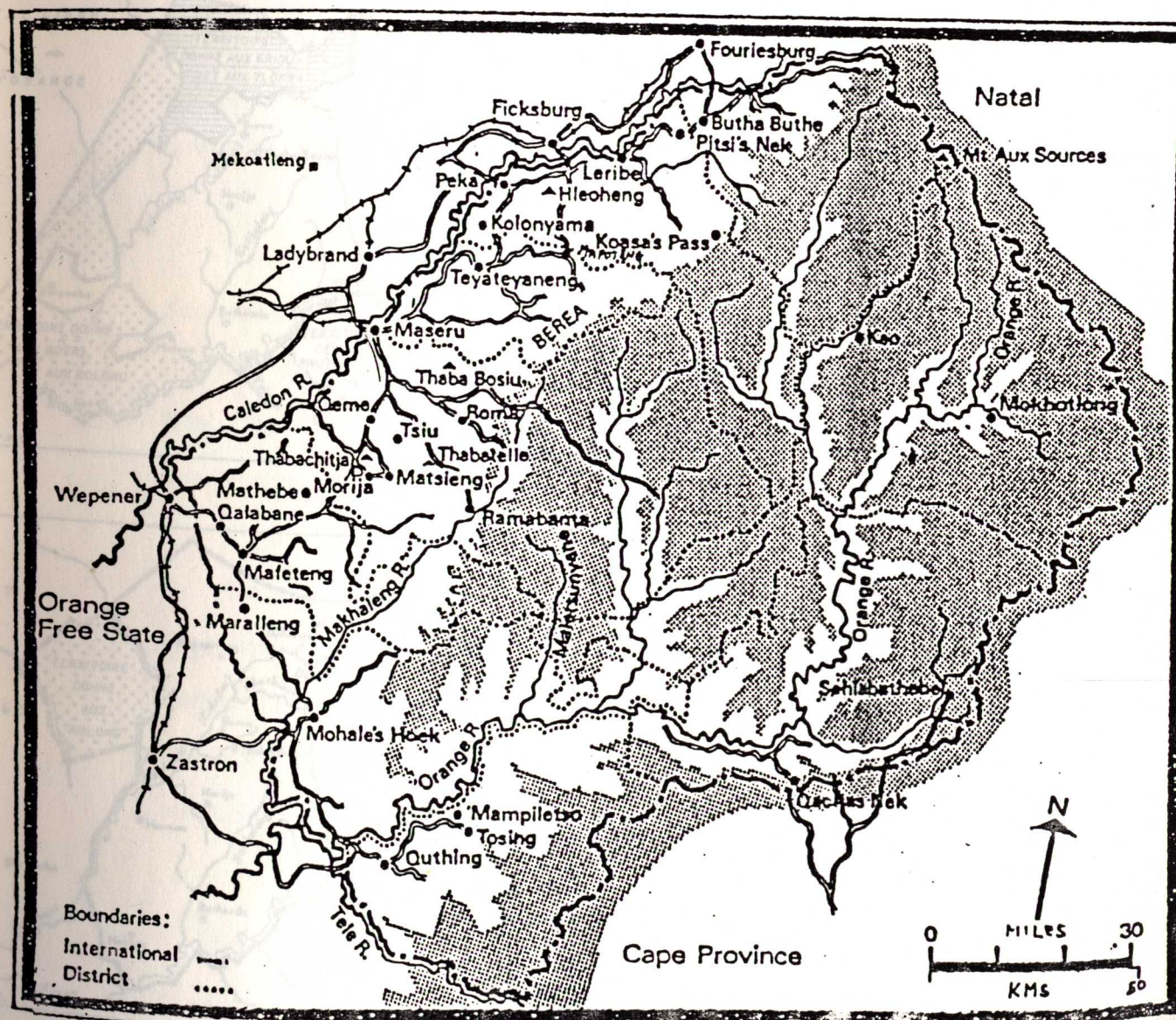
Map 1. Lesotho's position in Southern Africa Page 10

In contrast, during the pre-colonial period that we'll study in the first part of this course, Lesotho was less clearly defined. Its borders varied considerably according to conflicts and treaties (c.f. Map 2), and in general, it's more relevant to approach the issue through the notions of Sotho "people" or "nation" than to define it directly in territorial terms - the missionaries of the time spoke of a "country of the Basutos". Rather than "Lesotho" - the Sotho "nation" itself was a recent reality, the unity of which had not yet been established. This reality, whose unity was only loosely assured, resting mainly on the person of the chief

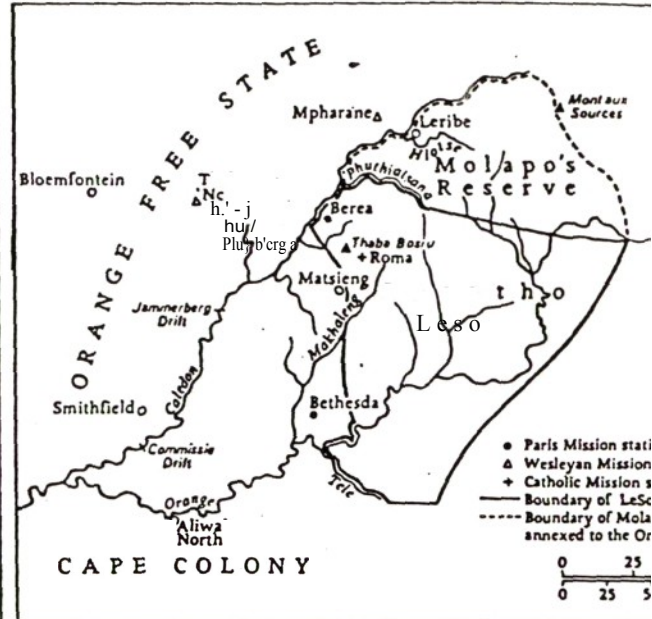
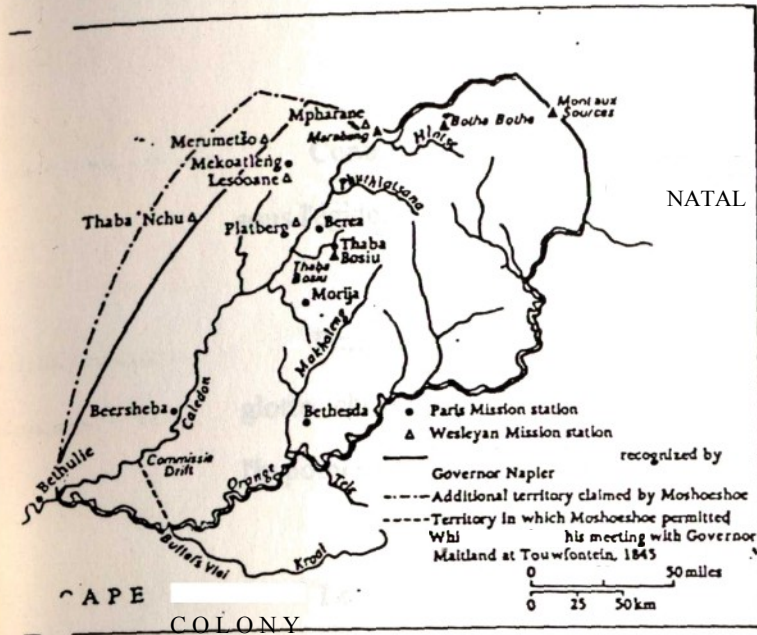
(suy) (Ènze)Mosltocslie, and doitt the territorial occupation had varied a lot in l'es}Jacc de quelquesdécennies. After a phase of rapid expansion à la both territorial and demographic - integration of populations, the area was stripped of a significant portion of itsarable land - two-thirds in 18b6 - following the second war with the Libi'e State, which broke out in May 1.865. For the pre-colonial period, we'll talk more about (de) (")people sotho" or even "nation sotho", or even for convenience "royaume sotho" (parallel with the European socio-political organization systems employed/by the iiiÎSSionnaires). In the same way, we refer to "subjects" a s people under the authority o f a given chief.

Map 2: Lesotho's changing borders. Page 11





(c) (arte) (2) (:) (Les) (mo) (dificatio) (ns) (fr) (ontalière)s (subies) (par)le Le sotho (tirées de Perrol C. H., L (sotho) (s) (au) (XIXè)siècle et de ThompSOB L., Survival in two worlds).



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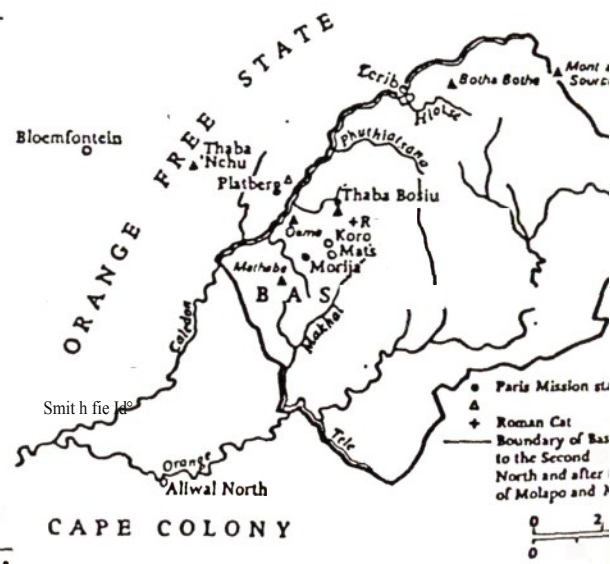
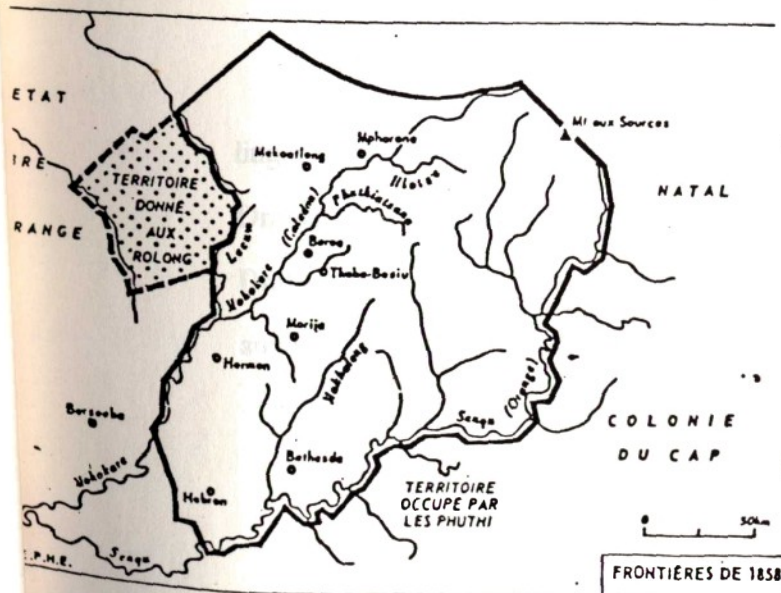
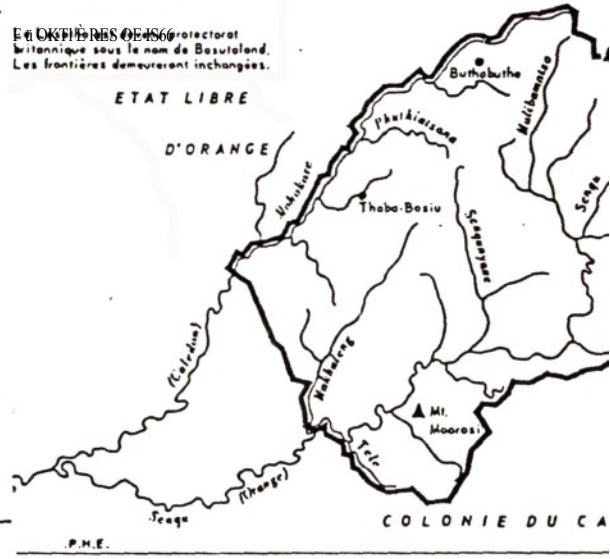
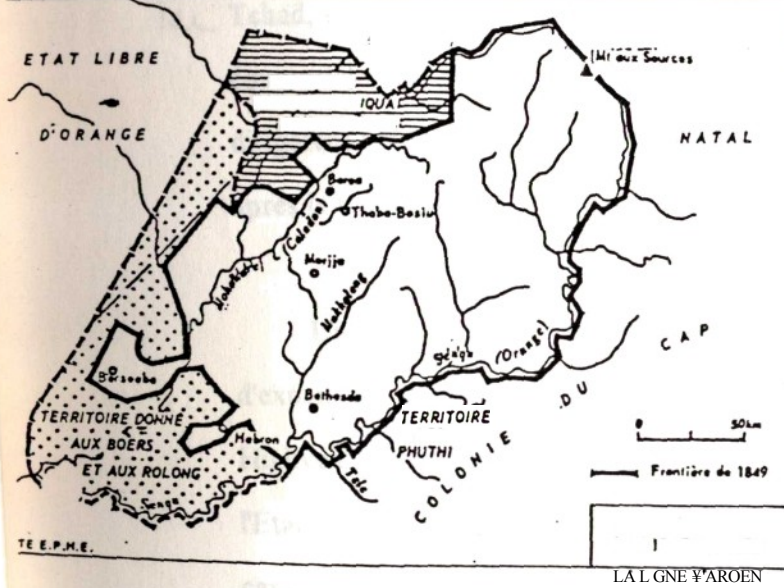


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INTROOUGTION

Like most southern African populations, those who became Basotho under the aegis of Moshoeshoe had their origins in Bantu migrations.

Several theories have described this phenomenon, based above all on the principles of glotto chronology - Guthrie's work - but also on archaeological studies - such as the hypothesis put forward by Phillipson in 1977.

There is now general agreement that the ancestors of Bantu-speaking populations migrated from a home in West Africa - perhaps near the **lao** Chad, but theories differ on this point. Migrating south, they crossed the equatorial forest equatorial forest, some of them continuing to disperse southwards, while others headed for the Great Lakes region (breaking away from the southward movement before or **after** crossing the forest, depending on interpretation).

The arrival of the Basotho ancestors in southern Limpopo was part of this southward expansion. According to archaeological research, the "Souther **Highveld**" region, which stretches over most of the present-day Transvaal and Orange Free State provinces, was occupied by populations with a mastery of ironworking techniques - characteristic of the Bantu people - around the 15th century.

Some populations settled south of the Limpopo retained more similar linguistic and cultural traits, depending on their distribution in relation to the Drakensberg (the mountain range parallel to the Indian Ocean coast). Thus, to the east of the Drakensberg were populations of languages described today as "Nguni" - often referred to in sources from the first half of the 19th century as "Nguni".

term "calmes", while to the west of the range lived populations speaking "sotho-tswana" languages - again, described in the 19th century as "béchuana".

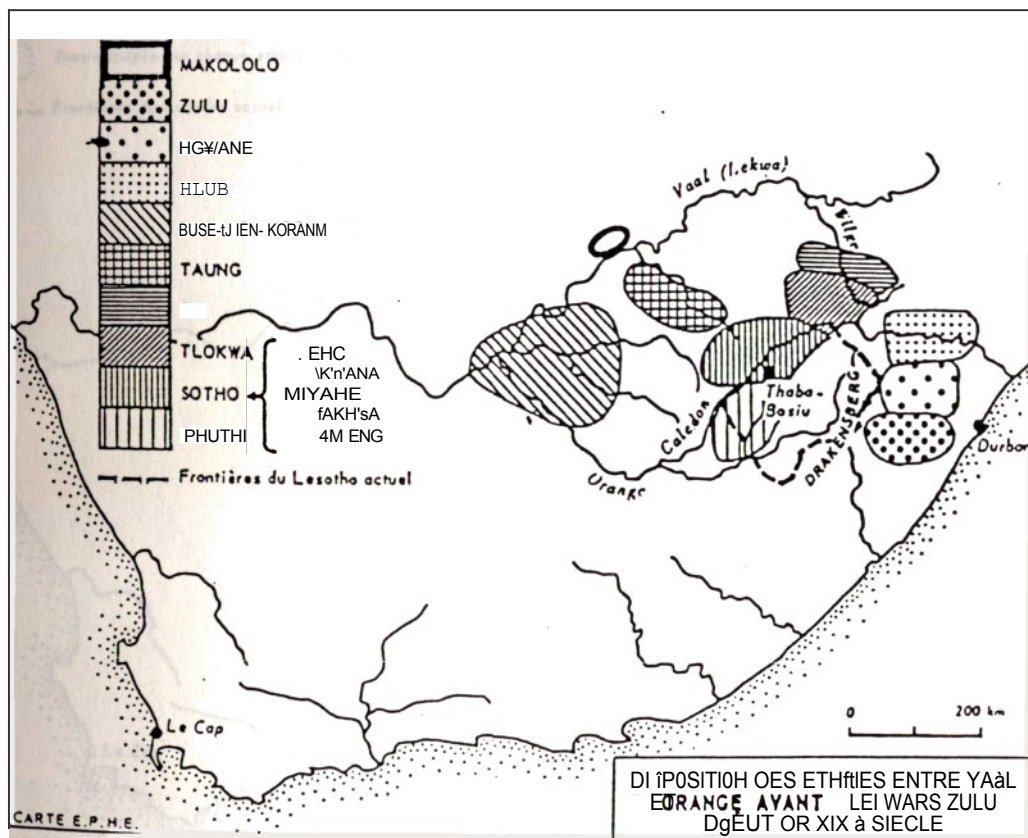
In 1821, in what is now the province of Natal, the Ngivane led by Matiwane fled westwards after being attacked by the Mthethiva and Ndwandwe, led by Dingiswayo and Zivide respectively. In their retreat, they attacked the Hlubi who, having lost their chief Mtimbulu, split into several groups, which in turn fled. One section in particular, led by Mpailgazita, crossed the Drakensberg into the Highveld, where it resumed the process of raiding the fleeing populations.

Map 3: Population distribution between the Vaal and the Orange before the Lifaqane.

Map 4: Population movements caused by the Lifaqane.

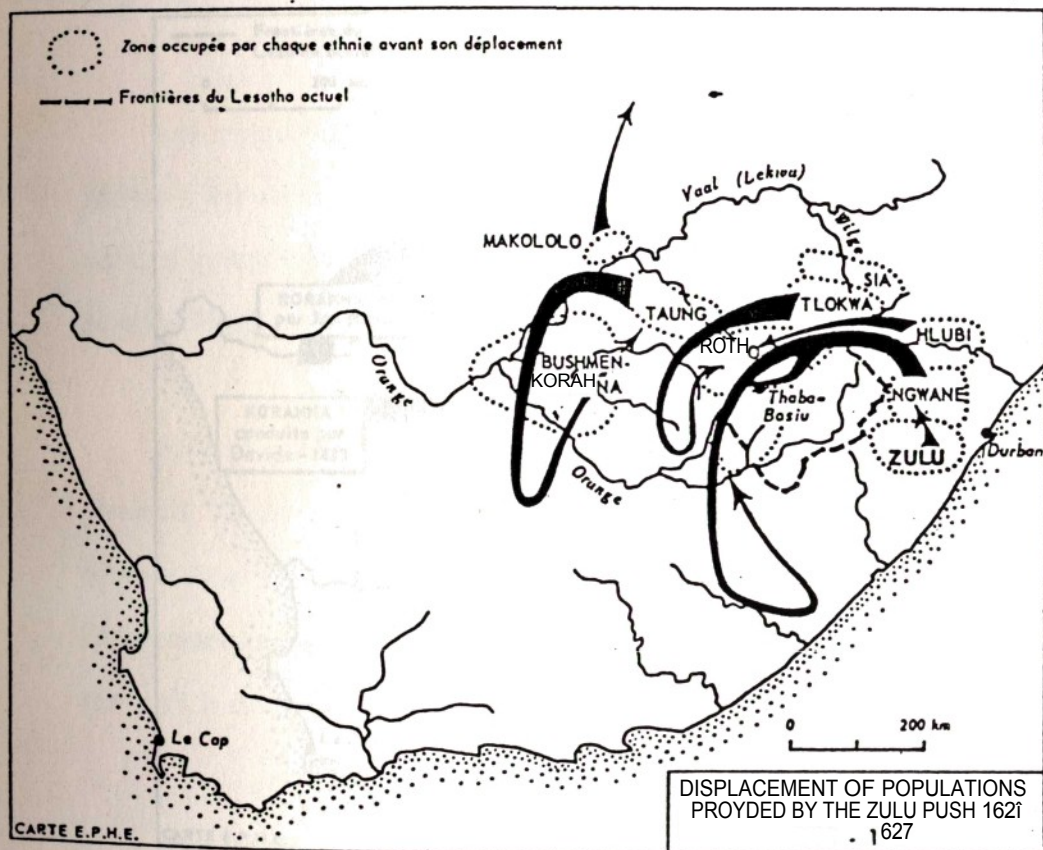
Map 5: Koranna and Griqa population movements.

(C) (arte) (3) (:) (D) Population distribution between the Vaal and Orange before the Lifaqane
 (from
 Perrot C. H.. Les sothos au XIX^e siècle, p.7).



carte 4: Mouvements de populations f...g...l...dr Spä II LifaqāFīl? (tiré de Perrot C. H.,

Les sothos au XIX^e siècle, p.14).



(c) (arte) (5) (:) Population movements Koranna and Griqua (from Perrot C. H., Les sothos au XIX^e siècle, p.16).

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OCCIOEHTAL THRUSTS:

KORAHHA AND GRIQUA - 1633.34

c-n(e) (R)he chain reaction of attacks and devastation leading to others - to which 24 pp# avons only partially alludes - leading, at least initially, to tt dislocation of pre-existing societies, is described under the term "Lifaqane".

It was against this backdrop that the Sotho people took shape: Moshoeshoe, initially a simple village chief of the Mokoteli, a minor lineage of the Kwena tribe, founded a village on Ja montagne - the Butha Buthe fortress - around 1820-1821. From there, he was able to withstand major Lifaqane **attacks**, and gradually built up a reputation that won him many followers. The survivors of many Highveld triTus came under his aegis. At this time, another migratory movement was also taking place: the "Boers" - a population of Dutch origin - were arriving in the region after leaving Le

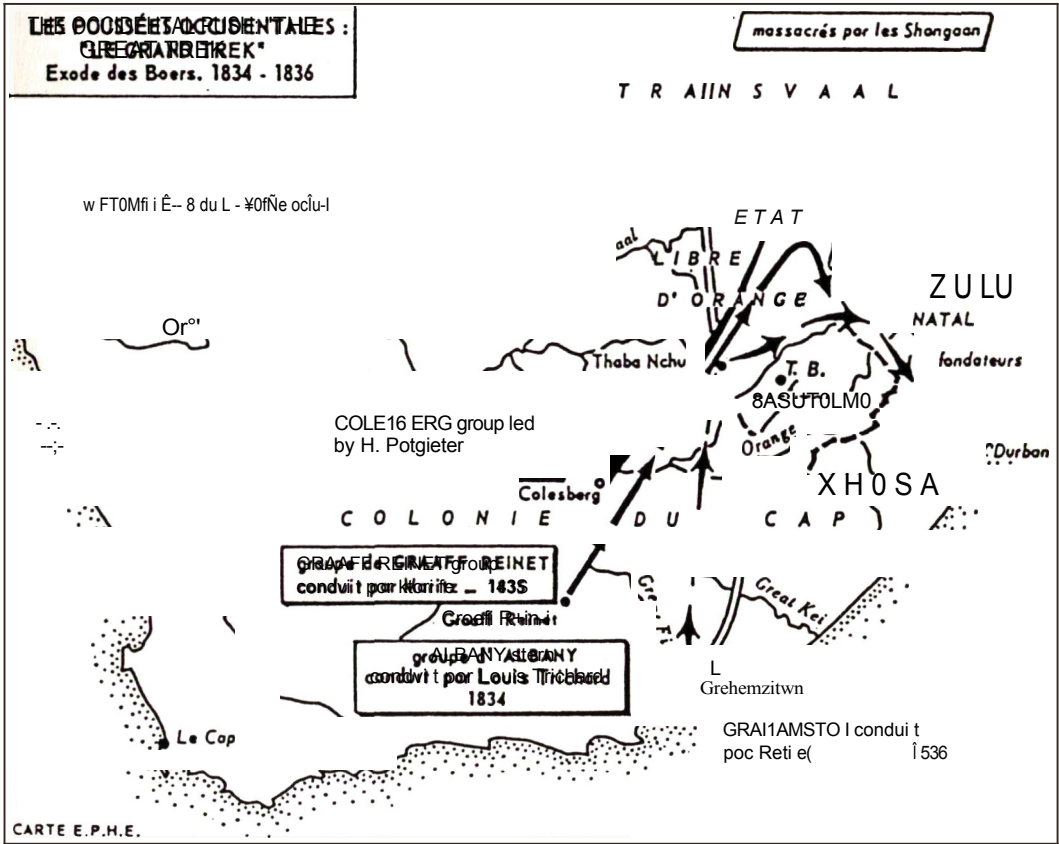
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The populations that gathered around Moshoeshoe were thus of varied origins. Nevertheless, most of them spoke closely related languages, dialects of modern Sesotho. Some groups nevertheless spoke Nguni languages, as was the case, for example, of the Nguni people.
pour les Phuthi.

Even when the Sotho kingdom formed a united whole, several "tribes" could still be distinguished - the most prominent being the Kwena, to which Moshoeshoe belonged. Nevertheless, as we shall see, the concept gradually lost importance in favor of that of a Sotho "nation", whose formation began with the advent of the supreme chieftaincy.

Map 6: Boer movements during the Great Trek.

(c) (arte)6: Boer movements during the Great Trek (from Perrot C. H., Les sothos au XIX^e siècle, p.17).



PART ONE - POWER STRUCTURES UNTIL 1884

POUVOIR : LA

de Moshoeshoé

Mais avant que

sothos vivaient à

tribal. Le rôle de

avaient d'eux resté

Nous allons

antérieure à la 18.

1. L'ORGA

a. L'orga

Les premiers

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RE 1. THE TRADITIONAL STRUCTURES OF THE R: THE CHIEFDOM

As we alluded to in the introduction, it is as if the Moslives had gathered, under the authority of a stiprerræ chief. But it is clear that the lifaqane system entails indirectly the gathering of the Moslives. The Moslives lived independently of each other. Each tribe had a tribal chief. The role of these chiefs, their duties and privileges, and the way the system remained the same when the monarchy was established.

We'll start by presenting the structures of the Moslives in the pre-Lifaqane period.

1. POLITICAL ORGANIZATION

a. Pre-Lifaqane organization

The earliest traces of a population that can be linked to the Sotho groups are to be found in the Highveld, and date back to the 15th century. At that time, these groups were organized into villages, comprising around a hundred households. A tribe **Potlako** once numbered over a thousand people.

They then migrated southwards, settling in the Caledon valley, where they found land suitable for farming and stockbreeding. They were still organized into independent chiefdoms, a pattern that continued until the early 19th century.

More precisely towards the end of the XVIII^e century, the populations settled in the area (the 'l'ivniciil cl'iii' los

(;l'iaiii) (s) (s)ituées entre la chaîne des Maloutis à l'Est, et le Vaal au Nord-Ouest. The chiefdoms (reg) (roupa) had then a small number of villages - from one to three or so - each of these villages could gather several hundred inhabitants. The socio-political organization was **much the same** as that revealed by archaeological research three centuries earlier, and this in the context of migrations. In particular, there was still no trace of the subsequent phenomenon of statism.

Cin has several explanations for this. The simplest is that, in order for political regrouping and centralization of power to take place among the Ricans of a stable group, there had to be something to trigger it, and that no event had taken place that would prove this change. But it would also seem that, in addition to the absence of a phenomenon in favor of a regrouping, certain elements stood in the way. The accession of a chief to the position was often accompanied by a phenomenon of fission.

"It's in the nature of small African states to break up under the influence of peace and prosperous circumstances. The chiefs, all polygamists, have a large number of sons. They are also herd owners, requiring their own pasture and water "*.

This general remark is true of pre-Lifaqane Sotho societies. The chiefs sent their sons and younger brothers to found villages in areas

They had to remain under the control of their father or elder brother. Often, however, these subordinates would secede to become independent chiefs. As the population grew, so did the number of chiefdoms. But for this phenomenon to take place, it was necessary to

¹ E. Cusa. Les Bassoutos, p. 266.

abundant land, so that new villages could be founded.

Here we come back to the first point: some Tswana populations, unlike Sotho groups, formed state confederations very early on (between the 10th and 12th centuries), because they lived in regions where water was scarce, and where it was therefore impossible to found independent villages anywhere.

But this was not the case with the Basotho, and it was only at the beginning of the 19th century that a chief was able to claim some authority over several previously independent chiefdoms - in this case around ten. His name was Molhomi and, like the supreme chiefs who reigned thereafter, he bore the title of "Morena e moholo" - Great Chief - but his authority was not exactly of the same nature: it was more a question of supremacy, linked to a primarily social status, than of real political power. Moreover, it manifested itself through magico-religious aspects - which was not a characteristic of Sotho chiefs, unlike Tswana chiefs, for example. Molhomi was a rainmaker and healer, and gained a reputation as a great sage. He was highly respected, even outside Sotho communities, to the point of becoming a legend.

When Moshoeshe established himself as supreme chief, he tried to legitimize his authority as such by linking himself to this past: he posed as Molhomi's heir.

b. Organization under Moshoeshe

It remains to be seen how power was defined at the time of the establishment of the supreme chieftaincy. Certainly, at least in the pre-Lifaqane period, authority was defined in terms of a given population. A chief was first and foremost the head of a tribe, whose unity was based on the fact that its members recognized each other.

commie descendants of a common ancestor, which was their own. Ice Basotlio, for example, was one of the main tribes (including the BaLvena, to which Moslioelie belonged). Chactine was in fact named **a f t e r** an animal, totem, which syijibolized its common ancestry.

"The bakuena call the crocodile their father, they sing it in their fetes, they swear by Int and make in the ears of their cattle, to recognize them, an incision that resserrible to the tail of the aiiimal ampliibie. The head of the family holding the first rank in Īa tnbii receives the title of : *Graiicl hotuitie dir rrocodi/e* ².

What may be considered the most traditional link between tin chief and his followers was therefore uii kinship. On the other hand, even before the lifaqane, the Basotho power base also developed territorial aspects - as was later confirmed. This is evidenced by the fact that influential personnel - chief's advisors in particular - often had no personal relationship with the chiefs.

2. ACCESSION TO POWER

It seems that aspects of chieftaincy changed little between the period before the lifaqane and when Moslioneslloe became supreme chief.

L'Accession to the position of chief was generally by *liérédaire* succession. NonBaleinent, it was the eldest son of the first wife, in the case of the third, and so on. Main cette règle generate pouvait admettre des exceptions; bieii que l'liérédit é était le cntère le plus déteiaiiiiiait darts la succession, ce ii était pas le seiil et oii tetra it é3aleiilent conl}ite des merited }iersonnels des prétendants, '1° ique cela eta it rareinent

"E Casalis, Les Bassoutos. p 264.

decisive. This is how Moslioeshoe's father gained access to the throne, while hereditary considerations gave priority to his uncle.

"Legitimacy more often than not belongs to beings incapable, not only of governing the state, but also of governing themselves. Thus, the Bassoutos had a Libé, who was asked to do nothing more than obey. They left him there, calling *him Rnlmtsisi, father of the flies*, and Mokachane his younger brother took his place.³

In addition, the heir's younger brothers often had the ambition of eclipsing their eldest. They sometimes succeeded, not because the younger successor was not capable of fulfilling his role, but because they had become rich through raids, which enabled them to attract followers. In general, however, it was the eldest son who became chieftain, while the youngest sons were placed in charge of villages - as were the uncles of the successor.

Finally, regency was a special case. If the legitimate successor was too young to assume the office of ruler, one of his uncles would assume the regency - rather than, for example, an older half-brother from another lineage. It often happened that such a regent was slow to give up his position to his nephew, when the latter became an adult.

Finally, it's worth pointing out that being a chief wasn't simply a title; it was a function, and that in order to be able to fulfil it, the person who held it had to be rich - owning lots of livestock. In general, being a member of the lineage of their fathers gave them access to this wealth - unless a few brothers had acquired even more cattle.

³ Gasalis. *Les Bassoutos*. p. 271

The main difference between the pre-Lifaqane and post-Lifaqane periods was of course the superimposition of the authority of the supreme chief - morena e moholo - over that of the chiefs - marena.

But there were also other degrees of authority. Even before the arrival of the monarchy, as we have seen, chiefdoms were often made up of several villages. These were headed by a village chief, "*Ramotse*", literally "pèi'e de village". In addition, at least under Moshoeshoe, a fourth category of authority could be inserted between the ramotse and a morena, who for this reason was called *tioreicuici*, diminutive of morena - thus minor chief, sub-chief.

Under Moshoeshoe, political power was structured in a pyramidal manner: many i'arnotse were in charge of the many villages that formed the basic units of society; they were subordinate to fewer morenana, who in turn were subordinate to an even smaller number of morena. The latter bore allegiance to Moslioeshoe. Of course, this pyramidal structure was not commonplace before the lifaqane, when populations were organized into autonomous tribes.

In both cases, however, the Sotho socio-political organization was based on chiefs, defined by their functions. It is therefore necessary to look in more detail at these functions, many of which are found during the protectorate period.

3. TRADITIONAL FUNCTIONS OF CHIEFS

The role of the chiefs was characterized by a set of duties and privileges that were indissociably linked in fine iiièMe foictioli. They possessed all at lo t'iis ce tlie l'on Jietit distiii quer coiiiine pouvoir's exéciit if, judiciaire, et même au sei s Jb 'S*.

But these powers and related functions were not in fact perceived as distinct roles: they were all part of the function of being a leader.

a. Control of resources

Executive power was ax'ant reflected in the administration of the society's wealth. On the one hand, the chief was responsible for administering the land. fi did not exist riel similar to land titles. Land belonged to society as a whole. As the head of the society, the chiefs were considered the guardians of the soil, and were responsible for allocating land.

This allocation function followed the pyramidal hierarchy of the dii'ers degrees of aiitoi'ite. Thus, Moshoeshoe was the trustee of the soil of all the territory occupied by the Basotlio, but of course he did not personally allocate land to individual families. His authority in this respect was delegated to the chiefs, who were likewise the trustees of the land on which their subjects lived. In the same way, they delegated their authority to the minor chiefs, and the latter to the village chiefs. Finally, these chiefs allocated the tenures to the families.

The most important chiefs therefore directly distributed very little of the ten'e' of which they were the theoretical custodians: simply, each of them had a village of his own, and could allocate his land to whomever he wished. For the i est c. his authority was more symbolic than effective.

As far as ai'ables land was concerned, every adult male. married. der had in i ccci oir nue parcel of the chief on whom he depended. It was the chief's duty to allocate them, and he could not refuse to do so' oil i cji l'ciitli'c ties

land only if the subject had pledged allegiance to another chief, or had more land than he needed. At least, that was all that society recognized as a chief's privilege. In reality, however, the chief might take over the land for his own personal profit when it was particularly productive.

"...there is more than one Naboth among them who silently regrets such and such a piece of land that had to be ceded to the chief because it was remarkably productive. These expropriations usually take the form of a polite request, but one that few people would dare resist. ⁴

Chiefs also tended to award the best land to their loyal followers. However, according to Casalis, these abuses were not frequent enough to lead to strong i'essentiineit on the part of the population towards the chiefs in general - the particular victims, on the other hand, obviously regretted the good and were less indulgent towards the chief responsible.

On the other hand, chiefs were responsible for preserving areas that their subjects were to use for winter grazing. These lands were called *riiaboefln*. They were therefore communal lands. The chiefs' main function in this respect was to ensure that the inaboella were not used up too soon. This was an important role, since the survival of the livestock depended on it, and they played a fundamental role in numerous economic and social activities.

Livestock provided dairy products and occasionally meat, when the decision was made to slaughter a cow - for example. But liourritiire needs were stirtotit ;s;itisf;iits pai l'agricultiire. Livestock was the main source of stock for the farmers. A pei'soiiiiie iac lie was someone who owned

^{4E}. Casalis, *Les Bassoutos*, p. O

large herds. Cattle also played an important role in marriage. A man wishing to marry had to pay his future wife's family the "*bohali*", and only in cattle. Fines were also payable in cattle. The denarius was thus the vehicle for economic transactions. Because of its economic and social importance, it also acquired symbolic importance: it was a symbol of wealth.

and power. The fact that chiefs were addressed as "*khomotseo*". The fact that chiefs were addressed as "*khomotseo*", or "these beasts", although explained by Hamnet as primarily due to the fact that chiefs owned a lot of cattle, can also be interpreted as due to the fact that cattle had become a symbol of power.

Cattle were therefore a central element in Sotho society, and controlling access to winter pastures was therefore an essential function.

The chiefs also had exclusive rights to the reeds, wood and thatch used as building materials. Whoever needed it had to ask the chief's permission to harvest it, and bring him a portion of what had been cut. This was the chief's privilege, and presented no advantage for the population. It simply enabled the chief to obtain the building materials he needed, without imposing a special chore. 11 It seems that this privilege was important above all for its own sake: despite its minor economic importance, it was highly prized by the chiefs. It underlined the status of their subjects, constituting a mark of their allegiance to their ruler.

These various functions linked to the administration disclose a conception of the chief as organizer of the company, controlling who had access to which resource and its use; the function of chief appears to be regulating the distribution of resources, or an intensive use of resources, which could have put some of his subjects in difficulty, or even in peril.

But there are a few caveats to this pattern. Chiefs were not outside the society they regulated, but were an integral part of it. On the one hand, they too needed the resources available to that society for their personal use - and that of their relatives, so they were of course just as inclined to monopolize unduly the resources they were supposed to manage as their subjects were, as we have already alluded to.

On the other hand, many of the chiefs' functions depended directly on their personal resources: this was already perceptible with regard to land administration, in that the chiefs were considered to be the custodians of the land, which gave them the right to distribute it. This notion of "custodian" can be likened to the notion of ownership, taken in a literal sense. The term itself is, of course, quite specific. A chief was not the owner, in the sense in which we understand it, of the land on which his people lived: in practice, he could not negotiate its use in exchange for any other property. But as we've seen, some chiefs were eager to take over particularly fertile land, so that the produce could be returned to them. The chiefs' hold on the land was therefore very partial to the idea of *propriété* - the right to enjoy and use a given property and the possibility of exchanging this right for an equivalent right to another property. We can therefore simply say that access to the land passed imperatively through the chiefs, and that the role of these chiefs appeared to be that of a "regulator".

On the other hand, when it came to questions of resources, chiefs always said "saait

This was in itself "est to ti ax ei's propriétés of their sicles.

On the one hand, they had to go to the hills to get the (IX) J-I soil in the IC JOS0111, [11]

example of widows. L'orsque les récoltes n'ont pu être livrées, ou si pour toute

In times of famine, they were responsible for ensuring the subsistence of the entire community. They were also responsible for supporting the people who assisted them, as well as the warriors who fought alongside them in times of war. They were also responsible for feeding travelers passing through the community.

"When you enter a town where you have no acquaintances, you go and sit in the town square. It's very rare to be left without help. The chief, or one of the local leaders, will soon come to ask where you've come from, and what the news is. Meanwhile, refreshments, bread, milk, a few bundles of sweet reed and mai's arrive, depending on the season. Mokachane, father of the sovereign chief of the Bassoutos, made it a duty for his sons to stand in the public square in winter and always keep a good fire burning for travelers. It is by listening to the discourse of these fires," he said, "that you will learn to know the customs of foreign nations"⁵.

Finally, the chiefs also acted as providers for the community through the mafisa system, i.e. the loan of livestock.

The chiefs gave cattle to the poorest men, who by law had "usufruct" of them: they could use their milk and dung (known as fuel); they could use the animals as beasts of burden. But they could not trade them for other goods, nor kill them to eat their meat. Only exceptionally were they allowed to own one of the beasts. Law's still it was old.

Unlike the relationship between this system and wage-type relations would consist in the chiefs employing the laborers in need to guard their beasts, and pay them a fee for the protection of their property.

E Casalis, Les Bassoutos, p. 261

However, the comparison stops at a certain point: only in exceptional circumstances could cattle loaned in this way be taken back from their guardians. This is one of the characteristics of the system of access to land. We can therefore consider that mafisa was more of a usufruct gift.

It should also be noted that in the case of land, as in that of livestock, the allocation or loan was only guaranteed during the recipient's lifetime, and the latter's sons would not systematically inherit it.

On the other hand, it's worth pointing out an essential difference between land allocation and mafisa: being allocated land by a chief was the only citizen to have access to the soil; on the other hand, people often owned their own livestock, completely outside the mafisa system.

Finally, it's worth emphasizing the importance of hunting, since it provided meat but also from a symbolic point of view.

In the pre-colonial period, people sometimes went on collective hunts. hunts.

These were organized by the chiefs, who reinforced the lionesses. The hunter killed an animal, he kept the largest part of the animal. However, he had to offer a quarter of the animal to the chief. Given the number of animals that had to be slaughtered during such hunts, the quantity of meat that the chiefs could thus receive was appreciable. It was all the more important that the chiefs could thus receive it. From an economic point of view, hunting them provided a lot of meat.

access to otherwise scarce food, and enabled the chief to gather supplies for his court - which was also supplied by gifts of agricultural produce.

But in addition to the share they received from each animal killed, the chiefs were 8tlssi offered the whole of the first slaughtered animal, as a tribute. Their sons also offered them not a quarter of the animals, but their heads, as a symbol of their rank. The hunts were thus an opportunity to symbolically assert the authority of the chiefs. This is all the more interesting given the quasi-magical powers attributed to them.

b. The need for material wealth

Through these functions of the chiefs, we can clearly see that they manifested themselves atiLsi as providers for the community, and consequently, as i'edistributeiirs of wealth.

In order to fulfill this role, they needed more than the theoretical recognition of being custodians of a given resource. To be able to provide food or livestock, they had to own it. A chief therefore had to be rich.

"What leaders have most to fear is the loss of their wealth. This misfortune' entails a de facto decline just as fatal as that which might result from a revolt. They are the gi'ands for 'oyeui's of the community. 11 From the products of their herds, they must feed the pans i es, pi'octiate weapons to the warriors, iioui'rissent the ti orifice in caiii|iagne. prof oqiiient and assure the alliances that it is important to conti'act with neighboring nations. The idea of l'iin}ièit has not yet d a w n e d on them. All their skill lies in ion<- âoii c a inaiiiteii ir and /a ati*iiiieitei'. if possible. the i'essoirces they already possess ⁶

Although this certainly demanded *liabileté*, the chiefs were helped by a number of factors. On the one hand, the most important form of wealth, livestock, had the important characteristic of being able to grow 'as is' and at lower cost. What a chief provided to the community could, under favorable conditions, be obtained simply by the natural reproduction of the herds inherited by the incumbent chief from his father and predecessor.

But a chief could also increase his wealth in a more active way: during victorious wars or raids on neighboring populations, most of the cattle he captured were rightfully his. In addition, chiefs kept the fines they imposed on their subjects.

This last point could lead to a very particular kind of abuse: if we cite Casalis, some chiefs tended to "tolerate a certain crime, until it was committed by an individual whose wealth could pay for all the guilty"⁷.

Acting in this way presented a double advantage for these chiefs. On the one hand, they were certainly richer than if they had immediately cracked down on a less fortunate subject, and on the other, the individuals thus dispossessed no longer competed with them on the basis of their wealth. Indeed, the chiefs saw a wealthy subject as a potential rival, and some went so far as to accuse them of witchcraft - then recognized as a crime - to dispossess them.

In the pre-colonial period, the reason why the power of a chief was strongly linked to his material wealth was that this power was measured above all by the number of people who adhered to the chief. People could in fact decide to "turn their backs" on their chiefs - i.e. no longer be his subjects - to give allegiance to another. **Plus** a chief was

⁷ . Casalis. *The Bassoutos*, p. 272

wealthy, the more he was able to fulfill some of his duties to his subjects, and the more adherents he attracted.

It's important to stress here that the relationship between wealth and power was primarily functional, rather than one of prestige: being wealthy enabled chiefs to assume functions that were legitimately recognized as theirs, rather than bringing them prestige that would have legitimized their status as chiefs.

A large proportion of chiefs' functions were therefore economic in nature, involving the administration of society's resources, a field in which chiefs mainly performed a *ti'avail* of distribution and redistribution.

c. Military function

On the other hand, as we have already alluded to, chiefs had a special role in times of war. in times of war.

The chief was the one who *coiniiandated* the warriors. The warriors were organized into *reginients* (*mabotho*), according to their age - men who had been initiated together were grouped in the same *i'egiinent*. Conflicts were very often over the possession of livestock, and took the form of *i'aids*. A chief would re-initiate his warriors and attempt to *ernpai'ei'* cattle from a neighboring *cliefferie*. The chief of the *coiiinunativity* *dii i'aid* victim would also have to *i'eini'* the *lioiiii40S* }3Otlr *defeiidi'e* the *coiniiniinaity* and its property.

A *liorniie* called *pai' sou chef* .a se inobiliser *coininettait* un *rlélit* s'y i'efiis. Considei'e comuns an act of rebellion. un UJ retire }ioiivait *valoi'* d'été'e "iii'iii'e" p.u' le *cliefi* c'est .i tlii'e de se *voii'* com *fisqtiei'* se"" *bieii* S

d. Judicial function

The chiefs were also the holders of judicial power: each of them had the right to rule on any dispute brought before him, and to condemn any individual he deemed guilty of an offence, even a ramotse. But there were limits to the jurisdiction of the chiefs, depending on their hierarchical position: the more serious the case, the more powerful the chief who could judge it had to be.

On the other hand, the chiefs never played the role of policemen. They judged the cases presented to them, but did not try to detect possible offences. Likewise, a morena would never take on a case that was too serious to be judged by his subordinate, morenana or ramotse. It was up to the latter to take the matter up with the morena. Conflicting parties could also appeal to a sniperian authority if they were dissatisfied with a judgment, no matter how trivial the case.

"The smallest subject has the right to appeal to the judgment of the sitzei'ain chief, even for cases of little importance. As a result, African princes are - qéiléralement obsessed by an infinite number of small lawsuits, which they deal with with exeinplaii'e patience, even though no profit is to be made "⁸.

In general, the procedure by which cases were brought before the courts was fairly straightforward. The party wishing to obtain justice, or at least an official decision concerning a dispute, summoned the other party to appear before the chief's court. If the second party failed to appear, the plaintiff would then apply to the chief, who would summon the advei'se party to appear in court - and the plaintiff would have to inform him of this.

⁸E.Casalis, *Les Bassoutos*, p. 285

in the event of a second refusal, the chief could send a delegate to summon the person to appear; but this was a rare occurrence, as it was disloyal and liable to a fine. An obsessed person who refused to answer all these questions would have been guilty of insubordination, and could have been executed.

In addition, the complainant could try to speed up the process by seizing property belonging to his adversary when the latter was having difficulty in corripating. The chief had to be informed, and could himself take custody of the confiscated goods. But this practice carried the risk of reprisals, and considerably increased the animosity between the parties.

When the parties in dispute were brought before the chief, the trial took place in the lekhotla, the place where the men gathered for public affai'es. The hearing therefore took place in public, and any men who wished could take part, in particular to ask questions of the litigants. The litigants pleaded their cases themselves, without the help of a tiei'ce per son. It was above all up to the chief to determine the truth, and to estimate the nature and gravity of the offence. However, the fact that all the men c o u l d take part in the debates reduced the risk of arbitrary decisions. In addition, it gave the population an opportunity to participate in the administration of justice, and to do so in an active way, since they iiterven in the debates aimed at determining the veracity of the allegatiolis, pi'eiiièrè ètape dti pi'ocessiÈ. In this way, it made the denture more democratic.

On the other hand, the liii-inène verdict and the condaiiinftion etaieit ties décisions att xti - --

}iopulation ue participait }ias. Le }ilaign;iiit, aii conti"iii'e. iiiiI'ttenç'iit loiirdciiient le |oids tte l'/ condamnation, puisque cette deiaiiéi'e cori'espoiidaît eli q-énei'al 'a ce tlii'il soili.iit.i it i ccc 0' as reparation. de chef poi"ait néanmoins ne pas s ltisfaire ses préctiitioii lot stp'o cellCs-ci étaient tro{i élevés. Cctte coutume 'ex}iliilile |ii'obiil'leiliciit |i'i i' le fa it 'l * '

justice's dual role of punishing the guilty and, if possible, compensating the victims, the emphasis was on the latter.

This is in line with Casalis' analysis of the concept of crime. According to him

"The idea of property, which lies at the root of all offenses, falls, in the eyes of these peoples, into the category of theft. The greatest crime of all, murder, is reprobated less as an attack on public safety than as a violation of the sacred rights of a father, who has been deprived of the services of his son, of a widow, of orphans, who will find themselves 'without support'".

Casalis sees in this a "preponderance of individual right", and speaks of "the idea of the wrong done to the individual, prevailing over that of the damage done to morality"⁹. On the basis of the examples he gives - murder, as we have just cited, but also adultery, seen as "the illegitimate appropriation of the exclusive rights"¹¹ of the husband - it would seem that the offence was indeed perceived as a violation of the individual's rights. the offence was perceived as an attack on the individual, rather than as the fact of having committed an act recognized as reprehensible. But it is clear that, in any case, the definition of a reprehensible act is generally based on the notion of harm done to the individual.

What's more interesting here, still based on Casalis' examples, is what he calls "the idea of property"¹², i.e. the fact of considering the victim to be those who lose a member of their family, as a support.

economic. According to Casalis, in the case of murder, the main victim was the family destroyed. and not the individual detainee. Nonetheless, it seems likely that Casalis believed his intention is to show that the victims of these offenses are the families, who would be devastated.

⁹E Casalis, *Les Bassoutos*, p. 281-282
¹⁰E Casalis, *Les Bassoutos*, p. 282

¹¹E Casalis, *Les Bassoutos*, p. 282

¹²E Casalis, *Les Bassoutos*, p. 281

compensation to the family of the deceased. But since the latter were the only victims who could still obtain compensation, this practice perhaps did not imply such obvious notions of "property" and "theft".

In any case, these examples make the notion of harm done to the *indii idu* ambiguous. If by this we mean giving precedence to the point of view of the victims rather than that of the guilty party - for having committed a reprehensible act, this was certainly the case. On the other hand, the fact that, in the case of a murder, the deceased's family was considered to be the victim in its own right - which they were, since they were entitled to reparations - implied a much broader notion than that of "wrong done to the *indi'idu*".

This fact can be interpreted in two ways, which are not necessarily mutually exclusive. On the one hand, it can be said that the notion of victim - in the official sense of the term - applied to anyone who had to suffer from a crime, even if the crime had not been committed against them. On the other hand, it can be interpreted as the manifestation of the fact that the *fainille* était considéré comme prépondérante par rapport à l'individu en tant qu'unité fondamentale de la société.

This latter interpretation would run counter to Casalis' conception. However, it seems plausible in the context of a society whose economy était à tout basé sur l'agriculture, and where consequently the survival of the communauté même was relatively précaire. Focusing on the survival of a troop, in this case the *fainille*, it is not that our individuals should have appeared as a necessity - if the expression is in itself 'not solid'. Each member était individuellement concerné de cette façon. This piece of solid reality would account for what Casalis describes comme la perception de tout délit sous l'angle du "vol"

It is also important to note that the estimation of the seriousness of the crime depended in part on the status of the victim, and in particular on his or her social position, gender and age. This would also seem to indicate a tendency to perceive the crime from the victim's point of view.

However, punishments were not limited to compensation: they also took on a more specifically positive aspect. On the one hand, the guilty party often had to pay a fine, which was retained by the chief. On the other hand, quite different sentences could also be handed down. Individuals convicted of rebellion, witchcraft or repeated theft of livestock were liable to the death penalty. It is difficult to estimate how often this was resorted to. Moslioeshoe, for its part, did so only exceptionally.

What's more, chiefs could seize - and appropriate - all the property of guilty parties - which of course could lead to abuse.

Chiefs also had a certain legislative power. Of course, Sotho social life was governed by habits and customs (or *meLlloa*) whose origins had been forgotten, and which therefore could not be traced back to the decision of an authority. However, chiefs did have the power to issue new "laws". ¹¹ These were generally rules and regulations.

and therefore temporary in nature.

"Les naturels reconnaissent à leurs souverains le droit de faire des règlements et de publier des ordonnances suivant les nécessités des temps. It is to these provisions s. most often temporary, that they apply the notion of "Molaos". our law or constitution³

¹³E.Casalis, *Les Bassoutos*, p. 286

D'yeut s'iy)'oser that ceilains rle these mnlaob youx'aient ncqueir uit status de coutunze
(ineklia). for exeinple if the conjoictur'e qui had given birth to them was prolonged.

CHAPTER 2. TRADITIONAL SAFEGUARDS AGAINST AUTOCRATIC TENDENCIES

1. LIMITS TO THE POWER OF CHIEFS

Chiefs were therefore the main holders of power, and the bulk of political and social life rested on them. However, their power was not absolute. Several elements helped to keep it in check.

a. Assistants

On the one hand, chiefs shared their tasks with various categories of assistants, and in particular with advisors (matona) whose opinion could heavily influence their decisions. The more powerful the chief, the more numerous his advisors. Two of them occupied a privileged position; they could be called upon to replace the chief when he was unable to carry out his duties. Probably for this reason, they were called the "masters of the x'ille" (moneniotse), or the arms, ears and eyes of the chief. According to Casalis, one of them was "the first warrior of the tribe"¹⁴ and fulfilled the function of commander in chief. Apart from this character, it seems that the moneniotse - and the matona in general - were the most subservient members of the tribe.

of the chief's family: his eldest sons and his maternal uncles (maternal uncles had a special relationship with their nephews and were responsible for looking after them, as is the case in all systems of matrilineal descent). However, the qualities of the people who distinguished them by their personal qualities to orient also include such functions.

¹⁴E. Casalis, *Les Bassoutos*, p 278

Apart from the councillors, other men assisted the chiefs, thus participating directly in political life. They were known as "banna ba khotla", i.e. "men of the court". They took part in deliberations during trials.

It's also worth noting the importance of the maqosa messengers, although their influence on the decisions of the chiefs is not nearly as obvious. They were responsible for carrying messages from one chief to another. They traveled on foot, and generally remained assigned to the same region, to avoid the confusion that could have resulted from the presence of several messengers between the same courts in the absence of written reports. According to Casalis, they would certainly have been capable of being entrusted with greater responsibilities.

"The observations they make in their travels give them great advantages over the rest of their fellow citizens, and sometimes even over the chiefs who employ them¹.

Nevertheless, it was other qualities that they were called upon to use

"These messengers are generally endowed with a prodigious memory, and can be expected to transmit verbatim the oral dispatches they are entrusted with ¹."

Occasionally, they might even negotiate on behalf of the chief, but this was only exceptional.

Finally, chiefs also listened to the advice of soothsayers and rainmakers, who were nevertheless not considered matona: they participated in political life as holders of magico-religious powers.

^{15E} Casalis, *Les Bassoutos*, p. 279

^{16d} casalis, *Les Bassoutos*, p. 279

b. The institution of Pitso

Apart from the people who surrounded the chiefs, a second element tended to control the chiefs' power through the influence it could have on their decisions.¹¹ These were the "pitsos", which enabled a much larger part of the population to express its opinion. Pitsos were general assemblies convened by chiefs to give them an idea of public opinion on specific issues.

When a chief called a pitso, all men under his jurisdiction could attend. Women, on the other hand, were not. They had no political rights and, more generally, had social status only through a man - either their father, or their husband when they married and went to live in his village.

On the other hand, during a pitso, all the men could express themselves freely.

"It is agreed that on such occasions the chiefs must agree to say the harshest without raising an eyebrow i 7q

The assembly certainly had no recognized authority as such, in that the final decision did not belong to it. It was only convened in an advisory capacity. In fact, the general opinion that emerged influenced the chief's decision, to such an extent that he could hardly go against his i ofont e loi'squ'elle nette et terme.

"They (these assemblies) ferir learn de qiie1 côté pelicie l'opiiiiion pitblique. et c'est a power with which they know ti ès bieii that it finishes coiii|itei- 18

¹⁷E Casalis, *Les Bassoutos*, p. 293

¹⁸Et Casalis. *The BassoQos*, p. 295

Moreover, when it came to taking an important measure concerning the community, calling a pitso was required by custom.

If chiefs had to fear strong opposition at a pitso, they were more likely to enlist the support of influential and respected men before the debates began. While this indicates that chiefs were able to "maneuver" public opinion, it also shows that they had to reckon with it.

Pitsos were fairly simple affairs. They were held in the open air, and could bring together several thousand men. They came armed, as pitsos had evolved from councils of war. Perhaps for the same reason, debates were preceded by song and sometimes even dance. When the signal was given to begin deliberations, the men formed a circle around the chief and his matona. The problem for which the crowd had been gathered was presented to him, as neutrally as possible. After that, everyone could give their opinion. Debates centered on support for or opposition to the chief:

"There, as elsewhere, there is always a party that supports power and an anti'e that attacks it.

that attacks it "19

The leader tried to curry favor by rewarding those who defended his position, by applauding them, or even by inviting them to sit next to him. The crowd, in turn, would show its approval of a speaker's words' }iai' siflelnents at the end of his discoiii's. The consultative nature of the pitso meant that the chief J'a rle en deiaiei'. a}irès avoir' entendu les diverses oj3inion s. de chef exposait alors sa décisioiL et rétiit ait les 'ii'gtiInents conti'aii'es. This decision was final and could not be appealed. When the liioiiiiies were satisfied, they approved of the chief's speech - a decision that could not be appealed.

¹ E Casalis, Les Bassoutos, p 293

exclaimed "E!" (yes!), then stood up and shouted "poula!
that they were now concerned only with their crops.

Those who were still opposed to the official decision could only bow to it once it had been made clear by the chief. But, as mentioned above, it seems that they were generally only a minority, since the chiefs had to take the pitso's opinion into account in their final decision.

What's more, in addition to the influence they could have on the leaders' actual decision-making, pitsos had other advantages in themselves. They enabled men to feel more directly concerned by political life, and to participate in it, if only sometimes. They not only invited men to express opinions they already had, but also to form their own opinions on issues on which they had none. The pitsos thus helped develop political awareness among the population.

What's more, they also had a socialisateui' aspect. and it's possible that (i) 'they fostered social cohesion - a problem we'll come back to more lai'-peniently in the second chapter. Indeed, as we mentioned earlier, a pitso for ait i éiiiiir thousands of liioiines, whereas in everyday life, people would never be in the presence of such a large number of people. What's more, people only exceptionally left their villages: they were therefore only rarely in contact with inerribi'es from other villages and regions - as evidenced by the welcome the chiefs made to travelers bearing news, and the pu -ilép-iée situation of the Inessauei's. Pit vos. ctix. were the occasion for such encounters.

It is, of course, difficult to estimate the extent to which they for 'rient doiilici licit fi de x èi itiibls personal contacts between iividuals hitherto strangers to each other aitti es. M'iis le siii|ilc t.iit d'être en contact avec des gens originaires d'autres i'cgiois ctait certii iicliiciit nu êlciiciit

important in raising awareness of their reality. Without such contacts, it was certainly very difficult to develop an awareness of belonging to a group as vast as the Basotho, and to identify with this group: one's perception of other regions was certainly rather abstract. The simple fact that pitsos enabled men who didn't know each other to come into direct contact with each other was probably a factor in socializing and fostering social cohesion. The fact that so many men attended was all the more likely to foster the development of a sense of belonging to a larger group. Opinions may have differed from time to time, but the very purpose of the gathering was to promote greater cohesion and solidarity, since it was held to discuss issues that affected all participants.

The pitsos were therefore intended to foster a sense of common interest among the men of the different gi'oupes. They were also intended to help individuals identify with the Sotho nation as a whole, and were therefore undoubtedly important elements of national cohesion.

c. The decision-making process

To summarize the way in which the chiefs' powers were limited, it is useful to pi'ésentei' the process followed in making a decision.

There were several stages in the process of making an important political decision. We prisi'oii\$' pour exemple le pi'ocess "iis s "iivi par Mosloeslloe liii même.

1.e chef s "iij i'erræ coiiiiieiij a it par se concerter in ec ses matona les }iltis Je roches. Loi'stjje le pi oblène coliceiaiat les i clatioiis' avec les einoJieeiis. il Amenait aussi l'avis d'iiii iiiissionnaii'e. After thus approaching the pi'oblèiie, he would discuss with the enseiible his

matona, whom he called together for this purpose. ō were therefore only people belonging to his court.

court.

Only after conferring with them did he seek the opinion of outsiders, in this case territorial chiefs under his authority. 11 summoned them and their matona. The council thus formed was known as the "lekhotla la mahosana", which translates as "council of princes". Each of the chiefs consulted his own matona, then gave his opinion.

Only after these various stages was iin pitso convened. 11 was not necessarily of an advisory nature, giving rise to debate: if Moshoeshoe ax'd already decided definitively on the course of action to be taken, he would simply announce his decision. Sometimes, however, debates actually took place, and the pitso reverted to its consultative nature. Nevertheless, at pitsos convened by Moshoeshoe, many important chiefs were present: more often than not, they were able to monopolize the debate, and thus impose their opinion. It was undoubtedly in such cases that rallying influential chiefs to one's opinion could enable the supreme chief to impose it virtually without fail, while still allowing the debate to take place.

Presumably, in the case of lesser pitsos, with fewer influential authorities, the population had a better chance of imposing its point of view. However, even at this level, there were pi'obableinent people with local influence to monopolize the debate. Despite these admittedly significant restrictions, the pit so enabled the chiefs to perceive the opinion of the po}iilation, and to ensure greater -pi angle legitimacy to their decisions.

d. Chiefs' conception of their task

We have just seen two elements that limited the possibility of chiefs developing despotic tendencies, despite the fact that they were the main holders of power: their assistants and the institution of the pitso.

Nevertheless, a third element must be mentioned, namely the *tiieiNe* conception they had of their task. This was not strictly true of all the chiefs, but on the whole, they seem to have had a certain deontological conscience that limited the despotic aspect of their political hegemony.

This awareness had a dual origin. On the one hand, it stemmed from *Sotlio* culture in general: all the *indic idiis* *-i'andissaiit* in Sotho society, including the chiefs, adopted the notion of what a chief could not afford to do. We're actually talking about customs here. For example, summoning a pitso before making an important decision could be considered a moral duty. Indeed, some chiefs were able to dispense with it when the British government urged them to make decisions.

Similarly, in the *doiriaiiie jtidiciaii'e*, we v'ti that *ilnportaiit* chiefs had to wait for their *subalteiaies* to send them the *affa ii'es* that didn't fall within their jurisdiction. Once again, this was a course of action they were free not to follow. Under pressure from the Europeans, certain chiefs sometimes decided to judge cases before the "vassal" chief sent them to them.

Il aurait donc été possible à des chefs de gouverner de façon plus despotique qu'ils ne
They would do so in reality, even if they had to pay for it (in the latter case, on the part of the
vassal chiefs). Mais ceci était peut-être moins rai potir le pitso. D'une *iiiiinie'e*

In general, customs were sufficiently precise in defining what could be considered the limits of a chief's power, even if exceeding them did not, strictly speaking, constitute a crime, and could, at most, only earn him a certain amount of resentment.

On the other hand, chiefs were influenced by the upbringing they had received from their fathers, as heirs to their positions. We have already alluded to Mokachane's advice to his sons to stand in the public square even in winter, so that they could listen to travelers and learn from them.

2. CASES OF ABUSE OF POWER

However, chiefs sometimes abused their powers. As we've already mentioned, chiefs sometimes took back land for their own profit, if it was peacefully fertile. Similar abuses could take place, this time concerning the wives of their subjects: a chief might wish to marry a woman who was already married, and send her parents a much larger bohali than their son-in-law had been able to pay.

their son-in-law. The son-in-law was then given back the bohali with which he had married the feiirne.

the feiirne, who became the chief's wife.

On the other hand, chiefs **did not allow themselves** to "appropriate" their subjects' property so directly. But when they had lent a certain value to an individual, they sometimes took advantage of the opportunity to take over an entire inheritance.

When raids took place, they would receive a share of the stolen livestock. If the victims then had to be given back their belongings, the chief sometimes kept his share.

Finally, as we have already alluded to, some chiefs used their power as administrators of justice to "eat" some of their subjects - to seize all their possessions. In these cases, the victims had no recourse. Casalis did, however, allude to situations where this was not the case, when chiefs had overstepped their rights. But even in these cases, it seems that people felt embarrassed to bring the chiefs to justice:

"There are, however, cases where leaders absolutely cannot avoid the demands of justice. In such cases, there is no way to save their dignity. dignity. The odiousness of their misconduct is generally laid at the feet of their advisors or favorites ²⁰.

This is indicative of the respect and trust that the population placed in the chiefs, and which obviously gave them *davahtag-e* opportunities to abuse their powers.

It seems, however, that these abuses, although commonplace, were not excessively frequent. Generally speaking, it seems that, despite the extent and variety of their powers, in the period under consideration, chiefs were fulfilling their duties without taking advantage of them. Casalis alluded to "the natural iiodéi'ation of rulers" ²¹. and also noted that administration gave rise to fewer abuses than might have been expected. than might have been expected.

²⁰E. Casalis, *Les Bassoutos*, p. 291
²¹Casalis. *Les Bassoutos*, p. 276

Clearly, the population had great respect for the chiefs. This respect was apparently linked to the fact that for the Basotho, the chieftaincy was the only form of governance and therefore synonymous with stability. In fact, it's possible that the very term "chief" - morena - derives from the verb "réna", meaning "to be tranquil, prosperous", although there are other interpretations.

"They know how to obey only real and incontestable powers, whose origin is hidden in the night of the past, or which, if they are of recent origin, seem to be the necessary result of an order of things somehow imposed by fate. Any power that would need to rely on reason in order to legitimize itself would seem to them to be inescapable.

This ue s-ignifies eu item tpi'il ii'av'ait pas de litiges au iiioinent de la succession.

Û 01111110 llOtl3 \$"ÏY'Otlb" Seen, làlii\$°pre the roof that the i priority and ait déteniiaiiée by the ii aissan ce, ture

22E Casalls. The Bassoutos, p 269

some leeway existed depending on the dii character and personal aptitudes of the principau.x contenders for succession. But once the chief was designated, his authority was perceived as having always been in t h e order of things. and retroactively incoiitestable.

Respect for authority came in many forms. From a ritual ritualistically, there was a ceremony to recall the presence of the chiefs

"When the first fruits of the earth reach maturity, the eldest of the reigning faiiille picks a pumpkin, has it appraised, eats it first, and shares it with his frèi' -s- and collaterals, following the order in which they were born. Once this has been done, heralds everywhere publish that the morena has eaten the first fruits. The same ceremony is repeated in all the tribe's offshoots, and from then on, everyone is free to harvest their own produce "2*.

This ceremony was held on a national scale, and is reminiscent of the way in which chiefs' meals were held. These also emphasized' the superiority of the authority in place, although the distribution of food d i d not take place within the chief's family, but among his guests, and only then followed the hierarchical order:

"... the chefs adn ctent to their meals anyone who wishes to attend ... De tenus eu tcmps. un rogaton du poids de plusieurs livres est obséquieusement placé par quelque doiiiesticqrie devant tel assistant que le chef a désigné ... To one side, behind the conx'ive piax'ilegié, stands a compact iiiasse of people ... 11 looks around him, fi.xe soir chooi.x sitr tleti x on three well-known people and hands them the exuberance of his dish; ccii.x-ci eu fout a rita nt .i lem

turn, until the young boys who participate in the feast from afar, see a few bones
their ranks a few bones whose marrow they are eager to suck ²⁴.

The fact of following a more or less well-defined order of precedence in this way, be it a hierarchy within the family or, more broadly, within society as a whole, emphasized the leader's pre-eminent position and underlined the respect due to him.

Other iiiarque3 of respect towards the chief were those that signified subordinate status, and which we have already mentioned when studying the functions and privileges of chiefs - chiefs' exclusive rights over certain constriiction materials, the right to lex'er chores, to which were added the clientelist relationships linked to the mafisa system.

On the other hand, it is seirible that chiefs only occasionally sought to underline their ranp- by a stalap-e of prestige goods. They were often simply dressed like the common population, and sometimes quite poor:

"There are times when, like Diogenes, they seem to want us to search for their pride through the holes in their manteaiiy ²⁵

Nonetheless, they were sometimes dressed in skins of peahters, and distinguished themselves by the wearing of a h e a d b a n d , or the merit of a plume, perhaps on ceremonial occasions. They were also described as having "-penei'a1einent dignity in gesture and in iiiaintien" But this miie .a part they ue 3e distineiiiaient not dii rest of the population.

De intime tt.111s letii'3 i'l'apport s joiiaianliei's *with* feu i s chefs, il serrible que les geii s ue leur montraient pas de déférence particulière.

²⁴pCasalis, *Les Bassoutos*, p 277-278
E. Casalis, *Les Bassoutos*, p 274

"... everyone approaches the most powerful chiefs without the least ceremony. No one thinks of hesitating in front of them, out of respect or to give them a more convenient place, when they unexpectedly appear in an already female circle. We interrupt them or contradict them without any embarrassment; we simply call them by their names, reserving periphrases and pompous titles for days of great ceremony ²⁶

The way people behaved towards their chiefs didn't indicate any particular respect. Nevertheless, this respect did exist and, if the need arose, the chiefs knew how to express it. If they felt exasperated by their subjects, they would throw a small rhinoceros club, which they carried in their hands as a symbol of their authority. If they challenged their subjects to pick it up, but everyone was quick to duck. Raising it would have been a crime of lese majesté, insubordination, and punishable by death.

Although not always expressed so explicitly, the relationship between the population and the chiefs was characterized by the former's respect for the latter. Casalis even speaks of an "almost superstitious respect", of "something akin to the ancient theory of divine right" ²⁷. If this remark is linked to the fact that the authority of the chiefs were legitimized above all by heredity, this was certainly the case. However, it should not be forgotten that relations between chiefs and populations were above all based on reciprocity. Economically, the Sotho chiefs had above all a true redistributive function; politically, their decisions were influenced by the opinion of the subjects, in particular through the pitsos. Of course, reciprocity was not total.

²⁶E. Casalis, *Les Bassoutos*, p. 275

²⁷E. Casalis, *Les Bassoutos*, p. 268

There were definite advantages to being a leader, both material and in terms of the power and respect that came with it. An etymological interpretation of the term *morena* was linked to this. Hammet wrote of the *serb korana* that it meant

"to be rich, not to work, to be a chief"²⁸ get thus associated the idea of being a chief above all with wealth and not needing to work to satisfy one's needs. It is, of course, very difficult to say definitively on which conception of chieftainship the term *morena* was based - Casalis' etymological interpretation or Hammet's. But the way chiefs were perceived was clearly expressed in several Sotho proverbs.

On the other hand, the way in which chiefs were perceived was clearly expressed by several Sotho proverbs. Some were related to the character of chiefs - emphasizing that they were capricious or underlining their power and the fact that they were obeyed: "the word of a chief builds the kraal".

But of the various proverbs that concerned chiefs, the most significant of the nature of their power was "*morena ke morena ka batlio*", "the chief is a chief for the people" ¹¹ not merely indicating a reciprocity in the relationships between people and chief, but establishing the basis of the legitimacy of chieftainship power as a social function in the will of the people themselves, and not divine volonte or a supernatural order.

1. Hammet. *Chieftainship and legitimacy*, p 86, quoted by S Poullet. *Pouvoirs et société au Lesotho au XIX^e siècle*, p 14

CHAPTER 3. THE REIGN OF MOSHOESHOE OF LESOTHO

THE FORMATION

1. THE FORMATION OF THE SOTHO KINGDOM

a. The extension of Moshoeshoe's authority

It was with the reign of Moshoeshoe that the monarchy was truly established, and over many more tribes than those over which Molhomi had ever claimed to rule.

The power of Moshoeshoe, and therefore the monarchy, were only gradually extinguished, as we shall see in the first section. Once this "conquest" had been achieved, we can say that the installation of the monarchy entered a second phase. It was no longer a question of uniting several peoples under the aegis of a single supreme ruler, but of keeping them there. Casalis summed up the problem in a general way

"Whatever the respect or fear he inspires, the leader called upon to govern moreieui's tribals rarely succeeds in making them a people homogeneous enough to bind them to uniform usages and avoid the embarrassments constantly created by ideas of independence, attaching themselves to their own of origin. The elements of which the nation is composed always tend to separate, and are held together only by a system of concessions and acts of compromise combined, but rarely based on the rules of a strict justice 29

"E. Casalis, *Les Bassoutos*, p. 265-266

Moshoeshoe set out to counterbalance the centrifugal forces at work within the new nation, in order to maintain its cohesion. He employed several means to this end, which we will examine in a second section.

Although he had succeeded in keeping the new whole under his aegis, its unity still did not seem assured at the end of his reign, partly because it rested on him as a person rather than as supreme ruler, as we shall see in the third point.

b. The means employed

Unlike many other state units, the Sotho nation was not, or hardly ever, forged through military conquests, but largely by peaceful means. The only military expedition initiated by Moshoeshoe was the one he launched against the Tembus in 1835 - and it was an unsuccessful one at that.

Moshoeshoe inherited a small Kwenya chieftdom from his father, Mokaheane. He established his village at Buthe Buthe around 1820-1821. After ruling there for several years, he decided to leave the site for strategic reasons - it wasn't safe enough in the context of the *lifaqane*. He therefore moved to a flat-topped mountain, Thaba Bosiu, a veritable fortress located three days' walk from Buthe Buthe. In 1833, he and his followers settled in Thaba Bosiu. From then on, it was to be the village and capital of the Sotho nation throughout his reign.

From there, he continued to extend his influence. He did so primarily in two directions: to the south-west where he had to deal with the *Bojani* and to the north-east where he had to deal with the *Basotho*. In the south-west, he had to deal with the *Bojani* who were a powerful and warlike people. In the north-east, he had to deal with the *Basotho* who were a powerful and warlike people. He had to deal with them in two ways: by war and by diplomacy. He was successful in both.

Sekoilyela, was hostile to Moshoeshoe. Other elements posed a more or less direct threat to Moshoeshoe, particularly in the south-west: half-breeds raided there, and the Griqua chieftaincy - whose capital was in Phillipolis - attempted to expand eastwards, towards the republics under Moshoeshoe's control. Added to this was the fact that the people who saw Molhomi as their ancestral leader regarded Moshoeshoe as a usurper, and were therefore hostile to him.

Moshoeshoe used two main methods to extend his influence, which can be described as both diplomatic and strategic. The first consisted in reassembling populations under the protection of his authority, then implanting relatives in these reunions by allowing them to found their own villages - of which they were chiefs, *toni* having now their allegiance to Moshoeshoe. From a strategic point of view, Moshoeshoe acquired rifles and *cliev'aux*, so as to be able to stand up to the Métis, for whom these two European contributions were the main advantage. Likewise, Moshoeshoe sought to counter the expansion of the *giŋqua*, in order to extend its influence over the entire Caledon valley.

Last but not least, the *siipreine* chief made the most of the missionaries' presence. He elicited from them to install their stations at the margins of the regions he controlled, in order both to counter the *exlérieiii*'es threats, and to establish more firmly his authority in the zones concernées.

The first mission station to be founded met the first requirement. in 1833. Moshoeshoe don't allow the missionaries to E. Casalis et T. Arbousset, missionaries of the Société des Missions Étrangères de Paris, to set up in Morija. The site he hadn't been chosen. It was in the region said to be the territory of Moshoeshoe, the region of the *Jeb mctib*. In installing the mission station, he intended to put an end to these raids. In fact, the Métis had already been in the region and the mission station was not a success.

obtained from European traders. If they had used them to attack other Europeans, the traders would have refused to sell them. Moreover, they would have run the risk of the colonists lending a helping hand to the missionaries. The presence of the missionaries was therefore an effective means of protecting them from Métis raids. As a result, Morija became the base for the extension of Moshoeslioe's power to the southwest.

Map 7: Distribution of the missionary stations of the Society of Evangelical Missions of Paris in Lesotho in

Paris in Lesotho in 1847.

The missionaries didn't grasp this aspect of their situation. Moshoeshoe's benevolence towards them seemed more than a little profligate, and soon attracted other S.M.E.P. missionaries. Stations were then set up around the kingdom.

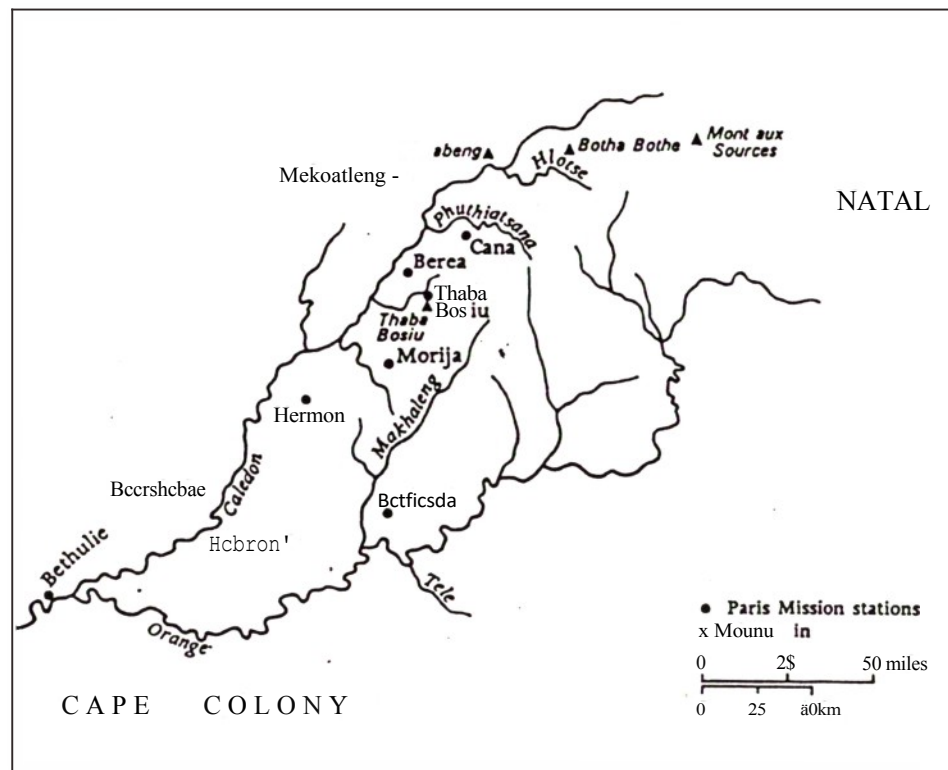
In the same year that Casalis and Arbousset had settled in Morija - in 1833 - J. P. Pellissier founded the Betbulie station, also in the south-west of the kingdom, but much further away than Morija - in fact, near Pliillipolis, the capital of the q-iaqia cliefferie.

Two years later, in 1835, S. Rolland settled halfway between Morija and Betliulie, where he founded the Beerseba station. Closer to Thaba Bosiu, it was in fact an outpost of the Basotlio kingdom.

Map 7: Distribution of the missionary stations of the Société des Missions

Evangeliques from Paris to Lesotho in 1847

(from Perrot C. H., Les sothos au XIX^e siècle, p.89).



Paris Missionary Society Stations in 1847

Bethulie, on the other hand, did not fulfill this role for two reasons. Firstly, it was far from the areas hitherto recognized as under Moshoeshoe's influence. Secondly, Pellissier, the founding missionary of Bethulie, did not recognize Moshoeshoe's sovereignty. Nevertheless, his station was just as strategically important for the monarch. It served to contain the expansion of the Griqua.

Other stations were later set up in the south-west, always with the same Moshoeshoe.

Nine years after the establishment of Beersbea, in 1834, the Betliesda station was founded by C. Scirumpf on Baphuthi territory. The Baphuthi already had Moshoeshoe as their supreme chief, but remained relatively independent under the aegis of their chief Moorosi, and numbered some 3,000 men. The presence of the Bethesda station therefore enabled Moshoeshoe to maintain control over Moorosi.

Three years later, in 1847, two new stations were founded to the south-west: Hebron, by L. Cochet, and Hermon by H. Dyke. This time, they were designed to protect the kingdom from a new threat: the Boers, who were beginning to settle in the region.

Previously, Moshoeshoe had also encouraged the founding of stations in the northwest of its territory, with the Mokoatleib station installed by F. Daivmas as early as 1837. Like Morija in the face of the Tloetsi, Moshoeshoe saw it as a way of protecting itself from the Batlokwa of Sekonyela. Three years later, in 1840, Moshoeshoe extended his influence towards the north-east. The missionary T. A. Boisset paid it in 1840, accompanied by two of Moshoeshoe's beloved sons. Mabotla and Kofopo. After that

Moshoeshoe sent a subordinate to found a village in the area. The Berea station was set up there by P. I. Mititi.

Finally, in 1847, while Hermon and Hebron had been founded to the southwest, the Cana station was set up northeast of Berea by D. Tieck.

Moshoesloe thus used the presence of missionaries not only to protect the margins of his kingdom against external attacks, but also to reinforce his control over peoples already subject to his authority - installation of Bethesda among the Baphiitlii - and even to extend his influence to new regions - foundation of Berea and Cana.

In these ventures, the missionaries were only half-aware that they were partners with the supreme leader. When their stations served only as bulwarks against the outside world, they played a passive role of which they were completely unaware. On the other hand, they were much more active in reinforcing Mosloesloe's authority among certain populations.

In fact, it was in their own interest to see Moshoesloe's influence spread, as long as he favored their enterprise, not only for the FflISO!IS st Ffuf+g(*128_S J8_]2a éiion.rees, but also because of uii sincere interest in letii's teachings. The missionaries dolie tried to reinforce Mosloesloe's authority in the areas where their stations were located - with the exception of J. P. Pellissier in Betlilitie, who liii. coiiiiie noifs l'avons vii, did not recognize Mosloesloe's soini eraiiité. The stations inissionnaii'es oy.rient se foi iNer autour d'elles des villages. des gens qui avaient été conti"iints par les giien'es de la Lifailane à s "e réfiigier dans la colonie du Cap ou parmi les

-qi'i'lti.is. true fois 11 }iai.x reveliue, se i'éorgaiisèreiit around the stations. The missionaries

were in close enough contact with these populations to influence their allegiance
allegiance, and encouraged them to consider themselves Moshoeshoe's subjects.

Finally, as well as extending Moslioeshoe's influence from the interior, they gave Europeans the impression that Moshoeshoe's authority as supreme chief was undeniable, and that he was the only representative of the area's populations to whom they could turn. From then on, the British turned to him as such, reinforcing his hegemony. This brings us to the second problem faced by Ntshoeshoe: maintaining the cohesion of the kingdom he had just united under his aegis.

2. MAINTAINING THE COHESION OF THE KINGDOM

a. The connection with tradition

The problem arose above all when the *soux'eiiir* of the Lifaqane - which had led people to see Moslioeshoe as a protective *pouv'oir* - began to fade. The various chiefs who had pledged allegiance to Moslioeshoe were tempted to regain their independence. To *iiiaintetiir* the unity of his kingdom, Moshoeslioie had to keep these chiefs in a *poL'ition* of subordinates. Here again, the supreme ruler employed a variety of methods to achieve his aims, which were both traditional and new in character.

On the one hand, Mosloesloe legitimized his position as supreme leader by linking it to tradition - which he said had already been useful in extinguishing his aitoité -: he presented himself as the heir to Mollioiii qti, cous nous l'asous xii. joiissait d'une épiitatioi tjuasi- légendaire cle gr'mct s" c. Ccités, k\osloes-lieo ii'ctait par° le descendait bc son illustre prédécesseur. 11 liii needed tloic ti'oivei' a .ititi'e place with liii. spiritual this time. Ce saw

the legend spread - probably supported by Moshoeshoe - that Molhoiii had in fact appointed Moshoeshoe to be his successor. After his initiation, Peete, his grandfather, took him to Molhomi. Molhomi is said to have foretold the destiny of the future supreme chief, and to have prepared him by teaching him the art of governing. After this teaching, Molhomi is said to have given Moshoeshoe one of his earrings, symbols of his power, thus designating him as his successor.

b. Placing relatives in positions of authority

On the other hand, Moshoeshoe relied on the traditional system of placing authorities, which he developed in areas where his power had no solid foundation and where tribal chiefs were threatening to form independent chiefdoms. Moshoeshoe sent members of his family to found villages there.

The chief thus placed had to assert his authority over the region concerned; having been delegated by the paramount chief, he was of course subordinate to him, and reinforced Moshoeshoe's authority as well as his own. He constituted an intermediate authority, to whom the population owed the marks of allegiance due to a chief, whereas he in turn owed to the paramount chief.

The chief who had until then ruled over the population concerned was not, however, replaced: he retained authority over just as many people as before. But he was now subordinate to the new chief placed by Moshoeshoe and, in this respect, lost his authority.

11 It's also worth noting that when a chief was placed in this position, the people who [accompany] him to found his village were not only his relatives, but also relays from various origins within the kingdom - this made it possible, albeit on a small scale, to [accompany] him to found his village were not only his relatives, but also relays from various origins within the kingdom this made it possible, albeit on a small scale, to [accompany] him to found his village,

to break the tribal attachments that had prevailed until then - the members of a given tribe lived in a certain region under the authority of a given chief, leaving the people concerned only with an attachment to the supreme chief and to the chief he had just placed and who represented him.

c. Strengthening ties with subordinate chiefs

The supreme chief could also maintain other chiefs as subordinates, using methods less degrading than placement. He sought to create family ties with his subordinate chiefs. He had two means at his disposal for this: matrimonial alliances and adoptions.

The existence of the polygamy and the importance of Moshoeslioe's personal wealth enabled him to make extensive use of matrimonial alliances. Indeed, he had been able to gather large herds by the usual means of raids and was therefore the richest man in society. He could therefore afford to pay out numerous dowries, and was able to acquire numerous wives - in 1864, he had around 150, and had perhaps as many as 200. He thus married the daughters of the chiefs under his authority, as well as allied chiefs, thus strengthening his ties with the latter.

Moshoeslioe also managed to establish family ties with these chiefs through his sons. Several of them were raised in Tliaba Bosiu mène, and Moshoeslioe, again thanks to his fortune, gave them animals - not only cattle but also horses, which were relatively rare at the time - and paid their dowries when they married. They became the adopted sons of the paramount chief. In addition to strengthening ties with their biological families, who lived off the land, this policy had long-term benefits.

Indeed, the sons of these chiefs could be called upon to inherit their father's office. By making them his adopted sons, Moshoeshoe created strong ties with those who could become his subordinates. In so doing, he greatly diminished the chances of these chieftainships reasserting their independence once the heirs were in power.

In fact, these adoptions can be compared with the *placerrænt* system. Moshoeshoe strove to have members of his family head the chieftainships that made up his kingdom, either by placing relatives at the head of these chieftainships, above the authority already in place, or by integrating future - or at least potential - heirs into his family.

At the same time, he also tried to keep a tight grip on his biological sons, and in particular on those who were likely to succeed him as supreme chief. Letsie and **Molapo**. Although he placed them in areas where he wanted to extend his influence - Letsie in the south-west and Molapo in the north-east - he was careful to give them co-chiefs in whom he had complete confidence.

d. The role of missionaries

As far as the mass of the population itself was concerned, Moshoeshoe was of course just as concerned about having it on his side as he was about the attitude of subordinate chiefs. We've already alluded to the role played by the missionaries' *plip art* in this area: the interests of the work corresponded fairly well with those of the supreme chief, and they encouraged the Basotho to consider themselves as subjects of Moshoeshoe.

The desire to establish their protector's authority more firmly was probably not their main motivation; it's likely that they saw the existence of the supreme chief's function and the centralized state as a means of *repi csciit.itionii of iiii systeméræ polititJie pltis*

close to those they knew in Europe. In their eyes, it appeared more "civilized" than the organization of independent chiefdoms. It is therefore likely that they also supported the position of supreme chief for its own sake, and not just because it was in the interests of their work in a conjunctive manner.

Finally - and this is much more a matter of supposition - it's not impossible that they unconsciously saw in the establishment of the supreme chieftaincy a means of influencing the imagination of their flock. They may indeed have seen in the idea of a supreme chieftain, lord of the Sotho people, a religious metaphor for the idea of a universal God, lord of the universe. The existence of the former may have seemed to them likely to facilitate the conception of the latter and, from a more personal point of view, may have seemed to them to be "in the order of things".

e. Respecting people's wishes

While the missionaries were allies for Moshoeshe in his endeavours to maintain the cohesion of his kingdom, the paramount chief sometimes had to distance himself from their teachings, with the same goal in mind. Indeed, the missionaries wished to reform Sotho society in many respects. Moshoeshe sometimes agreed and undertook certain reforms - he buried his first wife, Mamohato, according to Christian rites - thus leading by example and supplanting the initiation schools for several years.

However, his concern not to alienate the mass of his subjects in order to maintain his authority led him not to undertake these reforms, and even to walk away. He never agreed to put an end to the practice of mafisa, nor to polygamy. This friendliness was such a boomerang that Moshoeshe himself didn't want them, besides the fact he could afford it politically.

On the other hand, he did abolish initiation schools. But after a few years, he reinstated them. Not only were they an essential rite of passage between childhood and adulthood, to which people were very attached - an uninitiated boy was the object of scorn from those who had already been initiated - but they also encouraged young people to respect authority.

f. Clientelism

A second element in Moshoeshoe's clientele ties with certain members of the population is inafisa. As we have seen, this was a traditional practice, and its use by Moshoeshoe was in no way unauthorized. If there is a difference between Moshoeshoe's use of inafisa and what had been practised until then, it is in the scale of the phenomenon, and once again, it had to do with the wealth of the supreme chief: his wealth in livestock enabled him to establish a clientelistic relationship with many of his subjects.

3. BALANCE SHEET OR MOSHOESHOE'S REIGN

Through his various policies, Moshoeshoe managed to maintain the cohesion of all the chiefdoms he had brought together under his aegis. Gradually, a sense of national unity began to emerge, even though the Basotho now had other constituents to define themselves against. In 1859, Casalis wrote

"For some years now, the incessant pressure of the whites has been on the ears of the natives; their attention is focused more on what concerns their common interests. The chiefs become more indispensable to their subjects.

chiefs become more indispensable to their subjects, and the idea of a general confederation of tribes to stand up to a foreign race seems to be making daily progress "0

11 even quoted a man who, after suffering numerous attacks from a neighbor, had reluctantly resolved to defend himself. Destroying the culprit seemed the only surate-py likely to be effective, and although determined to put it into oeus're, the man lied to himself.

Whatever happens," the chief in question told me sadly, "I'm headed for certain doom. After all, this stubborn man who won't let me rest is a neighbor, a black man like me, one of the pillars of the country, one of the horns of the same ox fl I've known for a long time; if I destroy him, as seems inevitable, we'll all suffer. Then, pointing to the two windows of the room where we were sitting, he added: "Break the panes of one of these windows, and the cold will penetrate the *house*, even if the roof remains intact". These lofty ideas did not exist in the country three years ago, they are still far from being mainstream, but their progress is becoming more evident every day.

NeailNioins, throughout Moslioeshoe's regime, centrifugal forces continued to exist aii within his i'oyatirne. These tendencies became even more pronounced towards the end of Moslioeshoe's reign, when age began to weaken him.

On the one hand, the x ieux chief could no longer gonveiaier atissi effectively as before. On the other hand, he had to admit that either the era was coming to an end. The unity of Lesotlio had justpie 1.i eiitiei'eiiient re|'osé stir ses épaules-. It was to Moslioeshoe as qii'iidividu qtie the siiboi chiefs given 'owed alle*eiice. and with whom they had contracted alliances;

³⁰E Casalis, Les Bassoutos. p 267 Casalis,

³¹G Les Bassoutos, p. 267-268

the institution of the position of supreme chief did not in fact exist in its own right outside its incarnation by Moshoeslioe.

Moshoeslioe was aware of the problems raised by the overly personal nature of his power, and of the need to reform political institutions. Mais il ne parvint à résoudre le problème de façon intense à la société sotho, sans l'aide d'une puissance extérieure.

The only person with an interest in maintaining the cohesion of the rōyaintie was his first and successor, Letsie. This last king aside, the *teii* chiefs increasingly asserted their independence, including Molapo - whom Moshoeshoe placed in the north-west to better control the region. The important tribal chiefs, Moorosi (chief of the Phutliis), Sekonjela (chief of the Tlokwas) and Moletsane (chief of the Tanna - s), were becoming autonomous chiefs. Moshoeshoe's brother Posholi, who headed a chieftaincy in the south, did the same, all the more so as Moshoeshoe had never had any real control over him.

These separatist tendencies were manifested, among other things, by raids on what had become the Orange Free State. During the final stages of the war against Lesotho in June 1885, Moorosi and Molapo decided to protect their respective chiefdoms independently, in direct contact with the Free State.

Moorosi accepted de ne plus prendre part à la guerre, et l'Orange le reconnut comme chef indépendant; on his side, Molapo signed avec l'O.F.S. un traité de paix séparé in March 1886. Six months later, Moshoeshoe and the chiefs who were still his vassals signed the Treaty of Tlaha Bosis. This treaty committed them to leave to the Free State the fertile lands of Lesotho.

This failure only further weakened Moshoeslioe's authority. The paramount chieftain was aware that a double threat was weighing more heavily than ever on his kingdom: it seemed likely that, on his **death**, Lesotho would break up into independent chiefdoms; moreover, the Orange continued to covet what remained of his territory.

The combination of these two threats created a worrying scenario, not only for Lesotho as a political unit, but also for its people: if the country were to break up, the various chiefdoms would probably be absorbed by Orange one after the other.

At the same time, the British government continued to address Moshoeshoe as the sole representative of the Sotho people, recognizing and reinforcing his power over and above that which remained to him in reality. Moshoeshoe therefore decided to appeal to the British government, and asked Ph. Wodehoiise, the binding commissioner, to intervene. On March 12, 1868, the latter declared Lesotho a British territory, under the name Basutoland, and the population living there British subjects.

CHAPTER 4. THE IMPACT OF THE BU CAP COLONY POLICY

In March 1868, Lesotho - from then on Basutoland - became part of the British Empire. But the question of its exact status was not self-evident. At first, it was placed under the responsibility of High Commissioner Wodehouse, and it was intended that it should be taken over by the Colony of Natal. But fears that the laws in force in the latter, including those concerning disarmament, would provoke reactions among the Basotlio led the British government to reconsider the question. It was therefore decided that Basutoland would be placed under the control of the Cape Colony, which was done in 1871. Three years after it had obtained the status of British territory.

1. THE PROTECTORATE UNDER CAPE COLONY ADMINISTRATION

a. The passage to Cape Colony

From then on, Basutoland was governed by Cape Town, following a policy of direct administration.

Direct which was characterized mainly by a decline in the power of chiefs.

For administrative purposes, the territory was divided into four districts, each headed by a magistrate. A territorial chief was also in charge of each of these districts, but his authority was subordinate to that of the magistrate. Thus, in the Leribe district (to the north), Molapo was the chief in charge of the district, but was responsible to the magistrate C. H. Bell. The same applied to the other three districts. The Coialet Spruit district, in the south, was headed by Moorosi (the Phuthi chief) and J. Austen; the Bci'ea district by M.isiipia and W. H. Siiniion; and the Tiiaba Bosiu district, in the center, was headed by Molapo.

holes had the capital (henceforth Maseru), by Letsie himself, who had become supreme chief after Moshoeshoe's death in 1870, and by C. D. Griffith, also the governor's agent. The latter in fact directed the magistrates and performed functions similar to those of the governor.

b. Decline of chiefly power

The magistrates' administrative and judicial powers were considerable. Their administrative duties did not significantly overlap with those of the chiefs, since they were concerned with the new system: issuing commerce licenses and collecting taxes.

On the other hand, in judicial terms, the magistrates could judge any affair, with the exception of those of homicide or arson with intent to kill - committed against a person accused of witchcraft, or rape; under Cape Town law, these crimes were considered the most serious, and were punishable by death. The Sotho chiefs were therefore stripped of jurisdiction not only over these crimes, but also over everything that fell under the jurisdiction of the local magistrates, who could only judge cases involving minor offences. This constituted a loss of power for them, all the more so as the administration of justice had always been an integral part of their duties, and the new provisions meant that the subjects they governed had to turn elsewhere to settle their disputes and obtain justice, which upset their loyalties.

Other measures were in the same vein: parties who had made a mistake appealed to the magistrate's court, even if their case had already been heard by the chief's jurisdiction. To this was added the fact that the chiefs could no longer enforce their verdicts as they had before. The result was that the chiefs' power was greatly diminished.

condemned the guilty party: if the latter did not pay voluntarily, only a magistrate's order could allow seizure. Fearing that they would have difficulty obtaining compensation if they went to court on their own, victims tended to apply directly to the magistrate.

Chiefs therefore dealt with far fewer cases, not only because their jurisdiction was limited by law, but also because their subjects were discouraged from approaching them even when they could.

This in itself represented a major loss of power, but also entailed other, less direct effects: indeed, the administration of justice had constituted a not inconsiderable part of the chiefs' revenues, since they kept the fines they imposed - apart from what eventually went to the complainant. The chiefs therefore lost a significant part of their income, which weakened them politically - wealth being an indispensable condition for the exercise of their power, as we have seen.

From 1872 onwards, the creation of goux'eniemental pounds was a step in the same direction: until then, chiefs had been advising stray livestock. From 1872 onwards, the chiefs saw this source of income decline in their turn: Grieth set up the first pound at Maseru, where any cattle found were to be 'aieieied, and his example was resented throughout the Oastitolaiid.

c. Changing relations between chiefs and the population

Administration by the Colonie dti Cap athena not only led to a decline in the power of the chiefs dii fait de la diiiiiiiiition de lem s fonctions lrlais but also to an infiuu on relations between the cliefâ, and stu' relations between them and the population. The measures already taken } iiii' l'adl iiiiisti'ation coloniale pi'ovoqiêreiiit the resentment of the chiefs towards it; eu

This, in turn, reinforced her desire to weaken them. She maintained a privileged relationship with Letsie as supreme chief, at the expense of all the chiefs.¹¹ It is even probable that Letsie was able to maintain his position thanks to the support he received from the colonial government: he was rather unpopular, although Moshoeshoe himself had made him his successor in January 1870, and in the context of a society where centrifugal forces were numerous, he would probably not have succeeded in maintaining himself as supreme chief without Griffith's help.

Nevertheless, two of Moshoeshoe's younger sons were chiefs with whom the colony had to reckon: Molapo and Masupha. At first, the former was a popular figure, hostile to the government. But from 1873 onwards, he lost the confidence of some of his supporters and moved closer to the Cape. Masiipha, on the other hand, remained hostile, though this attitude never led to real conflict.

With the exception of these two chiefs, Cape Town had no difficulty in controlling the local authorities. He integrated most of the original chiefs into the new administrative system. At the same time, he multiplied the number of civil servants in the territory.¹¹ It was an attempt to counterbalance the influence of the chiefs on the population by developing closer contacts with them. For the same reason, Griffith had "national" pitsos assembled and held annual meetings.

The colonial administration also attempted to curry favor with the population at the expense of the chiefs through more concrete measures: on the one hand, as early as 1879, all Basotho were recognized as equal before the law, including the chiefs. The latter could now be prosecuted.

In addition, the Cape administration tended to rule in favor of the individuals of the population in disputes between them and their chiefs. This was partly due to

About corv'ées (letseiiia). As chiefs tended to abuse their power to conx'oquer their subjects and make them work on their fields, the letseica custom gave rise to numerous disagreements - some chiefs even resorting to the use of force. In some cases, however, from the point of view of custom, the chiefs were within their rights, but the government systematically ruled against them.

The Cape Town government's policy led initially to a rapprochement between the Sotlian population and the administration, and with it a loss of prestige for the chiefs.

2. THE GUN WAR

a. Developments

The goirrenieineit of the Cape soon attracted the general antipathy of the Basotlio. In 1578, the Cape Parliament passed the "Peace Preservation Bill", which empowered the -qouvenient to order the disarmament of the colony's Africans. Spriq-q-, the first iiiiinistre of the Cape. who had presented the project to the parliament, decided to apply it to Basutoland after the rebellion of Moorosi, the chief whose son had been arrested.

In October 1.879, Spri3g i iiiiit liii-inèiiie reclorrær to the Basotlio that they abandon their annes au pitso national. L'ogpositioN a cette mesrtrc était on tle "s vi e d'uiic pait. les Basotlio étaient très attachés 'a letii s fiEils doris lesquels ils v oyaient un spiibole de 'imite et de maturité. d'auti'e pa rt, la per spectis e tie se reti'oiis er tJcsai iiiiés face "i leiii's voisins de l'Etat d'Orange m'avais i ieil tte i 'Issfii 'M. E iifiii, this cxi-ciicc their |'ai 'iissütit d'ùlttânt p l plus

Moorosi had revolted, the other chiefs had supported the government against him.

In vain, the chiefs sent a delegation to Cape Town to demand the repeal of the decree.

Most of the chiefs, including Masupha and Lerotholi, Letsie's son, revolted, followed by their subjects.

Letsie, whose power depended on colonial support, remained loyal to the Cape government, as did a few other chiefs, for various personal reasons. But the rebels were in the majority, and even included Christians in their ranks.

b. Consequence: the British crown takes over Basutoland

In May 1883, after several years of civil war and infelicitous talks, and having clearly lost all legitimacy in the eyes of the population known to the Sotho chiefs, Cape Town applied for the second time to the imperial government to assume direct control of Basutoland.

After long negotiations, the Imperial Government agreed. On 29 November 1883. In a meeting where the Sotho chiefs were asked to decide whether they wished to maintain the control of the British crown, or become independent. For the insults that had pushed Moshoeshe to call for the establishment of the protectorate, all the chiefs present voted in favor of the first proposition.

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Jiendaiit deïx années. ji1s jusqu'en 1886, où he finit pai' l'acceptei'.

Ain si |'rot égée des tendai'ces ce "trifû-es itztenies et du syect'e de l'absor|'tion yai l'uui de ses
oisins - du rnoiii s pour un ternps, le Lesotho voyait enfin sou existence en tant qu'unité
territoriale et liirnaine reposer sur des bases relatis-ement relativement solides.



CHAPTER 1. THE HOLDERS OF POWER

The period we shall study in this second part was characterized by the direct control of Basutoland by the British government.

We shall therefore begin by examining the role of the British administration as the holder of power, from 1884 - the year in which the Crown's protectorate was placed - to around 1938 - the year in which the first of a series of reforms aimed at resolving the problems that had arisen were passed. We begin by examining the British motivations that determined its policy, before looking at the institutions it set up to this end.

1. THE BRITISH ADMINISTRATION

The characteristics of British administration from 1884 onwards resulted both to Britain's motivations for maintaining a protectorate in Basutoland and to its past experience in the matter - in particular, its knowledge of those aspects of Cape Town politics likely to have had some responsibility in the defeat of the Rifle War.

In fact, when the British government took over Basutoland from the crown in 1884, its motivations were not profoundly different from those which animated it when it first agreed to protect the territory under aegis in 1868. I think it would be a good idea to briefly outline the circumstances here.

It was Moshoeshoe himself who, at the beginning of the decade, had approached the High Commissioner, Phillip Wodehouse, to request that the Basotho be recognized as British subjects: this appeared to Moshoeshoe to be the only way to protect his kingdom effectively against the threat of conflict with the Boers. 11 At the time, there was no question of Britain taking over the Basotho as subjects, but only of recognizing them in principle, at least initially. Moshoeshoe formulated his request in the following terms:

"I will be under the Queen us lier subject, and my people will be her subjects also, but under me ... so that the Queen rules my people oitly through nie. I wish to govem my oivn people by native law, by our onu la s, but if the Queen ixishes after this to introduce otlier laws into my cointry, I xxill be willing, but I should wish such laws to be submitted to the Council of the Basuto, and when they are accepted by my Council I will send the Queen and inform her that they have beconie laix' 32

The British goux'ernemeiit did not immediately accede to Moshoeshoe's request, partly because Wodehouse himself was skeptical that the Sotho people could accept' rnétne this form of protectorate, but mainly because the British gotw eniement did not allow liii to make decisions that could have proved costly.

costly decisions. It was only after the second war between Lesotho and the Free State - which, it should be remembered, broke out in May 1865 pom ditrer pltts d'un ali (the first having lietted in 1858) - and the struggles that poiii'sriii ii'ent encoi'e for almost two airs, that the British crown finally decided tl'acc edei' to Moshoeshoe's request.

32R Stevens. Lesotho Botswana and Swaziland. p 22

a. Motivations for taking over Basutoland and subsequent policy

The circumstances surrounding Basutoland's accession to protectorate status are in themselves well revealing of the motivations which led to this decision, to say the least. The fact that the Free State wanted to extend the borders of its territory eastwards to secure access to the Indian Ocean not only made conflicts more likely, and played a role in the British decision.

The fact that Basutoland came under the protectorate for reasons of regional strategy was of course determinant for British policy towards the territory. This is evident from the following reflection of the Secretary of State to the High Commissioner:

"The object [of protecting the Basutho] was to attain such an arrangement as, without involving the imperial government in any pecuniary liability, should secure peace around the frontiers of the South African colonies"³³.

Clearly, the Rifle War did not profoundly alter this policy. When the Cape Colony was relieved of the administration of the territory, and it came under the direct protection of the Government, the need for order was still the same. The instructions issued by the government to the superior resident were as follows:

"... nothing more could be attempted at first than the protection of life and progeny, and the maintenance of order on the border ... [while] the Basutho were to be in disputes"³⁴.

... to establish internal self-government sufficient to suppress crime and settle intertribal

R Stevens, *Lesotho Botswana and Swaziland*, p. 24 R
Stevens, L. *Lesotho Botswana and Swaziland*, p. i

Certainly, British policy in Basutoland changed substantially from the previous period. Goux'eniement was keen to avoid repeating the mistakes that had led to the Gun War - a result which, to say the least, ran counter to the aim of securing calœe in the region.

In 1884, the government had a choice between two forms of administration: a modified form of the "magisterial rule" which had prevailed until then, or a system closer to what Moshoeshoe and Wodeliouse had in mind, using the Indian authorities as agents of government. The British coiirôlNle preferred to abandon the system that had prevailed under the Cape administration and the corresponding policy of diminishing the power of the chiefs, and opted for the second possibility.

This form of government, known as indirect administration, was also applied in other territories under British mandate.

The forms they took in Basiitoland can hardly be considered separately from the concern to ensure calm in the territory with the minimum of means. Indeed, the British government decided to entrust the chiefs with a particularly large share of administrative responsibilities.

(I recognized of course that the che£ sripi èine cotrit "e was the soiriti ct of the sotho administrative hierarchy; but it decided to ii'exei cer qite little contrôle to the aïtres iiiveaiix of this hierarchy: at the level of the chiefs.

Jtisqti"3 um cert aili point. ces clioix etaielit sou s-cnteiidii }'ar l'optioii 'te l'"iiiiili'lect i iile" le contrôle devrait être exercé :a travei's les aïtoi'ites toca les l'ecoiinties par l'i }ioptil'ition

This was in line with the ideas of British philanthropists, opposed to a sudden dislocation of African cultures. But there was also a desire to intervene as little as possible in Sotho affairs, probably motivated more by a desire to distance themselves from Cape Town policy and take as few diplomatic risks as possible, leaving the chiefs with their traditional prerogatives.

In fact, the prevailing idea was that traditional institutions would adapt themselves to the needs that would emerge within Sotho society, and follow their evolution.

This policy of minimum interference in Sotho affairs led A. Pini (who in 1934 headed a commission of inquiry commissioned by the Secretary of State for Dominion Affairs) to describe Basutoland's administrative system as "parallel rule", rather than indirect. A. Pini was highly critical of British policy, which he described as having left "two parallel governments to work in a state of detached ignorance in tropical Africa".

"No attempt has been made to combine the government and the native organization into a real system of government or to make such modifications in the native system as would render it capable of dealing with the changing conditions of modern times ...³⁵

I have so far as to conclude

"There was not in 1884 and there is not now any rule either direct or indirect by the British government" ³⁶

Hailey. *The high commission territories*, p. 79-81 Hailey.
The high commission territories, p. 79

This extreme remark was certainly intended to be provocative, but the British government's control over most of the Sotho administration was very tight indeed, as we'll see in greater detail below.

The government's decision to administer the country through the intermediary of the chiefs was certainly also due to the fact that it took it for granted that the chiefs, as traditional authorities, had the unconditional support of the population. The fact that the population had massively rallied behind the chiefs during the Fhils war only reinforced this impression. As a result, the government equated Sotho opinion with that of the chiefs, and believed it knew the general feeling of the population if it knew that of a sufficient number of great chiefs.

This confidence in the representativeness and natural legitimacy of chiefs led him to adopt a consequential attitude. *Maintenir l'institution de la chefferie de l'int une fin en soi, plutôt qu'un moyen de gouverner, un point de départ à laquelle de nos autres institutions' aurait pu être développé.*

on the other hand, it's important to note that the government's desire to keep spending to a minimum resulted in very little investment in development projects. after the supreme chief's request to build an industrial school in the center of the country. the colonial reports of 1894-95 stated that if the Basotho were to être encouragés à s'occuper, l'industrialisation s'effectuerait dans la région, et en particulier le Transvaal, où il y avait au début besoin de travailleurs non qualifiés, et qu'un nombre important de travailleurs qualifiés se seraient vus consommer inutilement.

This short-term reasoning was encouraged by the fact that the government's policy of economic and political centralization was based on the desire to maintain the imperialist economic and political interests of the Union of South Africa - (I iii)

imperialist economic and political interests of the Union of South Africa - (I iii)

attenuated as the progressive establishment of the colony. It would seem that the British government thought it would only be in charge of the territory for a short time. There was more than one proposal to incorporate Basutoland into the Union of South Africa after its formation in 1910. But it was clear that the Basotho were opposed to this, and the principal chief Lerotholi sent as early as 1905 a delegation to Great Britain to request that integration should not take place. However, it remained a possibility.

Main after several years of controlling the territory, prompting it to abandon true policy in the very short term, and as Basutoland's integration into the South African Union became increasingly delicate, the British government began to take a day's interest in the country's development. But it was more a question of limiting the impact of pre-existing problems - for example, by taking measures to protect the country's soil from erosion, in a context where the population had grown and land was scarce. On the other hand, the government does not seem to have been concerned with the economic development of the country in the longer term, and Basutoland's economy increasingly relied on the migrant workers who earned their living in the Union. The government maintained this attitude in the second half of the thirties, when A. Pim was asked to lead a commission of inquiry to take stock of the political situation.

economic and social conditions of the protectorate.

b. Administrative structures

In order to carry out the task it had set itself in Basutoland, Great Britain had to set up administrative structures different from those of its cousin South Africa.

From 1884, as a crown protectorate, Basutoland was administered neither by the Cape Colony nor by Natal Colony, but fell under the authority of the High Commissioner. The High Commissioner was the only person with legislative powers.

The distribution of other powers was defined by the ordinances ("proclamations") of May 18 and 19, 1854. These provided for the existence of a "Resident commissioner" - referred to in French sources as "Résident supérieur" - representing the High Commissioner in Basutoland. This position replaced that of Governor's Agent under the control of Cape Town. The former magistrates were replaced by "Assistant Commissioners" - to whom French sources continue to refer as "magistrats". The ordinances also defined the powers vested in the chiefs.

We will use the terms "magistrats" and "résident supérieur" to refer to the positions of "assistant commissioner".

assistant commissioner" and "resident commissioner" respectively.

" At the head of the British administration in Basutoland was the resident superior. But this position didn't give him as much authority as he might appear to have at first glance. On the one hand, he had no legislative power, since this was reserved for the high commissioner. reserved for the High Commissioner. On the other hand, a significant proportion of administrative tasks fell to the Supreme Head - in the executive and judicial fields. The

Ministère des Colonies defined its rôle: il co:çine è:at:t ava:it tout d'ailleurs le chef siip iéiie si the latter needed it. According to Stepiens:

"The resident commissioner ... filled an anomalous, in-between position, something of an adviser to both"³⁷ (i.e.: the high commissioner and the paramount chief).

* R Stevens, *Lesotho Botswana and Swaziland*, p. 30

0 did control finances, and was responsible for public works, but given the limited resources at his disposal, these decisions could have little impact.

Magistrates ("assistant commissioners") were the government's agents at district level. For colonial administration purposes, Basutoland was divided into nine districts: Butlia Butlie, Leribe, Teyateyaneig, Maseru (the capital), Mafeteng, Mohale's Hoek, Qutliing, Qaclia's Nek and Mokhotlong.

Magistrates possessed both executive and judicial powers. Each magistrate was in fact responsible for his district from a purely administrative point of view - linked to tax collection, for example. In addition to these functions, the magistrates also held *coiirs de justice*, where cases that did not fall within the jurisdiction of the chiefs - because they were considered too serious, or because they involved Europeans, or cases that had been appealed from a Sotho court - were judged.

It's interesting to note that the functions of the magistrates - and of the Resident Superior - did not follow the principle of separation of powers, and all the more so as the accumulation of both executive and judicial functions was characteristic of the position of chief - which had already been the case under the Cape protectorate. Conscient or not, the British government had thus endowed some of its functionaries with powers comparable to those traditionally held by the chiefs.

2. THE SUPREME LEADER

The major evolution that took place during the period of crown protectorate with regard to the role of the paramount chief was the consolidation of his position. As we saw in the first part of this memoir, it was Moshoeshoe who truly established the existence of a supreme chief among the Basotho. It was his duty to maintain the unity of the nation by controlling the independence tendencies of his subordinates. But by the end of his reign, these tendencies were still present, and the unity of Lesotho was not out of danger.

British policy was to maintain the cohesion of the country, and the government decided to support the paramount chief as the guarantor of this cohesion. By the beginning of this century, as Lerotholi's reign drew to a close, this administrative "bias" in favor of the paramount chief to the detriment of other levels of native administration was clearly evident.

The government had recognized the Paramount Chief as the pinnacle of indigenous administration from the inception of the protectorate. Important powers were conferred on him. The government recognized the supreme chief's right to promulgate administrative ordinances, and after the formation of the Council - to which we shall return - the superior resident did not dare to submit questions to this council without first consulting the supreme chief. What's more, contrary to what had been the case under the Cape administration, the traditional system of land administration was no longer recognized: the paramount chief thus regained his role as "guardian" of the people's land.

sotho. What's more, the government made the Paramount Chief its privileged interlocutor, maintaining cordial relations with him - which nevertheless proved a little tricky with Griffith (1913- 1939). The government thus placed the supreme leader in a position

between himself and the Sotho nation; in other words, it made him the link between the latter and the outside world.

However, it was in a much more concrete way that he strengthened the position of the paramount chief under Lerotholi. In 1897, Chief Masupha (son of Moshoeshoe) rebelled. He was ordered to hand over his son Mouketsi, who had taken refuge with him after escaping from the prison where he was being held for kidnapping in the Free State. Masupha thought he had the general support of the population, thanks to the reputation he had built up during the rifle war, and decided to resist by force. The high commissioner, Lord Milner, then proposed to the senior resident, Lagden, the support of imperial forces. But Lagden refused, deciding instead to give Lerotholi the opportunity to assert his political authority by demonstrating his military superiority. The supreme chieftain did so, despite the fact that his cousin Jonathan did not give him the support he might have expected. After three years of fighting, with ten thousand men on each side, Masupha was forced to surrender. This victory strongly consolidated Lerotholi's position, and hence the very institution of supreme chieftaincy.

The fact that Lerotholi was also able to face up to the opposition of Jonathan and his half-brother Maama, who were also trying to assert their independence, was a step in the right direction.

This consolidation manifested itself in two main ways. On the one hand, rebellions by important chiefs ceased to occur, as had been the case previously. Both the unity of the country and the position of the supreme leader ceased to be *lilellaCées*. The mere existence of the protectorate was of course a guarantee of their security, but until II, the attitude of *ceitaiiis clicfb 2vait* continued to undermine them.

Power was also centralized around the Paramount Chief. Under Moshoeshoe, the paramount chief was the apex of the pyramid of power-holders, and thus represented the supreme authority for all the people of Lesotho. But when he delegated his authority to members of his family to administer certain parts of the population on his behalf, these representatives found themselves in a position of relative independence. Under the protectorate, this relative decentralization disappeared. True, the supreme ruler still entrusted important posts to relatives, but they no longer enjoyed the same independence. The phenomenon consisted more in a kind of "drowning" of the chieftaincy by the "Sons of Moshoesh" - the descendants of Moshoeshoe, than in a delegation of authority, partly because of the relationship between the supreme chief and these people, but above all because it was a question of placing chiefs with populations that were already integrated. Moreover, Lerotholi's political and military victories discouraged important chiefs from trying to secure an independence that the government had decided to oppose.

Despite its submission to a higher power, the Sotho monarchy was well consolidated by the protectorate, and one of the consequences of this consolidation of the position of paramount chiefs as instruments for fostering the cohesion of the country was to reinforce the image of the paramount chief as a symbol of national unity. This tendency could encourage autocratic tendencies. To a large extent, this was the case. But this was not due solely to the phenomenon we have just described. The importance of the increased importance accorded to the function of supreme leader was a true potentiality of autocratization, which could be realized if the personality of the individual assuming the function lent itself to it. It seems that until 1913, supreme leaders had not abused the consolidation of their authority. However, the potential danger was realized with Griffith's accession to power.

"The decline of the paramountcy into an authoritarian reactionary institution was mostly due to the character of Letsie's successor, his brother Griffith Lerotholi³⁸.

Nevertheless, supreme rulers were never absolute monarchs. For one thing, they always had to consult their advisors and those closest to them. As Sheddick once wrote 1953,

"The Paramount Chief possesses considerable powers without being an autocrat. In the first place, he rules as the appointee and the head of a ruling family. At the time of his installation he is reminded that he must listen to the advice of his grand-father and his paternal uncles. In addition to this family council, he has lots of personal friends who form an informal group of advisers. Today, there are also official advisers which the Paramount Chief appoints from a list of nominations submitted to him by the Basutoland National Council"³.

On the other hand, from 1903 onwards the existence of the Council in itself, it constituted a limit to the supreme leader's authority. The latter found himself in the position of a king in a constituent monarchy. From 1903 onwards, it was a unique British government. The council had this role, of course, but now had to share it with the Council with the Council.

Finally, during the pre-colonial period, the paramount chief shared with the British the British administration. It was proclaimed, and we point out, in theory at least, judge the most serious offenses on its territory. Dans tous les cas, il y avait désormais une autorité au-dessus de la sienne. Bien sûr, celle-ci fut évincée par la renforcement

³⁸ Leeman, *Lesotho and the struggle for Africanisation*, p. 32
Sheddick, *The southern sotho*, p.

power in relation to the other echelons of the Sotho hierarchy, this constituted a new form of dependence for the supreme chief, and a new limit to his authority, compared to what it had been in Moshoeshoe's time.

However, it should be noted that the duties of the supreme chief were now more varied. Collecting taxes, for example, was now part of his duties. Even if he was subject to British control in this area, this constituted an additional power, since appealing to the population in this way was not permitted by tradition Couture notes Hailey in a general way

"The responsibilities of a Paramount Chief today are admittedly of a very different order than those discharged by Moshoeshoe or even by Lerotoeli; but the backing given to him by the Administration must invest him with a more decisive authority in regard to a variety of issues, and these issues, if not so weighty as before, are now probably far greater in volume."

On the other hand, the relationship between the paramount chief and the general population also changed over the period. What was true for the paramount chief was also true for many other chiefs. But in this case, the direct support of the population probably played a role in the direction of change we've observed. Indeed, the supreme leader no longer needed the support of the population to the same extent - he could maintain his authority. From a practical point of view, on the other, his potential political rivals had ceased to be a direct threat, and the risk of armed conflict had disappeared. The paramount leader depended much less on popular support to maintain his position.

Added to this was the fact that the number of authority echelons between him and the population was increasing - due to the placement system, to which we'll return in more detail in the section on chieftaincy.

Mainly as a result of these two phenomena, the paramount chief developed a more distant relationship with the population. Apart from a disinterest that can only seem probable, and which is difficult to assess, this evolution was manifested in several ways.

On the one hand, the paramount chiefs ceased to participate in pei'soiine trials, appointing court presidents to do so in their stead - whereas during the pre-colonial period, Moshoeshoe ii liésitait not to spend a considerable amount of time there. On the other hand, supreme chiefs were now treated with more ceremony - aloi's 'pie here again, Moshoeshoe could be approached without special ceremony outside of important occasions".

0 It must be emphasized, however, that these developments affected the entire chieftaincy, especially the most powerful chiefs, and were therefore not specific to the paramount chiefs.

Lastly, the relationship between the paramount chiefs and the anti es was inodified. chiefs, with variations depending on their hierarchical position.

Generally speaking, chiefs responded to the consolidation of the atitorit é said supreme chief by clinging to their traditional privileges. However, the "i'iii chiefs who felt real resentment towards the supreme chief were the iiiiiiiciii's chiefs. had similar feelings towards chiefs placed in important eli.ii' es by the supreme chief. by the supreme chief. Indeed, their resentment was not taiit sui le l'i it rjme

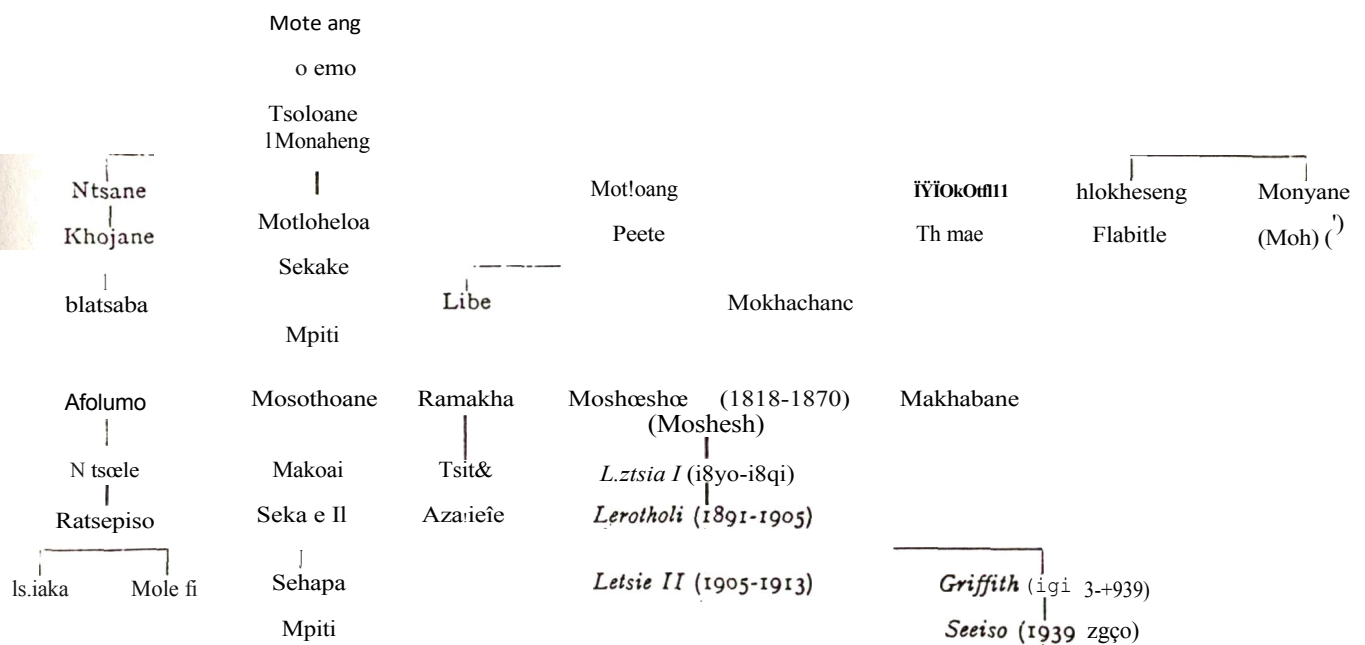
The period of the crown protectorate therefore saw the consolidation of the autoiat é of the This was a gradual process, but became particularly evident towards the end of LerothOli's reign, as i contributions between the siipi'èiie chief and the population became more distant, and chiefs !n.il'ieiii's Ue clos>(' ont tim t'esselitiiient eiivei's the sttjii'èrrle chief and the ineiibres of the class he iijietted in place.

Diagram 1. Sotho paramount chiefs and their genealogy.

Figure 1. Les chefs suprêmes sotho et leur généalogie

(from Perrot C. H., Les sothos au XIX^e siècle, p. 10).

GENEALOGICAL TABLE OF THE MOSHESH FAULT (KWENA E'ONAHENG),
after H. Ellenberger (*op. cit.*), M. Damane (*Historie de Lesotho*) and Morena Lekete Leteie I (in
formations recueillies par M. Damane).



Names in iirt/iqtte are those of the kings of Lesotho.

i. From i quo to i g60, the regency was exercised by Flatsaba, Seeiso's first wife.

3. THE CHIEFS

During the period of the Crown Protectorate, the chiefs were the principal holders of power, those through whom the British administration had decided to govern as early as 1884, and those on whom most of the administrative tasks effectively rested.

a. Territorial organization

Territorial definition of power

In this period, their power was no longer defined in terms of population groups, as had been the case in pre-Lifaqane Sothoetnvana societies - and Basutoland no longer included many peoples who recognized a specific identity within the whole that Moshoeshoe had brought together. In 1884, as had already been the case under Moshoeshoe, power was defined territorially; the chief controlled a given territory, and from there, the population living there - not the *in x erse*. The only exceptions to this rule were the rare tribes that still existed as such, the BaLvakwa and Batlokwa.

From the time of the crown protectorate, as under Moshoeshoe, the various chiefs were orq-q-anized hierarchically, with minor chiefs under the authority of clicfs gl ts iitipoitaMts. Their hierarchical position thus determined tui importaitce Jui territoii'e they controlled. The nature of their tasks and privileges did not vary in any discernible way according to their position in the hierarchy: they were more powerful. occupied true higher positions, simply because their zone o f influence was larger. and consequently their authority extended over a wider population and over larger areas.

chet" liioins" iiiiporaiits.

Three main hierarchical levels could be distinguished among the chiefs - apart from the supreme chief himself - corresponding to three levels of territorial division.

Basutoland was first divided into districts - also known as "wards", as we shall see later. Each of these was headed by a ward chief, sometimes referred to simply as "chief". The corresponding term in Sesotho was *morena* (the supreme chief being designated by the title of "*morena o inoholo*", i.e. grand chief). The districts that constituted the jurisdiction of a high chief were divisions of the Sotho administration: they did not correspond exactly to the districts drawn by the British administration, for which the magistrates were responsible. As we have seen, the latter numbered nine, whereas the number of Sotho districts was more elevated (eighteen from 1939, and a figure of the same order before that). A government district therefore included more than one Sotho district, but the latter were generally fully included in the British division. In 1949, the annual reports for Basutoland even described the territory as being divided into districts (governmental), themselves subdivided into Sotho "wards". But before that, there were at least three exceptions: Chief Boslomoane Peete's district was divided between the two governmental districts of Leribe and Teyateyaneng; Tomate Mahao's between those of Mafeteng and Moira le's Hoek; and Seklonyana Bereng's between those of Maseru, Mafeteng and Qaqlia's Nek. To this problem linked to the use of the "district" outfit in reference to both the territorial divisions drawn by the British administration and that of the Sotho administration, is added the fact that the term "district" designates also more widely the political unit of considerable size.

Les districts - sothos - étaient à leur tour divisés en "sub-districts", sous-districts. L'autorité sotho chargée de ces unités était appelée un anglais "Sub-chief" - sous-chef. Ce terme correspondait au sesotho "*inoi'cilana*" - petit chef, ou encore "*klisoaiia*" - troisième sens.

but etnp runté in Tswana (which is close to the term nguni). Here again, we encounter problems of nomenclature. The English term "sub-district" was also used in a broad sense to designate a political unit of modest size. Similarly, in Sesotlio, the same word "sereke" was used to designate either a district or a large sub-district, reflecting the fact that people were primarily concerned with the size of the parcel. Ingeniously, one wonders whether important sub-chiefs were not referred to as chiefs when the British government listed them in 1939, some sub-chiefs were described as "chiefs" so as not to offend them. This confusion in the use of terms can also be explained by the fact that some sub-chiefs had a larger territory - and a larger population - under their authority than others. However, the distinction between chiefs and sub-chiefs was justified by the fact that the former were under the direct authority of the supreme chief, while the latter were not, and were accountable to an intermediate authority. In addition, sub-districts were sometimes divided into smaller sub-districts. The sub-chiefs of the latter were therefore subject to a number of intermediary authorities between themselves and the supreme chief.

Finally, the sub-districts were in turn divided into "wards", which were the smallest political subdivisions, in that the authorities responsible for them - the "headmen" - were the lowest level of British administration, and had functions defined by it.

But this is not the case for the villages - the real basic units of society, and the lands and pastures that depend on them. In this case, each village is headed by an "village headman". These two categories of authorities, headman and village headmen, were both designated in Sesotlio by the same term "village head" i.e. "pêre de village". Nevertheless, the distinction was sometimes made by the use of the term "village head" for the headman and "village head" for the village headmen. In this case, each village is headed by an "village headman". These two categories of authorities, headman and village headmen, were both designated in Sesotlio by the same term "village head" i.e. "pêre de village". Nevertheless, the distinction was sometimes made by the use of the term "village head" for the headman and "village head" for the village headmen. In this case, each village is headed by an "village headman".

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which, as before, would seem to indicate that the Basotho attached more importance to the extent of an authority's jurisdiction than to its strict position in the Sotho hierarchy. The fact that there was no precise term to designate the various territorial divisions - "naha", "sebaka" and, as we have seen, "setereke" were used, which simply meant "territory" - points in the same direction.

In the above passage, the nomenclature I have used is that employed by Ashton in The Basuto, primarily because H. Ashton is, to my knowledge, the author who dwells most on the subject.

Nevertheless, districts were also frequently referred to by the term "ward" (and consequently to large chiefs by the expression "ward chiefs"). To add to the confusion, the term "ward" was also used to designate a small son-district - thus approaching the meaning considered strict here, and, in a broader sense, to designate a territory under the direct authority of a chief or deputy chief, and not delegated to an inferior authority: in this case, the term "personal ward" was used.

This diversity of uses given to the same term, even in English, when its use by the government should logically have led to defined uses, can be astonishing.

Example of territorial organization: the Mokhotlong district

The territorial organization of the Sotho power hierarchy can be seen more clearly if we consider one of the districts as an example. The diagram below shows

the political structure of the Mokhotlong district in 1936 - hence towards the end of the period of British rule. This district was then under the authority of Chief Seriso Griffith - who as such was placed directly below that of the supreme chief, who at the time was Griffith, his father. The

he district of Rlokholong was divided into three main sub-districts, each under the responsibility of a sub-chief, in this case Mankata Rafolatsane and Mo sue Lelingoana.

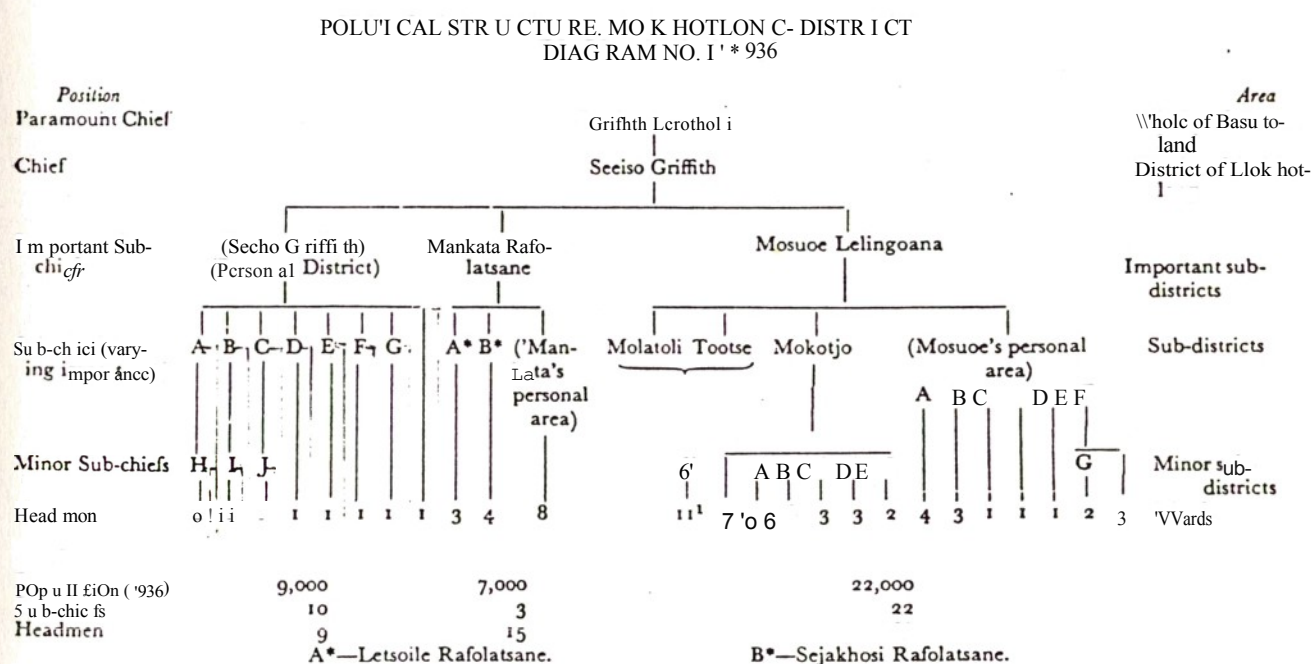
We note that the third sub-district was not under the control of a sub-chief per se, or that its sub-chief happened to be the "district chief, Seriso Griffith. This sub-district was the personal territory - "persou al w ard" - of Chief Scriso.

11 It should also be noted that the Nlosue Lelinqoana sub-district - on the right of the diagram - corresponded to the territory of the Batlokiva tribe.

The other two sub-districts, Senso's personal territory and Mankata's sub-district - on the left of the diagram, used to form a single district, under the authority of Mankata's father-in-law, Rafolatsane Letsie. Until 1925, both this former district and the Tlokwa territory were under the direct authority of the Paramount Chief, Rafolatsane Letsie.

Diagram 2. Diagram showing the political organization of the
of the Mokhotlong district in 1936.

Diagram 2. Diagram showing the political organization of the IVlokhotlong district in 1936 (from Ashton H., The Basuto, p. 189).



¹ Both Molatoli's and Tootse's areas are subdivided similarly to those of Mosuo and of other sub-chiefs. Together they have under them 6 minor sub-chiefs and 11 headmen.

Each of the three main sub-districts of 1936 was in turn subdivided into sub-districts of varying size. Each of these was headed by a sub-chief, with the exception of the territories directly under the control of Mosue, Mankata and Seeiso. Technically speaking, we can therefore say that the chief fulfilled at the same time the function of important sub-chief over a part of his district, and that of important sub-chief over a portion of the latter.

The main sub-district of Seriso was divided into eight sub-districts, that of Mankata into three and that of Mosue into four. But some of these medium-sized subdistricts were subdivided. The Mokotjo sub-district, for example, comprised six minor sub-districts, one of which was under Mokotjo's direct authority as his personal territory.

Finally, minor sub-districts and unsubdivided minor sub-districts were made up of "wards", some under the authority of a headman who was just that, others as personal "wards" of sub-chiefs - whatever their relative status - or chiefs.

Taking the main sub-district of Seeiso as an example, there were ten sub-chiefs - excluding Seeiso, three of whom were minors and nine headmen. As each of them was directly responsible for one ward, as was Seeiso, the number of wards in the Seeiso subdistrict was therefore twenty. Another way of looking at the problem is to say that each of these twenty wards, one was under the direct authority of the main sub-chief.

Seven of the wards were under the authority of both the sub-chiefs and the sous-chef principal, three were under the authority of both a sous-chef and the sous-chef principal, one fell under the authority of both the sub-chief and the sous-chef principal, four were under that of both the sub-chief and the sous-chef principal, and finally four tombaient sous d'un chef et de chacune des trois catégories de sous-chefs. All were, of course, under the authority of the chief of Mokotjo and said chief.

The population of the Seeiso sub-district was nine thousand. In the more numerous Mosue sub-district, where the population reached twenty-two thousand, the number of wards was ninety - Mosue didn't seem to have a personal ward. The number of authorities under Mosue's power was also ninety (not including, of course, the ramotse). Taking this fact into consideration, we can better appreciate the differences in status between a senior sub-chief such as klosiie, and a minor sub-chief who, in the worst case, only had a headman and two wards under his authority, the one controlled directly by the headman and the one controlled directly by him.

Similarly, Mosue had twenty-two thousand people under his authority, as we've seen, whereas he had an average of less than eight hundred under Mosue (the average ward population being around two hundred and fifty according to Mosue sub-district figures).

b. Roles and prerogatives: evolution

11 We'll now look at the role of the cliefferie during this period. In the following section, we'll simply refer to all Sotho authorities as "chiefs", whatever their hierarchical position. We will distinguish between important "chiefs" (or authorities) and "minor chiefs" as the need arises, the former referring to a graiid chief or his principal chief. the latter to a minor chief or headman.

The assumption of Basiitolaiid by the British crown inodified both the role and the:- prerogativ es of the chet's - the tletix were often linked. In some cases, it liimited their potn oii's, cliai'3eant of functions which were formerly theirs, but it gave them

functions they did not previously have. As already mentioned, in principle, chiefs had no legislative power, in that they could not promulgate laws (established customs were simply recognized). Nevertheless, chiefs could promulgate ordinances. On the other hand, they retained most of their executive and judicial powers - a direct consequence of the British option of indirect administration. This latter task was considered by the British administration to be the principal role of the chiefs, who for this purpose needed to control the judiciary and the executive, and even saw new tasks added to their traditional functions in this area.

Land allocation

One of the chiefs' traditional prerogatives, which was revived in 1584, was their right to distribute land among their subjects. In fact, this had been taken away from the chiefs when the territory was under the authority of the Cape. The British government, by regaining direct control of the territory, restored this prerogative to the chiefs.

We have noted that, according to Casalis, under Moslioeshoe, certain chiefs took advantage of this power to allocate the best lands to themselves. Although it is difficult to assess to what extent, the abuses permitted by this system became more and more frequent in the period that followed.

nous occupe.

This was particularly the case when the head of a family died. The chief would then reallocate the land: but the defiiiiit's adult sons were supposed to receive it first. These chiefs took advantage of this aliibiguity to allocate the land to their favorites. In a context of strong deiio*raplii'}ue ci'oissaiice, and doiic of increasing land scarcity, the fact tte takelre tles libertes .iv'ec this principle revealed all evening iiiimportance: chiefs allocated aiiisi

land to community members who, being relatively well-off, were able to buy the chiefs. By the early 1950s, complaints in this regard from the Progressive Association - to which we shall return - were commonplace, and the government was therefore aware of the existence of a feeling of insecurity about land among the population. although it remained reserved as to the validity of this feeling, and tended to attribute it exclusively to demographic pressure.

In the same vein, authorization to use reeds and other building materials was still considered a privilege of the chiefs, and constituted one of their sources of income.

Administration of justice

One of the chiefs' most important functions was to administer justice. This was a power that all Sotho authorities continued to possess, right down to the villap-e chiefs. Here again, there were many abuses in the exercise of this power.

On the one hand, as with the allocation of land, some chiefs allowed themselves to be bought. Litigants sometimes offered them gifts to ensure a decision in their favor.

But the administration of justice was a more direct source of income: the arrears they imposed - usually in livestock - were always part of the chiefs' prerogatives. It is obvious that it was directly in their interest to demand very heavy arrears, and this is indeed what they did. An example of an ox tribute case: "ai te, alors l'impôt ce la represented two thirds of the possessions of a nlosotlio iiojen. Une p'rt import.anc of the chiefs' re" eitis thus came from fines. In 1944, the Comité é l'q-é d'étude le p'objet de tresor public described the system as follows

"... the chieftainship was "fed" by "eating" the fines imposed by the courts and the proceeds of the sale of stray stock ... 41

fl alludes to another source of income for chiefs: the appropriation of lost livestock. Important chiefs were in charge of looking after lost cattle and, if they failed, after a period of one year, they became the owner of the cattle. Here again, many abuses occurred. As early as 1893, Quthing District Magistrate S. Barret complained about

"the practice which prevails among the chiefs throughout the country of treating inq- derelict stock as their prerequisite, instead of handing it over to the proper authorities, is liable to abuse, and should be put a stop to "42.

An even more serious case of abuse of power linked to the judicial function of chiefs was what is known as "eating up" someone. Already mentioned for the previous period, these abuses were repeated under the British protectorate. Some chiefs took possession of the possessions of people accused of witchcraft, and took advantage of the situation to attack the villages in which they lived. In the same way, an entire village was sometimes detained for the wrongdoing of a single inhabitant. Although the practice never completely ceased, it seems to have become less frequent, as the adiiiiinistratioii biltaiii: iqiic became concerned.

The executive

Uii means pltis ilii'ect which enabled chiefs to secure a coiiipléiiiciit of income seiiible ax'oii' cté l'extorsioli pure et simple. Duvoisin mentioned it as early as 1885. FaiLaiit

* Bas o N ional T easu E lana o Me orandu , p. 8
4gs Barret. Basutoland Annual Reports for 1892-03, p. 41

Probably alluding to the same phenomenon, Leeman speaks of "tebolio" or "reiriercieinent", a present in livestock or grain that the p-ens owed their chief, and which they themselves described as "tjotjo", "subornation".

Not only did the chiefs abuse their power to enrich themselves by acquiring the property of their subjects in one way or another, they also made them work for them. The practice of letserua or "com'ée" was still de rigueur after 1584, and was abused by the chiefs. In theory, their traditional rights were limited to requiring their subjects to carry messages for them, and to weed, plough and harvest their land. But in practice, chiefs came to demand that their subjects ciiltii er their wives' fields too, and bring dii wood for cliatiffa-e or building materials. These abuses were sufficiently numerous to be keenly felt by the population, who tried to avoid them as much as possible - so much so that they were eventually given the option of paying the chief in shillings a year, in order to avoid having to pay them.

Similarly, it was traditionally customary for "tsiino ea lii'a", or tnbale lands, to be cultivated free of charge by the population, their produce being reserved for the enti'etien of the chief's messengers and other assistants. The chiefs continued to ctiltii er' these lands free of charge, but some of them kept the pi'o'luits.

Social assistance

Chiefs therefore often used their position to abuse the di'oits lctii' gave them in order to accomplish their task. However, the chiefs' traditional whips did not lend themselves to such abuse. Cousine nous l'ai ous ii pour l' lii période précédente, ils étaient chargés de porter assistance :a ceux de letii's geii s dame le besoin. Theoretically, this was still the case after 1884: in 19.53, Slieddic k cci ivait eiicoi'c

that the chief's illage was the place where indigeiits, widows and widowers, people abandoned by their spouses, and in general, those without a home, gathered. They gathered around the chief to be fed in exchange for their labor.

But in reality, the chiefs were less and less fulfilling their cliaritable duties as redistributors of the community's wealth and pouw'oyeurs. Their disinterest was particularly evident in 1932-1933, when the country was in the grip of famine. With a few rare exceptions

"the chiefs behaved badly, doing little or nothing for their starving people "43.

New roles: collaboration with the government

In addition to their traditional role, the chiefs also took on new functions, as agents of the British administration.

taxes, as we'll see in more detail in the section on the Executive Poiis'oir.

Sources of revenue

As in the previous period, chiefs were distinguished from the population by fern affluence, more or less pronounced depending on their hierarchical position. But the less important authorities taififit fi!^ gënèra! p!us fori:ir:des than a N:einbre nioyei: ile !a population, owning, for example, one or two more lands, and those who occupied a high position in the administrative ladder possessed numerous lands and i astes herds.

These monies were in part from those collected during the period of the protectorate. raids, but also from the stray livestock they appropriated and the fines they imposed - these monies could be worth up to 500 liras.

" a year for an important chief.

The chiefs' other sources of income were their role in collecting the *taxe de case* and their prerogatives over reeds and building materials, as well as indirectly the *corvées* imposed on the population, abusive or not. This could be all the more profitable as they had to host land. An important chieftain, even though he was *inop-ame*, was thus able to have a *x'ingtaine* of large lands worshipped. To this was sometimes added the "*sethabathaba*" or "*morokhoana*", which people paid according to their means. Ashton claimed that for a time, it was imposed quite frequently. and

that if he could be taxed to finance a lawsuit concerning the whole population, he was taxed to finance a lawsuit concerning the whole population, he was taxed to finance a lawsuit concerning the whole population, he was taxed to finance a lawsuit concerning the whole population.

also to enable a chief to repay his debts, thus avoiding the shame of being *pou'suis* i

which had only recently been forbidden by the supreme chief when Ashton "" .
 cent in 1952

"Occasionally a *sethabathahn* or *morokhocuui* may be imposed on a district and. indeed, this used to be fairly common. This is a levy or "ship round", and people are expected to pay according to their means and not at a fixed rate. It used to be imposed to collect funds for some local purpose, such as to finance a lawsuit involving the tribe. or' to pay the chiefs debts and to save him the disgrace of *JroSecution*. but collection for this has recently been prohibited by the Paramount Chief⁴⁴

c. The investment system and its consequences

Origins

The entire period we are studying is marked by a phenomenon that profoundly altered the characteristics of chieftaincy, the distribution of power among chiefs, and relations between chiefs and the population: the placement system.

As we have seen, hloshoeslioe himself had already begun to develop this method of recruitment by the sothos authorities, which consisted of placing a member of his family - usually one of his sons - in charge of part of the territory under his authority. This practice had existed more generally among sotho-tswaiia groups before the Lifaqane. Even at that time, a chief's eldest sons were granted parts of his territory in which they acted as his representatives, for example with recently subjugated peoples, or even simply allies.

This custom was motivated by two concerns. On the one hand, it seemed desirable that the eldest son, and therefore future successor to the chief, should learn his future duties by starting to exercise them as early as possible, and while his father was still alive, and therefore under his supervision. On the other hand, this could help to counteract the dangers of jealousy and ambition on the part of the principal wife's younger sons. Cadets were therefore sometimes also given positions, if possible away from a chief's village. Existing possible intrigues. Only sons who came last in the order of succession were not "placed" in this way, especially sons of second-in-laws.

Après avoir dans le premier temps laissé le contrôle des différentes parties du territoire aux autorités locales établies, Moshoeshoe éprouva cette coutume. Mais avec d'autres motivations outre les précédentes, et en la favorisant comme nous l'avons vu; comme ceci

After having divided his territory into five portions, four of which he entrusted to his four main sons, Letsie, Rlolapo, Masupha and Majara, he developed the system by entrusting portions of his five "districts" not only to less important sons, but also to some of his brothers and to those who had served him faithfully.

Moslioeshoe's motives were, of course, the same as those already mentioned: entrusting parts of his territory to people he could trust met both the administrative need to delegate power, given the size of the territory he controlled, and the need to ensure its cohesion.

Features under the British protectorate

But under the British protectorate, with Basutoland's unity on a firm footing and a hierarchy of authorities already in place, the phenomenon of placement began to emerge, and - this was a development - at lower rungs of the hierarchical ladder. Big chiefs and their chiefs took the liberty of placing people of their choice in a part of the territory they controlled, it being understood that the authorities thus placed could in turn place others. Moreover, the habit developed of placing not only the sons of the first house, but also those of other wives.

11 It's not hard to imagine one of the most direct consequences of this phenomenon: the multiplication of the number of sotho authorities. But **b e f o r e** tackling the [H ohlèmc tte sos conséqlciices, vo}'oiiis more en detail comment nil placement s'e'it'ectiait.

The process of delegation of authority developed in several stages. First, the chief who decided to place a person had to consult the

population of the territory to be controlled by the new authority. Sheddick asserted that the wishes of the population were generally respected, and that it was difficult for a chief to make an investment against the wishes of the population concerned: but the unpopularity of the system may leave us in doubt on this point. What's more, Sheddick admitted that when it came to an important position, the chief's decision had **no opposition**.

The British administration was then informed of the placement by the Paramount Chief. For the placement of important authorities, it sometimes sent official representatives to attend the ceremony. In fact, once the placement had been decided with certainty, it was declared publicly and the new authority could then administer justice, choose its assistants and exercise its land administration rights. At this stage, there was still no personal territory.

It was only later that a village was chosen as the one in which he would rule. However, choosing a pre-existing village meant that the rainotse of that village had to cease to exercise his functions. So a new village was sometimes built for the new chief.

Finally, the new chief took over a portion of the territory under his direct control, the "bokliina pere", "personal xvard". On this portion, he could set aside enclosures, install his dependents, and allocate arable land and grazing land.

Consequences

The placement of the new chief had deep repercussions at the level of the redistribution of power among the cliefferie and at the characteristic of this power.

the distribution of power among the cliefferie and the characteristics of this power.

throughout the protectorate period, the system continued to offer advantages similar to those it had traditionally represented.

It kept the chiefs' sons busy, which, in addition to avoiding quarrels as we said, also avoided dividing the chief's family land between his sons in a context where the demographic explosion was making vacant land increasingly scarce.

On the other hand, the chief was able to control more closely the different regions under his authority. Although the risk of communities losing their autonomy was dispelled, it was nonetheless significant: here again, the scarcity of land on the long-occupied plateaus pushed people to settle in more mountainous regions, where they formed more dispersed communities, and thus more difficult to control politically.

In theory at least, the possibility of appointing authorities made it possible to reward deserving individuals, and to replace unpopular or incapable leaders. But in practice, as we shall see, this does not seem to have been the case.

The negative consequences of the placement system were many and far-reaching. D'ine j :ar:, c- syst--:ij- d'accès au pouvoir provoque une augmentation considérable du nombre de chefs. Existing jurisdictions were no longer sufficient, and chiefs took on the role of "iti-tlessus" of pre-existing aiiioiatés, in the same way Moslioeslioe had t "ait to conti'ôler the centrifugal tendencies of groups which, néanmoins, had already had a leader. De nouvelles positions étaient créées.

The extent to which this last phenomenon took place is all the more striking when we consider the number of sons - the main beneficiaries of the system - that the chiefs had. This number was of course linked to the number of their wives, since the sons of minor houses were also placed. I have no figures indicating the degree of polygyny for minor authorities, but the number of wives of certain important chiefs and *siiprênes* suggests that authorities of average importance may have had numerous wives: the paramount chiefs Letsie, Griffith and Seeiso had between sixty and eighty, fourteen and eleven respectively, and chief Molapo had eighty.

One wonders how many of these chiefs' sons were placed, especially as many of them were only officially *hls teurs*, their biological fathers in fact being dependents of the chiefs in question. Be that as it may, the placement system did lead to a significant increase in the number of chiefs. Again, it is difficult to estimate the number of chiefs in 1884; at the time, they had not yet been registered, but when they were in 1939, the figure had risen to 1,340. And although it was supposed to take headmen into account, it seemed likely that half of them had not. Unambiguously, this represented a significant increase on 1884.

Admittedly, the population had also increased, and although the authority of the chiefs was *i%ffiii- j:ar r°j:ort à 'i:i t-rritoire doiné*, one might well wonder if this did not *@stifia* it - from 159.1, a 1939, the population said Basutoland had risen from 213. 000 to 449.000 }Jei'sonnes. et ce lialgre le fait que beaucoup qtiittaient le pays pour aller travailler dali s les iiiiies de l'Unioii. However, the increase in the number of chiefs still outstripped that of the population. Em efFet. eci'ivaiit in 1944 aloi's that the number of chiefs had already been reduced, the coiiiite cliai'-qé de l'étude dii pi'ojet de ti'ésor public complained

"... the numbers of chiefs, sub-chiefs and headmen who had been "placed" and the numbers of courts which had been established were far in excess of the numbers required by the nation in the interests of efficient administration and of justice "* .

Indeed, all Sothos authorities had their own court of justice, including those in newly created offices created by placement. As the administration of justice was an important source of income for the chiefs, the fact that population growth had not kept pace with the increase in the number of chiefs meant that a given number of people had to support a given number of chiefs. The latter, if they did not want to see their "x'ie train" decline, had to get more from these people.

"... each authority naturally wants to be maintained in an appropriate style and so insists on his various rights ... The accumulated burden of these is intolerable "46.

Their courts of justice were one of the most important of these rights.

In addition to the increased burden on the population that this increase in the number of chiefs

it also led to a decrease in the average importance of their positions.

"There was a progressive fragmentation of authority, since where a new authority was superimposed on an old the latter was not always replaced, and powers were divided or jurisdiction split up *7.

But on average, some authorities suffered more than others from this decline. When a new chief was placed "above" another, the second was all the more degraded: he was separated from the supreme chief by a foldis step.

the Basuto National Treasury Explanatory Memorandum, p. 8
 Ashton, *The Basuto*, p. 203

47 Hailey, *The high commission territories*, p. 76

The case of the great chiefs Rafolatsane and Lelingoana, and their successors, as described by Ashton, illustrates this aspect of the problem. Both Lelingoana and Rafolatsane were independent tribal chiefs who, like all great chiefs, owed allegiance only to the paramount chief of the day, Griffith. In 1925, Griffith placed his son Seeiso above the two chiefs, making him responsible for both their districts. By adding an intermediate authority between them and himself, Griffith technically reduced the two great chiefs to the status of sub-chiefs.

Lelingoana and Rafolatsane protested rigorously, and Griffith promised them that officially they would still be considered great chiefs for the rest of their lives. Nevertheless, they were to be subordinate to Seeiso. For example, whereas until then calls from their courts had been made directly to Griffith's court, from now on they would be made to Seeiso's court. In addition, a small portion of Rafolatsane's territory was amputated so that Seeiso could build its village there. But when Rafolatsane died in 1935, his successor was obliged to cede a portion of the remaining territory to form Seeiso's personal territory. These two successive amputations represented more than half of what had been Rafolatsane's district. But the whole of this personal territory did not remain under Seeiso's direct control, in fact.

The Lelingoana territory had not been amputated, but when his son Mosue died succeeded him in 1934, he was officially degraded to sub-chief. Seeiso soon tried to make him perform the duties of a subordinate authority: he ordered his people to plough his fields and bring him wood. At

Mosue's remission, Seeiso brought him before his own court, where he was sentenced to an aliende. The case was then appealed to the court of the paramount chief, where the verdict was some de coiripromis. The fine imposed on Mosue was annulled, and it was decided that the people

* of Mosue would not have to plow for Seeiso; on the other hand, Mosue would have to bring the cattle to Seeiso, as a subordinate authority should to the one above it. He therefore had to show Seeiso certain signs of subordination, but not others.

Mosue tried in vain to appeal to the court of the superior resident, but the verdict was considered an administrative decision and not a judicial one, so he was not there. He was authorized. After a meeting with the Resident Superior, Mosue received the official contradictory assurance that "he had in fact not been deprived of any of his rights and that the government still considered him to have the same status as his father, and that the only change made was a verbal one, from "chief" to "deputy chief"! The Supreme Chief joined in with the government, assuring them that he retained all his rights.

At the same time, Seeiso continued to try to get Mosue to behave as a subordinate authority, which Mosue continued to refuse, arguing that he had succeeded his father as paramount chief and therefore owed no allegiance to Seeiso.

Seeiso then became supreme chief, before dying and being succeeded in 1940 by his father. widow, Mantsebo. In 1944, the latter asked Mosue to cede a portion of her territory to the chief who had replaced Seeiso as head of the district - just as Rafolatsane's son had had to do. Once again, Mosue refused, but Mantsebo ignored him and sent representatives who, together with the district chief (Mokhotlong), defined the boundaries, amputating Mosue's jurisdiction by one-fifth to one-quarter of its area and one-third of its territory. its population.

Mosue once again turned to the courts and, after losing his case in the court of the supreme chief and his appeal to the judicial commissioner, he finally won his case. He lost in the High Court. The judge who sided with him suggested that his status be better defined and, alluding to the assurances of the government, declared

otherwise enforcement of the decision to make him a sub-chief may be regarded as a breach of faith and result in the creation of a lasting grievance and sense of injustice, for this assurance can hardly be reconciled with a step which, in effect, deprives appellant of all authority over a third of the Batlokoa people and about a quarter of the area under him "*" .

Two years later, Mosue was finally recognized.

"Chief of the Batlokoa, Malingoaneng, in the Mokhotlong district subordinate to the chief of Mokhotlong ⁴ .

Although d was considered subordinate to the big chief, this meant that he was not officially branded a sub-chief, but instead received the title of tribal chief. This was, of course, a very mitigated victory for Mosue, and yet the many other authorities whose position was degraded by placement rarely had such consolation.

But the placement system had other disadvantages too, in addition to those associated with the multiplication of the number of authorities. Indeed, the endless quarrels that a new chief's placement entailed, between the latter and the previous one" ended up affecting relations between the chiefs and the population.

But above all, when a new authority was put in place, by definition it had no particular links with the population living in the territory it took over. The chiefs who had been in place until then, on the other hand, having acceded to their position by succeeding their father - generally - had links with the community they led.

H Ashton, *The Basuto*, p. 202
H. Ashton, *The Basuto*, p. 202

Having grown up in the same region, and having a kinship link with the previous chief, and more broadly, a clan link with the community as a whole, enabled them to have a different relationship with the population. On the one hand, the latter could more easily feel loyalty towards them. On the other hand, the chiefs themselves could feel closer to the population, which could reduce the temptation to abuse their authority.

On the other hand, placement

"... destroys the close clan, kin and personal relationships that often exist between smaller authorities and their people, and brings in outsiders who more often than not belong to a different clan or tribal group, have no personal feelings for or interest in their subjects".
affairs and well-being, and are mainly concerned with what they themselves can get out of their position 50a

This was true whatever the circumstances of the placement, but even more so when the new leader, rather than being installed "above" another, replaced him outright - the other losing all political authority in the process.

It is therefore highly probable that the placement system, while theoretically capable of replacing bad leaders with better ones, was in reality responsible for the deterioration of the relationship between subjects and leaders, which, as we shall see, tended to deteriorate.

The potential benefit of the system was rendered almost impossible that the replacement of incapable or inexperienced chiefs would have necessitated on the part of the authorities

a concern and benevolence towards the population that was precisely rare at all levels.

"Properly used, it might prove a valuable sanction for efficient administration, but this is not likely to be achieved as the power is wielded by people who, too often, are inefficient and corrupt themselves."⁵¹

In addition, the addition of intermediaries in the hierarchy from headman to supreme chief not only made the latter more distant from the population, but also considerably slowed down administrative processes and, in particular, the functioning of the judicial system.

A final important consequence of placement was the fact that, after being applied for decades, it had affected the clan composition of Sotho authorities at all levels.

Already under Moshoeshoe, it had the direct consequence - not to say the avowed aim - of placing people from the Moshoeshoe family in important positions.

Under the protectorate, while the system affected all levels of authority in the Sotho administration, members of the Moshoeshoe clan, i.e. the Bathena, were to be found at all levels of the hierarchy of power. But the domination was particularly marked in the positions of the king and his sons. In fact, since the implementation of the system, the system of the placement did not eliminate the chiefs preexisting in the hierarchy and reduced them to an inferior rank.

⁵¹H. Ashton, *The Basuto*, p. 20.

Thus, according to Hailey, around the end of the 1930s, twenty-seven of the thirty-two Sotho districts were headed by a Kwenas chief, descended either from Moshoeshoe himself or one of his brothers. Of the remaining four districts, one was under a *taung* chief (in the British district of Mafeteng), and three under *fokeng* chiefs (in the British district of Mafeteng).

Ashton, writing in 1952, then counted eighteen districts, all under the charge of either a brother, cousin or uncle of the paramount chief. The number of non-kwenas chiefs was therefore decreasing accordingly. The main victims of the system were the tribal chiefs, who had already lost much of their authority under Moshoeshoe. Thus, although the Bataung and MakwaLxa retained their tribal chiefs, they were only exceptions. The descendants of the Phuthi chief Moorosi had been degraded to the status of minor headmen.

"... the wide extension after his (Moshoeshoe's) death of the practice of "placing", which extended to charges of a relatively subordinate standing, had the effect of further diminishing any authority based on tribal or clan affiliations" ².

Generally speaking, the lineages of former chiefs had been eliminated from power. Of the dominant lineages, the main one was of course that directly descended from Moshoeshoe, and in particular the descendants of his son Letsie, but also of Molapo and Masupha, who also made investments in the regions where they were chiefs.

At the end of the 1930s, of the thirty-two Sotho administrative districts that then covered the country, twenty-seven were controlled by Kwenas authorities descended either from Moshoeshoe or from one of his brothers (the other four being controlled by Tammy and Fokeng chiefs). It should be noted, however, that members of the main descendants of the

²Hailey, *The high commission territories*, p. 71

Moshoeshoe's family had sometimes been placed at the expense of minor descendants who,

although still occupying important positions, had thus been degraded.

The supremacy acquired in this way by the descendants of Moshoeshoe was eventually officially recognized by the government. Indeed, they formed a -prople called the "Sons of Moshoesh".

It is unclear whether this group included all the descendants of the Moshoeshoe family with political power, even those of minor rank, or only the most important of them, and by extension other politically influential figures. Indeed, the 1949 annual reports spoke of the "hierarchy of chiefs and headmen, a number of whom trace their descent to Moshoesh ... and are styled

"The Sons of Moshoesh"³. Harley, on the other hand, defined the group as comprising

"the leading sons of the Moshoesh lineage and their principal advisers, together with the few restraining tribal leaders, such as the chiefs of the khoakhoa or the taung" 4

11 It would seem logical that the term was first applied only to the descendants of Moshoeshoe - and then to all of them - and that, in view of their growing political pre-eminence, a shift in meaning - quite significant in itself - took place so that the expression came to designate the most influential members of the Sotho administration, whether descendants of Moshoesh or not, it being understood that most of them were indeed so. Moreover, alluding to the issue of their reunions, Ashton noted.

"The meeting, though virtually of the Sons of Moshoesh, was attended by all the

chiefs, their councillors and people, in which they were descendants of Moshoesh or not ..."

Anonymous, *Basutoland annual reports of 1949*, p. 65
 Bailey, *The high commission territories*, p. 72
³H. Ashton, *The Basuto*, p. 197

This supports the hypothesis of a shift in meaning, representative of the changes taking place within the chieftaincy. The Sons of Moshesh became an influential group, particularly when it came to a critical issue: the succession of the supreme chief. Although succession was theoretically defined by custom, in practice disputes arose, especially when the stakes were as high as the position of paramount chief. Thus, while Griffith's successor should, according to custom, be Seeiso, Griffith preferred to appoint another of his sons, Bereng. When Griffith died in 1939, it was the British government itself that called a meeting of the Sons of Moshesh to appoint a successor - Seeiso was chosen. When Seeiso died, the succession was once again a problem. Seeiso's son, who should have succeeded him, was still a child. Moreover, Seeiso had died following an illness during which he had been replaced by his chief advisor, Gabashane, rather than Bereng. These circumstances were not conducive to appointing Bereng regent during the minority of Seeiso's son. Here again, after disputes over the details of which we shall not go into, it was the decision of the Sons of Moshesh that prevailed. Finally, they ruled in favor of Seeiso's widow, Mantsebo, and the government approved their decision. Here again, it was the government that had requested the meeting of the Sons of Moshesh in the capital, admittedly after they had already met several times without government intervention.

Through these two succession quarrels, we can thus clearly see the political influence that the group designated as "Sons of Moshesh", and particularly the descendants of Moshoeslioe.

d. Relations between chiefs and the population

Relations with the chiefs

The changes we have just described in the power of chiefs altered relations between chiefs and people's perception of them.

We've already touched on this issue, noting that the placement of authorities outside the population made chieftaincy less sensitive to the interests of the people with whom they identified, and generally led to a more distant relationship between rulers and ruled.

We will now examine this issue in greater detail. On the one hand, there was an evolution in the way leaders were treated. Whereas in the past, as we saw in Part I, people had shown a certain familiarity with eu.x, showing them ostensible marks of respect only in certain circumstances, during the period of the British protectorate, on the contrary, people treated chiefs with much less naturalness. It was in all circumstances that they showed them deference and addressed them with formality, and all the more so when the authority in question occupied a high hierarchical rank.

Important chiefs were greeted by uncovering their heads, or even kneeling before them. When people came to their courts, they threw themselves at their feet, bowing and flattering them. When an important chief travelled, he was accompanied by a group of horsemen, and was greeted in the villages by shouts from the women, and songs and dances from the men in his honour; likewise when he left a village. Less important authorities were of course not entitled to such honours. But in any case, they were treated with more respect than anyone else, whatever the circumstances.

It is difficult to assess the exact causes of this evolution. But it is unlikely to have been the result of increased respect on the part of the population... It is more likely that the chiefs, perhaps feeling less close to the people or wishing to make the most of their position, tried themselves to be treated with more deference, and that the population did not dare to refuse.

Indeed, people were in a new position of vulnerability in relation to their chiefs. Previously, chiefs had had a vested interest in respecting their subjects and fulfilling their duties towards them. If subjects weren't satisfied with their chiefs, they could easily leave them and put themselves under the authority of another. But during the period we're studying, population growth had eliminated this freedom of movement within Basutoland. Anyone who really wanted to get away from a chief could do so, but only if they left Basutoland, which meant taking on a salaried job and thus changing their life

"Lessouto is small, and the population has grown. For several years now, we've been noticing that the fields are getting closer and closer to our stations. At the moment, they're cemented in, all the arable land is cultivated, and there's no grazing other than narrow strips between the fields or on the plateau of the Maloutis⁵⁶.

It seems that the chiefs would rather see their subjects go than risk being expelled by their chiefs.

for minor reasons.

The chiefs therefore had nothing to fear from their people abandoning them because of their attitude.

H. Marzoff, Letter of May 1910 to committee members

It's very probably one of the main reasons for the changes of behavior of chiefs, with the consequences of the investments we've seen. ' Certainly, even in the previous period, there were abuses. There were "good" chiefs and "bad" chiefs. But in the period in question, the second category saw its members. In 1952, Ashton renounced

"Owing to the breakdown of the old sanctions, the chiefs have little inducement to win the support and popularity of their people by the exercise of justice, generosity and graciousness; and ... many are more interested in satisfying their own desires than in serving their subjects; they abuse their authority and the privileges of their position for their own selfish ends. Many are drunkards, corrupt and immoral, and, like their forebears, oppose developments and innovations proposed or introduced for the benefit of the country. Dieterlen wrote, many years ago, of their "deplorable decadence", and his stricture still applies today⁷.

The phenomenon therefore seems to have spread over the whole period.

Public sentiment

The people's reaction to this situation seems to have been somewhat ambiguous. Certainly, despite the fears one might imagine, people were becoming increasingly critical of their leaders. They complained about their misuse of the placement system, the way they administered justice - both in terms of abuse and delay - among other things, and regretted a past where this was not the case. In particular, people were questioning how chiefs retained their traditional privileges, while no longer fulfilling some of their customary roles, such as assisting those in need.

^{57H}. Ashton. *The Basuto*, p. 220

Nevertheless, these sentiments were not strong enough to create a spirit of revolt. Despite the fact that, in the eyes of the population at large, the chiefs had come to be seen more as tyrants than as paternal figures, they still seemed to be regarded as indispensable. It's true that the country had never known any other system of government, and so it was perhaps easier to imagine an improvement approaching the situation that existed in what was probably a somewhat idealized past, than to imagine radical, unprecedented changes in the country. H. Ashton even argued that the population was attached to the institution of the chieftaincy because it represented their traditions and national unity, and that the situation of racial tension that was then worsening in the Union of South Africa probably only reinforced these feelings.

Changing the basis of power legitimacy

0 It remains possible that Ashton was simply projecting onto the Sotho population a perception of chieftaincy that was, in fact, his own... In any case, the absence of a climate of revolt was much more simply explained by the very existence of the guardian of order and civil order, which was itself partly responsible for the new attitudes of the chiefs: the British protectorate. As we have seen, the government came to support the chiefs as if maintaining their authority had become an end in itself, rather than a mode of government. In so doing, it changed the very foundations of the legitimacy of the chiefs' power:

"No longer could it be said of the chiefs that 'their authority was built on the foundation of popular support and maintained by a two way stream of consultation and advice'. In part, this estrangement of chiefs and people could be attributed to the tendency

of the British government to encourage the chiefs to look "upwards" towards the government for authority and support rather than, as before, to the people"⁸.

4. THE COUNCIL

a. Origins and reasons for creation

Almost two decades after the British government took direct control of Basutoland, the political landscape acquired a new holder of power: the "National Council", which shortly afterwards became the "Basuto[aland] Council" - for the sake of simplicity, we'll refer to it as the Council.

This new institution was created by mutual agreement between the supreme leader and the government. The reasons for its creation were manifold, especially on the British side. Primarily, they stemmed from the government's concern to guarantee representation of public opinion.

Traditionally, this representation was ensured above all by the institution of the pitso, where any individual could express himself freely. But during the period of the direct protectorate, except among the Batlokwa, the institution gradually fell into disuse. Until 1864, pitso had been convened on an as-needed basis - in response to the emergence of specific problems that needed to be discussed. In the period which concerns us, the principle of the pitso had been taken over by the British government - the Resident Superior had developed the habit of convening a pitso when he had an important decision to make, for example when it was a question of settling a dispute between important chiefs - which showed both the government's concern to ensure the Basotho the

opportunity to express themselves, but also a concern not to take important decisions alone. decisions.

Under the aegis of Cape Town, from 1974 onwards, it was decided that national pitsos should meet once a year. But from 1879 to 1886, these annual meetings were interrupted. Although national pitsos were held again after 1888, they were no longer held with the same regularity, and more importantly, their role was changing. They were less and less the center of debate, but merely assemblies where supreme chiefs or the government made important statements. In some cases, their sole purpose was to welcome distinguished visitors. Thus, towards the end of Lerotholi's reign, pitsos became little more than ceremonies.

The Basotho were therefore tending to lose the only space in which they could express themselves, and the government felt it necessary to replace them. Why did the government feel that a council - whose membership was, by definition, limited - could fulfil this role? 11 On the one hand, it seems that the government initially failed to distinguish between the opinion of the population and that of the smaller number of chiefs, probably because it considered the latter to be the unquestionable representatives of the former. On the other hand, it probably seemed to the government that the opinions of the chiefs and the population differed more according to their loyalty to one clan or group than according to their belonging to one status or another.

But there were also other reasons in favor of forming a council. The role of adviser to the chief that the pitsos had once played seemed equally difficult to maintain in the same way, given the new scope of the supreme chief's powers. The latter could no longer technically convene a pitso every time he had to make an important decision. 11 therefore came to rely more and more on his immediate advisors to help him in this task. Faced with this phenomenon, he seiiiblait

important to set up an institution that would counterbalance the very personal power of the supreme leader and those closest to him. Moreover, such an institution would be better able to provide the paramount chief with an opinion more representative of the Basotho in general than was the smaller number of his matonas, often Sons of Moshesh. Of course, it was also supposed to fulfill the same function towards the government.

b. Formation of the National Council

The idea of such a council was not new. hloshoeshe himself had already put it forward. More directly, however, the Council's existence had its origins in representations made in 1886 by the Senior Resident, Marshall C[arke, to the then Paramount Chief, Letsie

I. C[arke's letter to Letsie, as reported by Stevens, seems significant enough to be quoted here.

"I send a proposal for the making and the work of a council; this is my owu suggestion and is not from the government. As I wish you to look well into it and tell me openly your opinion after consulting your brothers, sons and cousins, you can tell me what you think, but the matter is of importance and should be carefully considered. I propose keeping 8 nominations for the government so as to be able to give representation in case people are left out or forgotten.

I think while the council is assembled the members should be fed and lodged at government expense. The Resideilt Commissioner and the Paramount Chief would be members of the Council.

The council would meet at least once a year at Maseni at sucli time as would be fi.xed by the Resident Coinmissioner.

The council would consider any fresh laws which are submitted to it, so far as such laws purely affected the Basuto; it would consider all questions connected with local affairs; it would also receive an account of the manner in which hut tax was spent.

Where serious national cases are referred by the Paramount Chief to the Resident Commissioner they can where advisable be heard by the latter with the Council. The Council cannot make laws, this can alone be done by the Queen's government, but it is to give advice and make suggestions as to what it thinks best for the nation" .

Letsie didn't reply immediately, and Clarke didn't insist. But in December 1889 (about three years later), Letsie wrote to Clarke. He stated that, after discussions with his sons, brothers and other important people, he consented to the formation of the Council. He added that, after careful consideration, he agreed with Clarke on the modalities by which the Council should function. Letsie I thus seemed to share the British vision of the role it should have

"... this Council will be for the whole nation; it will be for the representation of the whole of Basutoland "60.

The paramount chief nevertheless had two requests. Firstly, that the value of the taxes paid each year, and the amount remaining at the end of the year, be communicated; and secondly, that the members of the Council be for the most part chosen by him.

11 also desired the participation of the senior resident in the Council's activities, and wished tpi'il to be able to eli'e certain members.

R Stevens, *Lesotho Botswana and Swaziland*, p. 33-34⁶⁰R
 Stevens, *Lesotho Botswana and Swaziland*, p. 34

Lastly, he asked for the possibility of replacing members who did not seem to him to be fulfilling their role in the enablement.

enablement their function.

The Resident Superior presented these proposals to the High Commissioner, who was favourably disposed. In April 1890, the High Commissioner approved a set of resolutions providing for the establishment of such a Council. However, most of the chiefs were opposed: they saw in the Council a potential rival, with whom they would have to share their powers. Letsie insisted, even sending a list of the names of those he wished to become Council members. Feeling his health failing, he longed to see the creation of an institution capable of governing the disputes that were likely to arise at the time of his succession. But when he died in 1893, the Council had still not been formed.

As early as 1894, the new resident superior, Godfrey Lagden, tried to push for its creation. Letsie's death had left the proponents of the project alone to face opposition from hostile chiefs. However, at the national pitso meeting in May 1899, the chiefs present agreed that a fifty-member council should be formed. But Lerotlioli, Letsie's successor, didn't accept the idea until 1903, when he himself was weak enough to consider the problems his successor might face. He seemed to see the Council as a support for the supreme leader in the face of other leaders.

The High Council gave its go-ahead in 1903. and the preliminary session could take place in July 1903, as a sort of experiment, since the Council's legal existence had not yet been recognized by proclamation. Designated the "National Council", it was to be composed of a maximum of one hundred members, five of whom were appointed by the Resident Superior, the others by the Supreme Chief. Its members were only appointed on arrival. The President of the Council was the Resident Superior.

At its first session in 1903, the Council defined a set of customs - later referred to as the "Laws of Lerotholi" or the "Lerotholi Code of Lerotholi". The Council met again in 1905 and again in 1908, when it was agreed that sessions would be held annually from then on.

c. Consolidation: the Basutoland Council

In 1910, the Council was finally formally recognized by proclamation on March 7th of that year. The "National Council" was henceforth referred to as the "Basutoland Council".

The reasons for this formal establishment lay not only in the fact that the Council had already been in operation for several years, and was therefore no longer in an experimental phase. They also stemmed from a feeling of insecurity: at the time, there was talk of integrating Basutoland into the newly-formed Union of South Africa. Already in 1908, two years before the Union was created, the Paramount Chief had sent representatives to Great Britain to demand that Basutoland be incorporated into the Union. Basutoland was not included.

In this context, the Council appeared as a potential representative of Basotho interests vis-à-vis the government of a South African Union of which Basutoland might become a part. But to do so, its legal basis had to be firmly established.

When the Council met in 1909, it highlighted the problem. The high commissioner, Selbourne, was sympathetic to his arguments and obtained the Secretary of State's authorization to institutionalize the Council by proclamation.

The March 1910 proclamation defined both the composition of the Basutoland **Council and its** role. Like the 1903 statutes, it provided for a maximum of one hundred members, under the chairmanship of the Resident Superior. The Paramount Chief would be a member, with the **title of** "Chief Counselor". The Superior Resident could appoint five members, and the Supreme Chief ninety-four; but the choice of the latter had to be approved by the Superior Resident. (1 It was understood that the members appointed by the Paramount Chief would be chosen from among the most important chiefs or their advisors. As for those appointed by the senior resident, in theory they could not be sothos. In practice, however, they were also chosen by all senior residents from among the Sotho chiefs.

According to the proclamation, the role of the "Basutoland Council" was limited to discussing the territory's domestic affairs. It could give its opinion on bills presented by the government, and advise the latter. But it was up to the Superior Resident, as President of the Council, to submit bills to it. Nevertheless, Council members could still decide to discuss amendments to any proclamation concerning the territory.

Moreover, as Clarke had envisaged and Letsie demanded more than twenty years earlier, the Superior Resident was to inform the Council of the amount of taxes collected during the year, and the value of expenditures made.

To a large extent, the higher president was entrusted with the task of defining what could be discussed by the Council. He could propose the discussion of problems of a traditional nature, in collaboration with the supreme chief. On the other hand, it was clearly defined that the Council could not discuss issues '1' that did not3
the territory directly - whereas problems important affecting the country originated
their origins outside. But the government maintained its position on this point

Proclamation no. 15.1 of 1913 amended that of 1910, providing that the Council could discuss problems which, although originating outside Basutoland, affected the Basotho.

d. Its practical importance

In practice, the Council played a very important role, certainly more important than its consultative nature would have suggested. This was probably due to the Council's conception of its own functions - quite different from that of the government, which in turn was probably due to the composition of the Council.

Indeed, as we have just seen, it was intended that the vast majority of members should be chosen from among important chiefs. The government saw in the possibility of discussing with important members of Sotho society a guarantee of having partners who were representative of this community, as we have already emphasized. Indeed, the members of the Council were chosen according to this principle: the Council was made up of important chiefs and their principal sons, which meant that most of them were Sons of Moshesh or their relatives.

But contrary to government hopes, these influential members of Sotho society were more concerned with representing their "class" than their community.

"It (the Council) represented mainly the interest of Chiefs, and it saw itself as the natural custodian of the traditions from which the chiefs derived their authority over the people. Its concern therefore was to keep this field intact as against innovations made by the

Administration, but subject to this important proviso, it was prepared to cooperate with the Administration in measures which would promote the general welfare "⁶¹.

The conservative nature of the Council was not immediately apparent. Herbert Sloley for example, who was the senior resident when the Council began to operate, does not seem to have been aware of this.

seems not to have been aware of this, probably because "he was on friendly terms with the chiefs. Sloley believed that the Council was sincerely intent on remedying the shortcomings of the Sotho administration, and in particular on putting a stop to the abuses taking place in the chiefs' courts.

From 1922 onwards, however, discussions about the power of the chiefs showed the Council's bias. When A. Pim - who had been asked to head his commission of inquiry - wrote in 1933, his conclusions about the members of the Council were unambiguous, and did not even mention Hailey's concern for the general interest.

"They strenuously oppose any measure considered as likely to affect the hereditary rights and prerogatives of chiefs or any legislation under the proclamation of 1854 which suggests a legal right to control any of their internal affairs. The debate on the subject of erosion which we were able to attend confirmed this impression very strongly ⁶².

11 It was therefore clear that the Council's opinion was in no way representative of that of the majority of the population.

What's more, the Council systematically supported the Supreme Chief when the latter disagreed with the government. Under the pretext that it had a duty to uphold the customs

⁶¹ Harley, *The high commission territories*, p. 62

⁶² Hailey, *The high commission territories*, p. 73

sotho customs intact, in accordance with the wishes of the sotho people, the Council very often positioned itself as a political adversary of the government, whereas the latter had seen in it a potential partner, who would help it in its task by advising it.

11 It's also ironic to note that one of the reasons why the government had wanted to create the Council was to have a more representative opinion than that of the supreme leader, to whom it had given predominant importance. 12 The consolidation of the supreme chief's authority was one of the factors that caused the other chiefs to cling to their traditional prerogatives, and led them to reclaim the Council as an instrument for defending their privileges.

Finally, the relationship between the Council and the institution of pitso was equally ironic. The need to create the Council had been particularly felt because of the decline of the pitso. Yet, as we have just seen, the Council bore no resemblance to the pitso, where any common man could express himself. It was not, therefore, a democratic substitute, contrary to what the government's intentions might have suggested. What's more, it was only with the creation of the Council that the institution of the pitso fell definitively into disuse, except among the Batlokwa. The existence of the Council had made it superlative.

13 It remains for us to assess what influence the Council has had in practice. The fait qu'il ne se réunissait qu'une fois par an - quoique, si l'on en croit Sheddick, ces réunions of course worked against it. But this seems to have been enough to profoundly influence the policies of the supreme chiefs who preceded Lerotholi.

What's more, the Council obviously influenced the decisions of the goitveiaieiiieit - it was created for this purpose.

created for this purpose. But it seems that the opinions expiâiiiiied there weighed be.iiicoiip

British policy than its consultative nature would have suggested.

This was because the government feared going against what it considered for a long time to be the general opinion of the Basotho. It therefore paid particular attention to the opinions of the council members. This situation eventually gave the institution an active character, making it a kind of forum. This can be said to have had a positive effect, insofar as the opinions expressed had a real impact on government policy.

Although it's difficult to pinpoint exactly when the Council took on this importance, in 1953 Sheddick wrote:

"In practice, it has emerged as an important instrument of government with both the High Commissioner and the Paramount Chief ruling through it rather than independently of it. It has become symbolic of national corporateness and such is much concerned with the interests of its nationals wherever they may be. It has ceased to be the passive consultative body envisaged by its early presidents"^{6*}.

The Council thus acquired considerable political importance. This was especially true in the legislative sphere. Of course, officially, it had no right to legislate. But the fact that the government took its opinion carefully into account gave it the de facto equivalent of a veto power in this area.

Moreover, it was the Council that had the "Lerotlioli Laws" drafted and amended, and circulated to the chiefs' courts of justice, to the point where they acquired in the eyes of the Sotho administration a legitimacy similar to that which might have been enjoyed by laws stemming from the "Lerotlioli Laws".

of legislative authority. Admittedly, in theory this was no more than the writing down of pre-existing customs; but as we shall see in the section devoted to legislative power, this simple exercise required powers that gave the Council an unquestionable power over the definition of Sotho customs.

It can therefore be seen that, although initially conceived as a consultative body to advise the Basotho chief and, above all, the government, the Council was rapidly diverted from this primary vocation by the chiefs, who turned it into an active representative of their own interests, and only secondarily of those of Basutoland in general.

5. THE POPULATION

a. Loss of traditional participation in power and the reasons for it

As we have already alluded to, during the period of the crown's protectorate, the population gradually lost its traditional political role.

As pitsos became rarer and rarer, the common people lost the opportunity to express their opinions to the chiefs, and thus to influence the latter's decisions. The practical impossibility for people to leave their chiefs for other chiefs meant that chiefs no longer had to respect the needs of their subjects, and their power base was crumbling. The disappearance of conflicts in the region reinforced the phenomenon in that chiefs no longer needed to make their trusted soldiers.

So there was little left of the traditional safeguards that had guaranteed the population a means of having their opinions taken into account, making them a genuine counter-power.

This meant that members of the public had to find new ways of making their voices heard, and of influencing those in power to make decisions.
and influence those in power in their decision-making.

But this was a slow process. In the period we are studying, the phenomenon was still in its infancy. Some members of the population began to reorganize themselves into organizations in order to gain sufficient clout to make their voices heard. It has already achieved some results, but their importance remained limited. It was only later that more organizations and political parties were formed.

b. Part of the population reacts by **creating organizations**

In the period we're studying, there were still very few organizations. By far the most influential was the Progressive Association. It was also the first, having been formed in 1907, only four years after the National Council. It was founded by people who could be said to belong to the "middle class", since they were teachers, clerks or shopkeepers. The association's main aims were fivefold, as described in its constitution:

- "(a). To further mutual intimacy and friendly intercourse among its members.
- (b). To promote matters beneficial to the nation and contributive to its progress.
- (c). To strengthen ties of loyalty towards the Empire, the Chiefs and all in authority.
- (d). To discuss in even meeting important matters relating the prosperity and progress

of the Basuto people.

(e). To instill into the minds of its members the duty of being self-respecting people in religious, educational and social matters.

(f). To establish Progressive Branch Associations at suitable centers throughout the various districts of Basutoland "64

The phrase at the head of this constitution is also indicative of the way the association

of its role

"Not for us but for our country and humanity".

(This sentence was also translated into Latin, which, in line with the last point, indicates the Christianity of its members).

The Association met once a year, with a quorum of ten, and included an executive committee of at least four people. It also had branches throughout the country.

Significantly, it delegated one of its members to represent its position before the Board. The delegate was to take part in the Board's deliberations on behalf of the Association, although the latter did not accept responsibility for any personal opinions he might express. The delegate was then required to report back to the Board.

30fi aCtîOfi il U OliîŧtĂ o°x% tltîf de- l' ASSOCIattOtl.

The Association's expressed desire to be loyal to all those in positions of authority was not respected to the letter, unless it was interpreted as iicitei those authorities to prove themselves worthy of their subjects' loyalty. For a long time, the Progressive Association was the only organization to criticize the authorities. These attacks were mainly directed at

the British government to a lesser extent. Criticism focused on the administration of justice, denouncing the delays and abuses of the native courts, the difficulties of appeal and the negligence of record-keeping.

The Association managed to get these issues discussed in the Council, particularly between 1918 and 1927. However, these discussions did not lead to any concrete measures, the Council arguing that the Lerotholi Laws already regulated these points satisfactorily.

Likewise, the Association demanded in vain - at least for the period under discussion - that men of the people be elected as members of the Council.

On the other hand, it was more successful on the issue of land administration. Indeed, the government, sensitive to pressure from the Association, made a proposal which the Consed accepted favorably: no document signed by a chief and granting land would have any value if it had not been approved by the Secretary of State. This decision was subsequently made official by Proclamation no. 65 of 1922.

But the Progressive Association had a greater impact than just influencing government policy and the Council. As the first association formed by representatives of the population, it served as an example. Its activities and role were not always recognized by its heirs: more radical, they condemned their predecessors in the Progressive Association for not having been as radical.

A second association was also organized at the beginning of the century to ensure respect for the interests of the population. It was the "Lekhotla la Bafo" or "League of the Common Man" which translates as "Line of the Common Man". Noteworthy

in the Sesotho appellation the term Lekbotla, designating the place where public affairs were traditionally dealt with, which was indeed open to any man of the people. This organization was formed in the 20s by Josiel Lefela and his brother. Like the Progressive Association, it criticized both leaders and government, but its attacks were more violent than those of the Association. Moreover, it had anti-European tendencies and advocated a return to the old order.

It achieved very little in the way of concrete results, but like the Association, it was a source of inspiration for the organizations that followed - in this case, the Basutoland African Congress. It also enjoyed considerable prestige among the population.

0 There appears to have been a third political organization during this period, the Lekhotla la Toka, but I've only found a brief mention of it in one source (Leeman's book).

0 It should also be noted that, in addition to these associations aimed at representing the population politically, people organized themselves into more specific associations, based on their professional activity, but also seloti other criteria. To take a late example, in the 1950s there were organizations such as the Comité des Indigènes Eduqués, the Association Coopérative des Fermiers de Matisse and the Union des Nlères, in addition of course to religious associations.

Despite the need to organize representation in the face of the now exclusive holders of political power, the population's vision of those who goux'erned it remained ambiguous. As we have seen, most Basotho remained attached to the institution of the clergy and continued to respect their chiefs.

The feelings of the population towards the government were in a sense less significant in that the latter was in less close contact with the people, and they were mainly determined by the fact that the British government supported the chiefs. It is interesting to note the attitude that Dieterlen observes among the population towards the British in 1900, on the occasion of the Anglo-Boer war which pitted Transvaal and Orange against the British from October 1899 to May 1902:

"The sympathies of the bassoutos are generally on the side of the boers, but without threatening to be transformed into deeds. It is strange that the bassoutos, in great part at least, hold for the boers who despise them, mistreat them, and only ask to take their country from them. [But] here's how I explain their attitude:

- 1) Os are angry with the English government for raising the annual tax from 10 shillings to 20 [...].
- 2) The people, i.e. the majority, reproach the English government for favoring only the great leaders, against whose ability and injustices it does not protect the little people.
- 3) It's the old story summed up by La Fontaine in these words: Our enemy is our master.

The English are the inafires of Lessouto, and corinne such must reg:ier !'oi dre and fight evil. The bad heads are offended, the lnasse follows the inoiw'ement ⁶⁵.

But unlike during the gueiTe des tiisils, these sentirrælits did not translate into a spirit of revolt.

ö would have been interesting to have other opinions than Dieterlen's on the matter, and especially at other times. Unfortunately, yours is the only mention I could find of the public's opinion of the English government. This may indicate that their resentment - if it was as real as Dieterlen claims - was directed at the chiefs, probably because, as we have said, they were in closer contact with them, but also probably because they were the traditional holders of power, and therefore a privileged point of reference.

But this lack of reference to people's feelings towards the government could also be explained by the fact that my sources - British, but also French missionaries - might have preferred to conceal the existence of resentment.

CHAPTER 2. THE POWERS

1. EXECUTIVE POWER

As we have already mentioned, although the final and most important decisions were made by the British administration in all areas, it was the Sotho administration that was responsible for most administrative tasks, including those linked to executive power.

The superior resident and the magistrates placed at the head of each of the nine districts defined by the government were therefore the most important holders of executive power in the territory, with the supreme chief again representing the highest echelon in the hierarchy of Sotho authorities; but in keeping with the principle of indirect administration for which the government had opted, executive power was largely decentralized, and the chiefs were entrusted with most administrative tasks.

a. Traditional aspects

The chiefs' functions in this respect were isolated and regrouped traditional functions, such as those linked to the existence of the traditional administration. Chiefs were still in charge of land administration, as was the Sotho tradition, and therefore continued to allocate land and control, as well as the vegetation utilized for the construction of dwellings. To this come in the pre-colonial period, the chiefs had reeds and charcoal or firewood from the villages brought to them when they were ready to take them.

fls continued to allocate arable land, demarcate grazing land, and control access to grazing land for the hix er. To these traditional tasks were added more recent ones:

"They (the chiefs) have, for example, to ... control the evpansion of villages, and allot sites for houses, schools and other buildings "66g

The chiefs were also entrusted with functions which, in the eyes of the British administration, were of paramount importance: the maintenance of peace and order. As late as 1944, the committee charged w i t h studying the draft Treasury Pubhc described the executive functions of chiefs as follows

"The executive duties of Chiefs are to see that orders issued by the Paramount Chief are made known and enforced among the people, to issue under the direction of the Paramount Chief such orders as may be necessary for the proper control and regulation of matters committed to their charge, to allocate land and colitrol reeds and thatching grass and open veld in accordance with Basuto custom and generally to prevent crime and maintain peace and good order among their people 67a

b. New tasks

But the cbefs were also entrusted with new functions by the bntanniqueie administration, which placed them in a real position as assistants to the government. colnme nous ax one fait briéx'eiiiient alltision dans le point consaci'é aux chefs. This was mainly the case in detix doiiiaines: the police and the collection of iinpôts.

⁶⁶H. Ashton, *The basuto*, p. ZÉ

⁶⁷Basuto National Treasury Explanatory Memorandum, p. 13

As for the former, it was during the period of Cape Colony control that a mounted police force was set up in 1872. In the present period, this branch of the executive was still under his control. The role of the chiefs was mainly to assist the British administration. This consisted above all in helping to recover stolen livestock, and in prosecuting those who committed offences. It would appear that the chiefs performed these tasks satisfactorily, as these extracts from the annual reports show

"I hax'e pleasure in bringing to your notice the ready assistance rendered by the Chiefs to the police in tracing and arresting criminals, and recovering stolen stock "*.

"the chiefs in this district have rendered me great assistance in tracing lost or stolen stock and in detecting crimes and offenses "6 .

The use of the word "detection" implies a more active participation by the chiefs than their traditional role required, since in the pre-colonial period, they simply listened to the complaints presented to them. This new responsibility was probably partly linked to the development of a new offence, which the British administration was keen to eradicate: liquor trafficking. It was sometimes referred to more directly as the chiefs' assistance to the government in this area, despite the fact that many of them were themselves major liquor consumers.

The chiefs also assisted the British government in the collection of taxes.

In fact, Proclamation 2B of 1884 - which defined the new type of

E N Raght Moons. Basutoland annual reports for 1894-95
 Anonymous. Basutoland annual reports for 1892-D3. p. 33

administration in Basutoland - did not impose any obligations on chiefs with regard to collection of taxes.

Nevertheless, from the beginning of the period, chiefs remitted their district's taxes to the government. This was the case until 1911, and the chiefs were remunerated for this service by receiving five percent of the sum due.

From 1911 until 1920, chiefs had only a secondary role: magistrates were responsible for keeping registers and collecting taxes, and chiefs were paid for their services.

sothos authorities were simply expected to assist them in this matter. The headmen in particular were responsible for collecting taxes in the local water of the modest territories they were in charge of. The important chiefs, for their part, were responsible for identifying the mau'ais who paid the taxes. During this second period, they always received five percent of tax revenues.

From 1920 onwards, the British administration employed salaried tax collectors to carry out the work of the magistrates in the previous period. They were assisted by the chiefs' messengers, and the chiefs no longer received what was left of the five percent of tax revenue after the collectors and messengers had received their shares. It seems that in this new administrative system, the chiefs were not particularly efficient: the government eventually employed the police to collect the arrears.

In addition to these functions, the chiefs rem. plissaient e *!e!*^."!! ii "S ti-c!ieS V3!1tfiS b+Otlf various important occasions:

"... They **control** the holding of initiation cei'einonies. and should send their messengers to feasts to prevent excesses, and to cereiiiioiiies such as vveiltlings, to wltne8's contracts that may be made 70a

⁷ . Ashton, *The basuto*, p. ZÉ

c. The scope of chiefs' executive power: evolution

Executive power therefore rested largely with the chiefs, despite the fact that the British administration had the final say.

Compared to the period of the Cape Colony protectorate, this situation represented a consolidation of the chiefs' authority.

But if we compare the extent of their executive power after 1884 with what it had been in the pre-colonial period, the situation was more ambiguous on the one hand. Chiefs now had to answer not only to the paramount chief, but also to *aii -pou 'erneiiient*; on the other hand, however, they saw their power extended to new functions (at least initially with regard to tax collection).

But it also seems that their executive power had in fact been extended for other reasons: as we saw in the section on chiefs, they were increasingly subject to abuse over the course of the period.

Generally speaking, under the protectorate of the crown, it can be said that the chiefs executive power.

"The chiefs' executive power is considerable and it is often difficult to say where their authority ends "⁷¹.

⁷¹ Ashton, *The Basuto*, p. 200

2. JUDICIAL POWER

a. Procedure

Under the protectorate of the Crown, the judiciary in Basutoland was characterized by the same principle of indirect administration as the executive. There was therefore a hierarchy of courts, with those with the most important responsibilities under British direction; but the others - the most numerous, which handled the bulk of business - were an integral part of the Sotho administration.

As we have seen, the courts of traditional Sotho were the responsibility of the chiefs - in the broadest sense of the term. They included courts of first instance, from which appeals could be made to the courts of more important chiefs. From there, at the beginning of the period, appeals were addressed to the court of the district magistrate - in the British sense of the term, who was assisted by a chief. But in 1930, the procedure was changed, and appeals had to go first to the court of the supreme chief. Only then, if necessary, were appeals made to a magistrate's court. All had to pass through the entire hierarchy of Sotho courts before reaching a British court. Throughout the period, appeals from magistrates' courts were addressed to the court of the superior resident. From 1922 onwards, the latter could also be presided over by a Judicial Commissioner, a substitute for the Resident Superior.

It should also be noted that there were informal courts that were not specifically recognized by the government - their existence was simply a matter of custom: family or lineage courts. As their name implies, these courts dealt with civil problems relating to disputes between members of a family. They are called *lekgotla* (family council) and *lekgotla* (family council) and *lekgotla* (family council). They are called *lekgotla* (family council) and *lekgotla* (family council). These courts were presided over by the members important du

lineage concerned. Their decisions were based on "ketsa lelapo", the rules of the household, which again, from a governmental point of view, were simply part of custom.

11 e.xis9 were also courts to punish those who broke the rules of mophatos (boys' initiation schools), or girls' initiation ceremonies (in this case, feounes courses

" ").

The various chiefs' courses, on the other hand, had specifically endorsed by the goux'eniement. In theory, according to Proclamation 2B of 1884, the right of a chief to have a court and to judge a case came from the Superior Resident. The latter was in fact supposed to designate the chiefs who could hold judicial power, the limits of which it was up to him to set. In practice, however, the superior resident did not designate the chiefs in this way: it seemed self-evident that, in accordance with Sotho traditions, judicial power was an integral part of the chiefs' political power. The least important native authorities were therefore entitled to have courts, and the extent of a chief's jurisdiction in the matter was determined by his hierarchical position in the native administration, not by the superior resident.

Limits were of course set to the jurisdiction of the indigenous administration as a whole: chiefs could only judge cases where no Europeans were involved. Thus, nn proviso to Proclamation 2B of 1884 stated:

any suit, action or proceedings in atiy court to which all the parties are natives, "... in and in all suits, actions and proceedings whatsoever before any Native Chief exercising jurisdiction as foresaid, native laiv may be adininistered "72q

⁷ Poulter. Famil law and Ilitiation in Basuto societ

This, it should be noted, also meant that Basotho were always subject to Sotho customs, even when they appeared not before the courts of chiefs but before those of magistrates.

Another restriction concerned cases considered serious, such as homicide. The proclamation itself did not prohibit chiefs from handling such cases, but an administrative ordinance required them to be referred to the magistrates' courts.

In addition, the superior resident could limit the jurisdiction of the chiefs by 'promulgating rules to this effect, just as the supreme chief could do with administrative orders. Thus, the siiprème chief decided that certain cases of theft of However, some important courts would still try such cases, particularly if there had been no casualties, and if it appeared that the gesture was intended to impress the owner. However, some important courts still tried such cases, especially if there had been no casualties, and if it appeared that the gesture had been made mainly to impress the opponent. However, the courts of the minor authorities passed on cases where weapons had been used to the courts of the major chiefs.

The extent of a given native court's jurisdiction was not always precisely defined. fl sometimes a chief, by appointing a subordinate, clearly defined the limits of his judicial power. But in general, each authority had an idea of the limits of his power, depending on his hierarchical position: the more important his position, the more serious cases he could handle. If the case seemed too serious, she had to pass it on to the court of the higher authority. According to Ashton, since a chief who overstepped his rights in this area could be reprimanded by the chief above him, there wasn't much abuse at this level. Ashton reports the case of a headman who was indeed reprimanded for committing such an offence. In 1934, Hlolo was the lieadliian of a village, and had sentenced a woman to weed her fields for stealing. Etalit gives

that "d did not have sufficient authority to make such a judgment, the chief above him, Bereng, fined him one beast.

The criteria by which the seriousness of a case was judged were manifold. The status of the people involved was also more important than that of t h e authority responsible. the court depended. The complexity of the case could also come into play. Gn can also approach the question from the point of view of the penalty incurred. In general, a minor court could not impose a fine of more than a few sheep, or more than a head of cattle. If the offense seemed to call for more, it was obvious that the plaintiff " insufficiently compensated would appeal after sentencing, and there was no point in the court court to deal with it.

In general, the cases handled by the headmen's and sub-headmen's courts were cases of theft, adultery, "seduction", "assault" or housebreaking, or cases concerning family problems (one party not fulfilling its duty to another) or land division.

As a rule, each chief had a court. Occasionally, however, a second court was set up temporarily, if the number of cases required it. Temporary establishment of a second court could also enable cases to be tried in remote locations. For example, Chief Theko Makhaola, whose district, Qaclia's Nek, was mountainous, set up a second court for a time, which travelled to endi oits that were difficult to access. As for the supreme chief, he had several courts in pennanelice. in Matsien-g. and had others that moved around, also permanently. Most of the time, there were five in Matsieng and three on the move.

Chiefs could, of course, preside over their courts themselves. Niinor chiefs actually did so, or if need be, would designate someone close to them to take their place. were particularly keen on this prerogative, sometimes to the point of postponing proceedings rather than being replaced when they could not be present. On the other hand, important chiefs and son-chiefs rarely presided over their courts themselves, preferring *desipiei' quel qu'iui d'autre* to replace them on a regular basis. When this president was absent, he himself was replaced by one of the *banna ba lekhotla* - who always informally surrounded the chiefs. *Banna ba lekhotla* also acted as assistants in the courses, in varying ways. In some classes, a few assistants worked on a permanent basis, and asked others to come in when needed. Ainsí, Bereng had two *conseillers* who, in the space of five months, were assisted by more than forty other people - some of whom repeatedly lent a hand. In Chief Seeiso's court, on the other hand, the same assistants worked for a period of one to three months, then stopped to be replaced by others.

As in the pre-colonial period, assistants were distinguished either by their material affluence, their personal qualities, or by the fact that they were members of the chief 's family. Those appointed to preside over the court generally fell into the latter category.

Courts also had employees. Their tasks were numerous: among others, they verified the payment of fines, organized the passage of witnesses, and kept the trial registers. In juvenile courts, they sometimes even took part in the judging, and conversely, they could be assisted by *banna ba lekhotla*, or even the president.

Theoretically, all those working in the courtyards did so free of charge, as a privilege; but in reality, they derived various *material* benefits from it.

On the one hand, even though they were no longer obliged to do so (unlike in pre-colonial times), chiefs sometimes had animals they had received as fines killed to feed people working at the court. In addition, they sometimes gave these animals, or stray animals, or even allocated more land to the court president or assistants. Gradually, the number of lawsuits increased, and some people demanded a regular income. As a result, chiefs sometimes had to pay them salaries. In the longer term, those who served their chiefs faithfully in this way might even be lucky enough to be "placed".

The court to which a case had to be presented in the first instance was that of the defendant's headman. This required the plaintiff to know where the person he wished to sue resided, and to go to the headman in question to lodge a complaint. However, there were exceptions to this rule. If the complainant or one of the witnesses was a passing traveller, the case was presented directly to the court of a major headman, so as to avoid delays caused by possible appeals that would immobilize the visitor. On the other hand, if the accused was a transient, the case was simply tried in the headman's court of the place where the accused had stopped, or where the dispute had originated.

A trial could also take place in the court of the authority superior to that of the accused's headman when the latter failed to appear: the headman could either fine the accused or ask the plaintiff to apply to the court of the chief immediately superior. In the latter case, the court of the next superior chief could refer the case to the headman's court and order the accused to appear, but it would usually deal with the case itself to save time.

Naturally, when one of the parties appealed, the case was then heard in the court of the authority immediately superior to the one that had just heard it.

The procedure followed in a case was more or less the same whatever the court, except that it was simpler and more informal in the courts of headmen and minor sub-chiefs.

When someone came to a headman 's court to ask for arbitration, the headman chose a day for the trial according to the disponibility of both parties. 0 also informed the men under his jurisdiction so that they could attend, and participate. In the case of a sub-chief's court, only men from his village or surrounding area were required to attend.

In a trial, the plaintiff would present his case first, and call his witnesses. Then the accused would do the same. In general, the parties did not question each other. They simply expressed their disagreement by denial, and by contradicting their adversary afterwards, when they had the floor again. Nevertheless, if either party really wished to address the other, they could. öthey were then questioned by the headman and anyone else who wished to do so. However, there were no lawyers to help or advise the parties. Indeed, it was considered that it was up to the headman - the judge - and the court to discover the truth, rather than the parties to convince them of their rightfulness or innocence:

"The judge is not an Olympian being, whose chief function is to referee the struggle between plaintiff and defendant and then decide whether, or to what extent, the case has been proven or refitted; they expect him to descend to the arena and discover the truth himself with the help of his assistants "73.

The headman and his assistants would then retire to deliberate. If they thought it was, they decided on a verdict, which the headman or a spokesman announced to all. If not, plaintiff and defendant

were asked to apply to the court of the next higher authority. When it was clear from the outset that the case did not fall within the headman's (or deputy headman's) jurisdiction, the latter would listen to the proceedings and only briefly ask for details.

In the courts of larger authorities, there were more formalities. But apart from that, there was little difference in procedure. 11 It would seem that, before the president and his assistants retired, the parties would briefly restate their version of events, in a manner similar to the modern closing speech. Moreover, in the most important courts, certain wealthy individuals were assisted by "specialized pleaders" (akhente), the equivalent of our lawyers, which, as we have seen, was contrary to custom.

Finally, it's important to note that although these courts were not usually presided over by the chief himself, the president could still impose his decision against the advice of his assistants - although consensus was sought first and foremost. Whatever the court and the circumstances, no votes were taken. Once a decision had been reached, it could be reported to the chief for approval, although this was only obligatory in land disputes and cases of assault resulting in serious injury.

At least in the major courts, when announcing his decision, the president would severely reprimand the guilty party and praise the victim's attitude - for not taking the law into his own hands, for example. However, I haven't found any information on whether the headmen and deputy headmen delivered such speeches.

A party dissatisfied with the court's decision had the right to appeal and, as we've said, the matter was then within the jurisdiction of the court of higher immediate authority.

This right did not exist at a time when the only recognized authority in a community was that of the tribal chief: his decision was the only one to be rendered and was final.

But the principle of appeal did exist in the time of Moshoeslioe tiui, who, in establishing the institution of the supreme chief, required that a party dissatisfied with his chief's decision could appeal to his court.

In the period in question, this right was recognized in the "Laws of Lerot holi" - the collection of Sotho customs as recorded by the Council. They established that an authority denying the right to appeal to one of the parties would be liable to a fine.

As we have seen, some chiefs and the supreme chief had courts ('i) (')that moved around, facilitating judgments on appeal.

b. Elements taken into account

The various types of evidence accepted at trial were x'arized.

As is the case today, testimonies were highly valued.

Anyone could be called to testify, with the exception of the mentally ill and infants. Although the testimony of older children was theoretically considered admissible, courts avoided calling them as witnesses. One spouse could testify for or against the other.

Accomplices could also testify against each other. But this was rital vu; accomplices who showed loyalty to each other could i oir' their attitude rewarded with a lighter sentence.

ö It's also important to note that a witness who lied to the court was liable to a fine.

here were no clear-cut rules governing how witnesses were to present their version of events. In general, they were allowed to speak, rarely being brought back to the question if they strayed from it. This was mainly due to the fact that courts could punish parties for offenses other than those that had provoked the trial. Letting witnesses speak could eventually lead to the discovery that other offenses had been committed. **Thus, in January 1936, a trial took place in which Titisi attacked Makhala for stealing grain and money from him. The facts revealed that Titisi had been guilty of adultery, and the court fined Titisi - in addition to imposing a fine on Makhala's village headman, who was in fact the true perpetrator of the theft.**

The testimony to which the courts gave the most credibility was that of eyewitnesses. ös were considered to be the only truly credible ones. In practice, however, courts gave credence to much less reliable testimony. Simple hearsay was often accepted as a dam of confidence, especially if repeated by several witnesses. Indirect evidence was also often accepted, and the courts do not seem to have been very demanding in this respect.

The fact that a man found himself alone in the company of a woman he was thought to love was considered incriminating in a case of adultery.

On the other hand, the courts did not readily accept witchcraft-related statements.

"No matter how firmly people may believe in sorcery, bone throwing (divinatory method) or the powers of seers as individuals, they would not, as judicial officers, accept

such evidence in court. Furthermore, although they might privately credit circumstantial evidence of witchcraft or sorcery, in their official capacity as judges, they reject such evidence "⁷⁴.

In contrast, confessions were given the most weight. A person who confessed to having committed an offence - especially in writing - was unlikely to be able to convince anyone of his or her innocence at a later date. It was possible, however, if they could show that they had only confessed under threat or mistreatment, or even if they had just been bragging. But anyone who reported a stolen object or livestock to the authorities was unambiguously considered guilty.

In theory, witnesses were required to present only the facts, and refrain from expressing personal opinions or suppositions. In practice, however, they were sometimes allowed to do so. In some cases, the court even sought the opinion of people they called in for their - supposed, at least - expertise. Thus, in a sheep theft case where the key element was some charred bones found at the accused's home, the court sought the opinion of several 'pom' people in an attempt to determine whether they were fresh or not - in order to discover whether the accused had killed the sheep from which they came before or after the plaintiff had been the victim of the theft. Similarly, it was common for courts to seek the opinion of old women to designate the father of a child when this was the subject of a dispute.

Witnesses were also allowed to depart from the simple exposition of facts by expressing opinions about the character of other witnesses. In this way, each side attempted to convince the court that its witnesses were reliable, and to discredit the opposing party. This strategy was most often employed when the trial was held in the open corners,

⁷⁴ Ashton, *The Basuto*, p. 240

away from the participants' village. At the local level, in the lower courts, the headmen and other members of the court know the witnesses, so these tactics were unnecessary. Similarly, it seems that headmen sometimes took the liberty of not attaching much importance to a case when they knew that the disputing parties were in the habit of arguing.

In addition to testimonies, the parties had to try to present material evidence. ö
 could be a weapon in an assault case, a piece of the accused's clothing left at the scene in an adultery
 case, or the object of a theft.
 stolen.

In cases of livestock theft, presenting the stolen animals was even essential: in March 1936, a certain Majone appeared in court for having stolen a man's horses. The man had lost twelve horses, two of which were found at Majone's home. The court found Majone guilty of stealing two of the horses, but not the others, believing that they could have been separated before Majore found them.

But in certain circumstances, the court could disregard the absence of stolen property: again in March 1936, after a certain Chaka had lost seventeen sheep and Sebabyane and accomplices had been found in possession of sixteen of them, Sebaiiyane was found guilty of stealing the seventeen sheep, since it seemed likely that he had also found the last one.

In the case of the theft of an animal that appeared to have been killed by the thief, finding the remains of the same animal in the home of the accused, when it was common knowledge that he did not own one, was considered sufficient proof of his guilt.

Once it had been established that a person was partly responsible for a crime, the degree of responsibility was assessed on the basis of several factors: his or her intentions, awareness of the consequences of his or her actions, and any extenuating circumstances. In most cases, the very fact that the offence had been committed implied malicious intent on the part of the offender (theft, adultery, etc.).

Sometimes, however, the situation was more ambiguous, and the accused's intention to commit a crime had to be demonstrated. For example, when a man sold an animal in his care, he could only be found guilty of misappropriation of property if it could be shown that he had no intention of replacing the animal. What 's more, in assessing the degree of responsibility of an accused person, more account was taken of what he or she intended to do than of any damage caused.

This could work to the accused's advantage, but also to his disadvantage. 11 could even be accused of a crime when in fact no damage had been done. A person caught loitering near a village at night, in circumstances which suggested that he or she intended to steal, could be prosecuted for "attempted theft". On the other hand, a person who injured another in anger - or sometimes under the influence of alcohol - could have his or her sentence reduced, or even entirely excused, if he or she expressed regret immediately after the act and assisted the victim - by dressing the wounds, for example.

Nevertheless, the position regarding drunken acts was ambiguous.

Drunkenness was considered to mitigate liability only if the offender that he had no intention of causing harm. Otherwise, drunkenness could be considered an aggravating circumstance. We can assume that this ambiguous attitude on the part of the aiitoi'ités was due to the extent of the

the extent of alcoholism in society, and thus the desire to take the problem seriously and discourage people.

In addition, the degree of responsibility of a person for a crime could be considered lesser or non-existent if the offender was unaware of committing a crime, due to age in the case of a child, or due to mental deficiencies. On the other hand, the argument sometimes put forward by defendants that they had been possessed - by a spirit or by "the devil" - was very rarely taken into account, and in no case by the higher courts, the members of which were highly skeptical as to its validity.

Courts also took into account the circumstances in which the offence had been committed to assess the degree of responsibility of the offender. A person who injured another for having caught him in the act of theft or adultery with his wife could be totally excused. The same applied to someone who was merely defending himself or his family. A person who injured a livestock v'oleur caught in the act or trying to escape was not considered guilty towards the victim. He could be prosecuted for taking the law into his own hands, and could be fined, but not required to pay damages to the injured party.

However, a person could sometimes be found guilty of a crime he or she had not intended to commit. Someone who did not respect the law because he was unaware of it was nevertheless held responsible. In the same way, anyone who failed to observe a day of mourning, or who failed to cultivate the chief's fields when the latter had ordered him to do so, because he was unaware of the fact, was guilty of an offence.

On the other hand, an individual could be held responsible for the actions of others. Indeed, a man was responsible for the acts of his unmarried brothers and sisters.

living at home, wives and other dependents, even if he had no knowledge of their actions. However, as far as unmarried adult children were concerned, the tendency developed to hold them eu.x-memes responsible for their actions, but this was not general, and was therefore not generalized. A man's responsibility for his dependents included the offenses they might commit, the debts they might incur, and the commitments they made. 0 was also responsible for any damage caused by those who worked for him in the course of their duties. For example, if a shepherd let his livestock damage a neighbor's crops, the owner of the livestock was liable.

11 was no longer liable, however, if the shepherd stole someone else's livestock. Similarly, a chief was held responsible for the faults committed by those who worked in his yard.

This responsibility of a person for the faults committed by his dependents translated concretely into the fact that he had to represent them in court and pay the fines and damages imposed by the court.

Last but not least, a person had to account for any damage caused by his animals. When livestock entered a field and trampled a crop, the owner was held responsible, even if he or she had not been negligent.

With regard to the principle of co!-c:i-.- - 5!-w. vil!ag-. liability for any offence committed by one of its inhabitants - it is difficult to determine what the e.xact situation was.

Moslioessioe tried to do away with the principle. According to Ashton, writing in 1952, the British government had tried to revive it, but without much success.

succès.

In 1931, Laydevant alluded to this practice, and Duvoisin wrote in 1885 that some chiefs used the fault of **an individual** as a pretext to punish an entire village. It seems possible that this practice occurred at the beginning of the period we are studying, but gradually disappeared.

In Enhn, the degree of responsibility of an individual in a crime depended on his or her level of participation: a distinction was made between the main culprit(s) and accomplices. It was particularly used in cases of theft.

Penalties imposed by the courts almost always consisted of fines, with damages to be paid by the aggrieved party if necessary. The sums were usually paid in livestock: sheep or oxen. Another punishment was whipping, but this was mainly reserved for minors.

The courts of important chiefs could also "eat" the accused - seizing all their possessions, especially when they were found guilty of witchcraft or insubordination to the chief's authority.

The death penalty could also be imposed, but only rarely. It was used mainly in cases of treason or repeated theft of livestock - which, once again, underlines the importance of the latter in Sotho society. Death could also be inflicted on a person who refused to appear before the court of the mal-qré chief after a messenger had been sent: such an attitude was indeed considered an act of rebellion against the chief. But it doesn't seem that many cases occurred.

Once the penalty had been imposed, in the case of fines and damages, the convicted person usually had around a week to pay. He could, however

ask for an extension, which, it seems, was generally granted. Payment was made in public (to avoid any disputes), in court, where the chief's assistants received it and took note of it. In by far the most common case, where payment was made in livestock, they were also responsible for verifying that it was indeed the property of the accused. The amount demanded as damages was then handed over to the injured party. The rest of the fine went to the chief, as already mentioned.

But payment could also be made in instalments. In this case, the damages due to the victim had to be remitted with the first instalment(s), before the chief could levy any fines.

0 sometimes failed to pay on time. The chief would then send a messenger to call him to order, and possibly ask for an explanation. If several reminders were not enough, the chief could fine the offender for disobedience, or have the cattle seized - the envoys in charge of this task could even pay themselves by taking an extra sheep or two. If the offender resisted, he was fined again, and could even be "eaten".

The personality of the chief played a big part in how things worked in practice. Some could wait several years before reclaiming livestock owed, and when a year was prosperous, they took advantage of the opportunity to i call the latecomers to order. In fact, people often failed to pay the fines because they were so high in relation to what they could afford - one animal represented around two-thirds of the average household's possessions - and this was one of the most frequently imposed fines.

d. Crimes and misdemeanors

With regard to the acts themselves considered as offenses by custom, and therefore punishable in the Sothos courts, they can be classified into three categories: civil offenses, offenses against the property of others, and what may be considered insubordination to authority.

In the first of these categories, we mainly distinguish cases of dfiomicide (polao), assault with intent to cause death or serious injury (phutunu), ordinary assault, rape or sexual assault (peto or petello), abduction (chobeliso), adultery (bofebe), defamation (ketseletso) and similar offenses.

The most serious of these offenses was the first, homicide. Homicide occurred when one person caused the death of another, directly or indirectly. If homicide therefore occurred even if the victim did not die immediately after the act, but nevertheless died as a result of the act. When the victim of an assault complained of pain, or when an inflicted wound did not heal, if the patient died as a result, the person who had assaulted him or her was considered guilty of homicide. Similarly, if a woman fell pregnant out of wedlock and died in childbirth, the child's father was also guilty of homicide, and owed damages to the woman's parents.

Liomicide was considered to be more or less serious, depending on the circumstances; cold-blooded murder was the most serious, as opposed to an act of negligence resulting in the death of another person. In the case of a simple accident, there was no offence.

But there were also several other cases in which voluntary manslaughter was not considered a crime.

Killing 'your enemies - during raids, for example - was authorized by tradition. But this type of conflict gradually disappeared during the period we are studying.

Executing a person on the chief's orders - if it was someone accused of witchcraft, for example - was not a crime either.

witchcraft - was not a crime either.

Moreover, a father was also allowed to kill his child if he had run away from the mophato (initiation school) - he was seen as having dishonored his family.

Cattle thieves caught in the act or resisting arrest could also be legally shot. This last point can certainly be explained by the fact that, like alcoholism, cattle rustling was considered a real scourge on society, and was therefore discouraged as much as possible.¹¹ However, it is difficult to assess whether cattle rustling was really as widespread as one might suppose from this law, or whether the phenomenon was perceived as a scourge because of the extreme importance of livestock.

Finally, there were those homicides which, although considered misdemeanors, were judged by family courts. This was the case when a person was killed by a member of his own family.

"Where someone is killed by a member of his own family, as when a man kills his wife, or a woman her child, no civil action can be taken as the offender and the victim are one and the same legal person"^{7*}.

^{75s}. Ashton, The Basuto, p. 2155

This seems to indicate that the conception of murder that Casalis described was still the same under the protectorate. It should also be noted that abortion was considered a crime - within the jurisdiction of the family courts. However, it is difficult to determine whether this was due to a conception of the fetus as a person in its own right - in the same way as a baby - or whether it related to the fact that the family was losing a potential member.

- or whether it was due to the fact that the family was losing a potential member.

With the exception of the cases mentioned above, homicide cases were rarely tried outside the British courts. It's also interesting to note that the damages imposed on the culprit were usually ten head of cattle. They were generally lower if the victim was a child, and it would seem that they may even have been higher if the victim was an adult male (five head of cattle): damages being the compensation paid to the victim's family in an attempt to minimize the loss they had just suffered, and women being the ones who bore children, this compensation must therefore have been higher when the family lost a woman.

Aggression (*phutuiiu*) was defined as an illegal act of violence committed against a person. As in previous cases, certain acts of violence were not considered offences: those committed within the family (a parent hitting his child or a man his wife), those linked to the activities of initiation schools, or even fights between young shepherds.

The seriousness of an assault case varied according to the accused's intent, the circumstances in which it took place - after a provocation, in a state of excitement during a ceremony - as well as the nature and severity of the injuries caused. and the nature of the weapon used.

The use of a firearm, and to a lesser extent a knife, was considered particularly serious. This was not only due to the fact that these

weapons could easily lead to death, but also for less rational reasons the use of firearms was associated in people's minds with the idea of rebellion, and knives had been particularly used by the Pandomise, who were despised by the Basotho. people's minds with the idea of rebellion, and knives had been particularly used by the Pandomise, who were despised by the Basotho. In addition, the seriousness of the aggression was also assessed according to the victim's social position.

The simple act of threatening to attack someone, even if the attack itself did not take place, could be considered an offence if there was every reason to believe that the threats would have been carried out without the intervention of a third party or the submission of the potential victim.

Even without a threat, it was an offence to try to frighten someone else. In a case decided in October 1936, a man was convicted of approaching a woman's hut at night, during her husband's absence, ordering her to leave, and then approaching her in circumstances that suggested malicious intent. fl was found guilty of a misdemeanor despite the fact that he had run away when the woman tried to use a spear.

In an assault case, the culprit was sentenced to pay damages to the victim - in addition to a fine, unless there had been serious provocation, or other extenuating circumstances. The value of the fine and damages awarded varied greatly. H. Ashton says he studied sixteen cases, in which the damages imposed were as high as two beasts - or the equivalent of \$4 - and the fine five betesæ.

Rape was an offence that also fell into the category of torts. Before conciliating that rape had occurred, the court would take into account the previous relationship between the two parties, the degree of force used, and also the man's intentions with a view to a possible marriage. fl seems that courts were inclined to treat cases of rape as of

simple "chobeliso" (see below), particularly when the accused wanted to marry the girl and had abducted her. I have only one figure for damages and fines imposed in cases of rape: in a case tried in Mosue court in 1936, the accused, Lemeko, was fined one bete, and ordered to pay six betes as damages.

B was another sexual offence, "chobeliso", which can be translated as **"abduction"**. It did not in fact necessarily involve either the "victim's" disapproval or sexual relations. In fact, this offence could be defined as an act that undermined a young girl's reputation for chastity.

The aspect of publicity was therefore the chief factor that determined whether or not there was an offence. If a young man had sexual relations with a young girl without them being married, but they did it discreetly enough so that it wasn't public knowledge, there was no offence. But if the girl became pregnant, and they ran away together, there was "chobeliso", as the girl's reputation would be affected. Running away with a girl, even if there was no sexual intercourse, was therefore a crime.

The prohibition extended even after marriage, until the bride was formally taken to her husband's house: a man who took his new wife to the ant was committing "chobeliso"!

This aspect is well illustrated by an affair judged in October 1936. Motsaiiai versus Lekholo

"Motsamai found Lekliolo's younger brother' in a Init at nip-lit with his daughter. They admitted that they were love with one another and that they wanted to be married. The boy had given her his hat and they had exchanged searves. They denied having had intercourse. Motsainai nevertheless sues Lekliolo for his 1st other act of seduction and

claims the usual compensation. As Lekholo contest this, the court orders the girl to be examined by some impartial women. They report that she is intact and has no blemish. As the girl's reputation is thus publicly upheld, the case is dismissed, but the boy is ordered to return the girl's scarf and is fined 10s. for having jeopardized her honor and given her **presents "as if she were his wife"** ⁷⁶

The guilty party was fined, the value of which depended in part on his matrimonial intentions. At the beginning of the period, a man who had "kidnapped" a young girl had his fine doubled if he refused to marry her. He was then given the opportunity to do so directly.

However, from 1912 onwards, he had to pay damages of two beasts. If the girl was pregnant, the damages would even amount to six cattle. If he married her, it was "reduced" to two cattle, i.e. he had to give two cattle in addition to the usual dowry in order to marry her.

However, after a trial at the Bereng court in 1935, the accused had to pay six betes to the girl's parents, without the girl apparently having become pregnant. He was also fined one beet - which seems to have been the usual amount. Towards the end of the period in question, six betes seems to have been the usual amount of damages to be paid to the girl's family, even if she didn't become pregnant.

Adultery was *pei'çu* cousin inue infringement of a man's privileges as a husband - and not those of a woman. Therefore, adultery occurs when a man has sexual relations with a married woman, but not between an unmarried woman and an unmarried man.

H. Ashton, *The Basuto*, p 260

The seriousness of the offence depended in part on the husband's social position: it was more serious if committed with one of the chief's principal wives. Damages had to be paid to the husband - usually three beasts, but it seems that they could have been as much as ten beasts, sometimes more, in the case of a repeat offence for example. In practice, however, some offended husbands preferred not to take legal action to avoid making the matter public.

Insulting someone (*hlapa*) was also considered a *deiit*, punishable by fine. This could involve verbal insults, but also failure to observe certain conventions towards a person of higher social status. The wrong was deemed to have been righted when the offender apologized, and his apology was accepted. Sometimes, a sum of money was even offered in compensation. On the other hand, in the courts, the offender was only ordered to pay damages in exceptional cases.

Similar offenses were distinguished, such as defamation (*tlotlollo ea lebitso* or *ketseleko*). It was defined as the act of damaging another's reputation by falsely criticizing them, distorting their actions or words, or spreading false rumors about them. In practice, it was sometimes difficult to distinguish between defamation and insult, and here too the accused could be fined but rarely ordered to pay damages, as the victim's interest in bringing the case was more to defend his or her reputation.

What's more, a person could be fined for having 'poui'stiii i another in court, even though he knew the latter to be innocent.

Fines for insult and defamation ranged from 5 to 30 shillings.

Sotho customs recognized a second category of offenses: those against the property of others. In this category, a distinction was made between theft, illicit use of other people's property, and damage to property.

Theft involved all kinds of possessions. But the theft of livestock, large or small, constituted the majority of cases, since livestock was the main form of wealth.

When a defendant was convicted of theft, the condemnation he received was determined according to three principles: as in the previous case, he had to give the court a certain value as punishment (fine), another as compensation for the inconvenience caused to his victim (the equivalent of the damages), but this time he also had to return the stolen property if he still possessed it, or, if necessary, an equivalent **sum or** good. According to Ashton, Ellenberger and Mac Gregor found that these three values were to be paid in the following proportions: to the victim, twice the stolen value (once as restitution, and once as compensation), and as much to the court. In other words, the culprit had to pay back four times the value of what he "d stolen. On the other hand, law n°12 of the Laws of Lerotholi instituted different proportions for the fine in 1903.

"It is the law that thefts of any kind or description whatever shall be punishable by the law of Moshoeslioe which is the only one that satisfies the nation, to wit : - a beast to be repaid by a beast, a second beast for compensation, and a third as a fine to be paid to the court. If the person so fined continues to steal, the court has the right to increase the amount of the fine. ⁷⁷

⁷⁷Laws of Lertholi, Law n°12 (p. 5)

In this case, the fine payable to the court was equal to the value of what had been stolen, rather than double. In practice, however, it seems that a fixed value of one beast was generally imposed as a fine. But this remained at the discretion of the court, and varied all the same, to a lesser extent, with the value of what had been stolen. Moreover, the heavier the fine, the greater the penalty for repeat offences, as stipulated in the aforementioned law (for inveterate thieves, the fine could be as high as ten beasts)-as we mentioned, at the beginning of the period, capital punishment could even be envisaged for the latter.

It's interesting to consider the compensation paid to the victim. Admittedly, it corresponded to the value stolen. But if the theft had been committed by several people, this value was to be paid to the victim by each of the thieves, rather than by all the people involved. This principle sometimes led to interesting results, particularly for the victim. The rightful owner of sixteen sheep, stolen by three people, was thus compensated with a total of forty-eight sheep.

ō would have been even luckier if the thieves had killed the stolen sheep - which were in fact simply returned -: indeed, when the thieves were no longer in possession of the stolen goods, the same principle applied to restitution. In July 1936, for example, four thieves were convicted of stealing two sheep, which they killed and starved to death. Each of the culprits had to give Mosalatsi, the owner, two sheep as restitution for the stolen property, and two more as compensation. In all, Mosalatsi received sixteen sheep! Unfortunately for the victims of such thefts, these rather faiitaistic principles were not always applied. The thieves were each sentenced to pay a value equal to that of the stolen goods as "compensation" - although this could be less for mere accomplices, but the victim only received one of these "compensations" and the court kept the rest!

As far as accomplices to theft were concerned, they were liable to the same types of sentence as full-fledged thieves, but were nevertheless fined a morn's heavy. The notion of complicity applied to people who kept goods they knew to be stolen, but it could even apply to those who ate the meat of an animal, knowing it to be stolen. Even someone who had aided and abetted theft under threat could still be sentenced, albeit more leniently. An accomplice who tried to hinder the investigation could be sentenced to a heavy fine - in a case tried in 1936, two beasts.

On the other hand, thieves who threatened or even attacked people to achieve their ends did not have to pay any particular compensation to these people, although their fine could be heavier - which, let's not forget, benefited the authority on which the court depended, and, indirectly, those who worked there, but in no way the victim.

There were also special cases of theft. Using an object or animal entrusted to you as your own - by selling it, for example - could be considered theft. This was especially true of livestock entrusted to a chief during a dispute. In a case that went to court in Bereng, the culprit had to replace the vac'lie he had illicitly stolen and was fined one beet, but did not have to pay any compensation to the victim.

Finally, keeping un' property that had been found 'c' saris pris'e les m'esures necessai'es to try to find le owner was also considered conirne a form of x'ol. Normally, found objects had to be reiiiis an lieadiiian, ct, if the owner was not found within six inois. the objects had to i'ex enii' to the qiiii let found.

Causing damage to other people's property was, of course, a criminal offence, and the victim was liable to pay damages. What's more, if the damage had been caused intentionally, the guilty party could also be fined. However, in certain cases, the damage caused could be considered lawful: a chief's envoys who broke down the door of a hut to find compromising items were not ordered to pay the damages claimed in October 1936 by the hut's owner - Mposi.

When damages did have to be paid, their value had to be equal to that of the damage, but the victim was not entitled to "compensation" for the inconvenience caused, as in the case of theft. Assessing the amount of damage sometimes posed problems, for example in the case of crops damaged by animals. Lerotholi's laws provided for the payment of 1s per head of large livestock and 3d per head of small livestock having wandered into a field.

But these arbitrary values did not necessarily reflect the extent of the damage. The courts therefore did not always follow this principle to the letter, and attempted to assess the damage caused. In a trial held in February 1936, the owner of a field claimed damages from the owner of the twelve head of cattle that had trampled his crop. d asked for 32s - whereas the Lerotholi Laws provided for only 12s. But the court awarded him even more, £1, in view of the extent of the damage. As we have seen, in such cases, damages could be demanded from the owner of the livestock, even if he had committed no fault. In addition, if negligence was shown, a fine could be imposed.

Finally, there was a third category of offenses, linked to insubordination to authority, such as those committed against a boss (refusal to obey orders, for example). The main offences in this category were: failure to attend a pitso

summoned by the chief, refusal to carry messages for the chief, refusal to accompany one of his delegates carrying out an investigation (of theft or loss of livestock) and refusal to carry out work imposed by the chief.

When a person no longer fulfilled any of the duties he owed to an authority as a subject, he committed an offence. Ehi still referred to this attitude as "turning one's back on the chief", but during the period it was no longer accompanied by allegiance to another chief, given the demographic problems. Such an attitude was seen as insubordination to authority and was punishable by fine. The individual was deprived of his land and expelled from the region controlled by the chief in question.

Offences against the judicial administration formed a second group of offences in this category. It could be failure to respond to court orders to appear, failure to pay imposed fines or return disputed property; but it could also be disrespectful attitude at trial, refusal to testify, or perjury, witness tampering, assisting criminals, and obstructing court messengers.

All these offences were punishable by fine. The value of the fine varied according to the seriousness of the offence, but generally amounted to around one beast. The most serious offences were those committed against messengers, and failure to comply with court orders.

In the case of a person who failed to respond to a summons to appear, the offence could be dealt with in one of two ways. When the person finally appeared, and the trial took place, the court could fine the offender for the offence at the same time as it handed down judgment on the other charges. But the court could

also require the offender to appear specifically for failure to respond to a previous summons, particularly in the case of the court of an important authority.

The chiefs themselves could still be considered guilty of crimes - as we said in the first part of this memoir, all Basotho were considered equal before the law, since the country had passed to protectorate status.

This was also true of the way they dispensed justice. Thus, a subordinate authority who retained a fine when it should have been handed over to the superior authority could itself be sentenced to a heavy fine.

In addition, a chief who failed to fulfill the duties that were always recognized as his, or on the contrary, de facto exercised powers that he did not possess, was guilty of a misdemeanor, punished by the authorities above him. Offences of this kind might include refusal to pass on a case to the higher court - in the event of an appeal, for example - or neglect of livestock under his responsibility (because they had been lost or were the subject of a dispute), resulting in the death of the animals, or the sentencing of an accused to a penalty that was too heavy.

It should also be noted that the chiefs' courts could themselves prosecute civil offenders when the victims did not play plaintiff - which was not the case in pre-colonial times. which was not the case in the pre-colonial period. But this seems to have happened only rarely.

e. Problems linked to the exercise of judicial power

As we've already seen when discussing the power of chiefs, the exercise of judicial power in Sotho courts was often problematic. In addition to abuses linked to the fact that chiefs kept the fines, the population complained of numerous delays. This was not so much due to the system's organizational shortcomings as to the lack of enthusiasm of certain chiefs, as one former assistant explains

"Many chiefs, too, did not take their duties seriously; they did just enough to get by. so that they were not liable to reprimands and fines from the D.C.'s and the Paramount Chief"⁷

Oo could make very similar criticisms of court staff, even when it came to improper fines. Indeed, Jingoos continues

"... the chief sometimes gave me £3 a month, other times I received £5; it depended on what we had gathered from the people during the month. The people who worked in the chiefs court were the same; what they received depended on the fines levied in the court. Consequently, they sometimes levied as high a fine as possible, to increase their own cut. It is also widely known that chiefs clerks took bribes to line their own pockets at the people's expense "⁷⁹

What's more, when culprits paid their fines in installments, and caused damage to their victims, the chiefs tended to deduct the fine before remitting the damage to the injured party, contrary to what they should have done in theory. Once they had deducted the fine due to them, they made no effort to make the rest of the livestock pay for it, so the victims were often not compensated.

⁷⁸B Leeman. Lesotho and the struggle for Azania, p. 41
⁷⁹B Leeman Lesotho and the struggle for Azania, p 41-42

Finally, the president of a court and the assistants who sometimes replaced him were supposed to be responsible for each other's decisions. To be able to claim this, they were supposed to keep each other informed of cases and what they had decided. But in practice, they didn't always do this, and sometimes even pretended not to know about other matters, so as to pass the buck.

The most common criticism of the justice system, however, was its slowness.

3. LEGISLATIVE **POWER** AND LAWS

a. **Legislative** power

As already mentioned when describing British administration, the seith holder of legislative power in Basutoland in the period under consideration was the High Commissioner, whose ordinances were published in the official gazette.

Nevertheless, certain restrictions must be made. On the one hand. The British administration used to consult those it considered to represent the Basotho before proclaiming laws.

"... it is the policy of the Government to consult the Pai'amotiiit Chief and the Basutoland Council before Proclamations closely affecting the domestic affairs and the welfare of the Basuto people or the progress and development of the Basuto Natio Administration are enacted" ⁰.

Anonymous, Basutoland annual report of 1949, p. CE

It could even be said that one of the Government's main motivations in setting up the Council was precisely its need to have a local interlocutor to guide it in this area. Indeed, as we have seen, in practice the Council played its role with great zeal, studying each bill carefully. According to Sheddick, it was able to delay or even veto measures that seemed unacceptable.

On the other hand, the Council can be seen as having *de facto* legislative power; but we'll come back to this point when we discuss the status of the "Laws of Lerotholi".

b. The laws

The laws recognized in Basutoland were of various origins. On the one hand, when the British Government made the territory a Crown Protectorate in 1884, it was decided that the laws of the Cape Colony would continue to apply. As late as 1949, annual reports stated.

"The laws in force in Basutoland include those of the Cape of Good Hope up to the 18th March, 1884, except where repealed or altered by Proclamation of the High Commissioner... ⁸¹.

Without going into the details of the characteristics of these laws, we can point out that they were close to Dutch Roman customary law, and to a jurisprudence modeled on that practiced in the Union of South Africa. But these laws, although promoted, only applied to cases where Europeans were involved.

⁸¹anonyme, Basutoland annual report of 1949, p. 48

In all cases where only Basotho were conceived, the government recognized "the legality of Sotho customs". the legality of Sotho customs. As the population was overwhelmingly Sotho, these cases were by far the most numerous. On the whole, therefore, the population was traditional customs when dealing with the law. We will therefore focus on these customs and their status.

Until the protectorate period, they were the only ones to govern society, and they had never been written down. Without going so far as to assert that they varied constantly and significantly according to particular cases - which would in fact be tantamount to denying their very existence - we can say that a given custom was applied more or less systematically depending on the case: there was room for exceptions. We have already seen an example of this in the succession to chiefly status of Mokachane rather Libé.

In 1884, the situation was in fact the same: the courts of chiefs could continue to apply Sotho customs in the same way they had always done.

The evolution actually came later, and at the initiative of the Sotho chiefs rather than of the British administration. They felt the need to establish customs on a new basis than oral tradition alone, on the basis, in fact, of European "customs" by writing them down.

Chiefs weren't the only ones to feel this need: mn author sotlio. Sekese, also published, in 1907, a collection of customs in which he recorded what he called "the laws of the clieP", eighteen "laws" which, according to him, were firmly established coiitiliies (cf. appendix p 4).

But Sekese's work made no claim to official status. On the other hand, what the chiefs wanted to achieve was quite different.

The best-known written compendium of Sotho customs, and the only one used as a reference by Sotho courts, was the "Code of Lerotholi", or "Laws of Lerotholi", the drafting of which was organized and supervised by the Council.

There were several versions. The first dates from July 1903, just after the creation of the National Council. It defined the rights of both the chiefs and the population: succession to chieftaincy, the right of chiefs to hold courts, to demand work from their subjects and to distribute land, as well as a ban on confiscating property or punishing people without trial.

Then, in 1918 and 1919, seven new "laws" were added. Among other things, they set out how justice was to be administered. But one of these additions had nothing to do with any custom, since it introduced a public holiday, "Moshoeshoe's Day".

All these "Laws" were published in a revised edition in 1922, which came to be known as the "Matalen".

the "Matalenyane".

After 1938, further additions were made to Sotho customs. The "Laws of Lerotholi" were again published in a reworked form, comprising three parts: the first was mainly composed of the Matalenyane, with certain amendments and additions made after 1922; the second part included statutes and some provisions borrowed from the Matalenyane; the third consisted of the ordinances of the supreme chief. A few years after the publication of the Sesotho version, an English version was published, which also included a fourth part: the new statutes of the indigenous courts.

The circumstances in which the first version was drafted are revealing not only of the needs they were intended to meet, but also of the ambiguous nature of these "laws": it was at the very first session of the Council, on July 6, 1903, that it was proposed to put the Sotho customs into writing. The Council elected a committee to carry out this task, made up of six chiefs and eighteen Council members. After three days of deliberation, on July 20, the committee presented twenty-one draft laws to the Council. The Council discussed them for six days and finally accepted eighteen of the twenty-one. But many had been modified during the discussions.

The need for a written code can be seen in two respects: on the one hand, the eagerness felt by the members of the Council to finalize it, and, on the other, the fact that the customs "were not self-evident", contrary to utopian expectations, since many of them were modified by the Council. Already at this time, H. Sloley, the Resident Superior, wrote to the High Commissioner about these "laws".

"What is known as Native laws consists of the tribal customs, judgments and opinions of important and respected Chiefs, such laws are preserved and handed down by oral tradition, and the suggestions made by the Council are not intended to be a complete collection of such Basotho laws, but deal primarily with matters which the Courts of Native Chiefs have of late years been inclined to -give their own and unjust decisions" ².

Sloley also wanted the Leretholi Laws to be written in the form of a memorandum for the use of the courts of chiefs, and to be written in the form of a memorandum for the use of the courts of chiefs. This clearly shows how the British government perceived the formulation of these

⁸² S. Poulter. The History of the Basotho in the Lesotho, p 35-36

"laws": as Sothos habits and customs were recognized as applicable in Sothos affairs, there was no reason why they couldn't be put down in writing. c
as a simple reference, it was siiiipleiiicn, F It
written formulation of pre-existing and recognized "laws", and by no means ini xN
legislation. The High Commissioner's reaction to Sloley's letter confirms this. sq
en effet que les "lois" ne semblant pas enciétei' sur l'exclusivité qu'il av:iit dii ç--"
législatif, il ne voyait pas d'inconvénient qu'elles soient imprimées et circiilccs

Moreover, it's also interesting to note that the "laws" put down in writing l':ri "iēt{ - to
meet a practical need: of the many iis and customs that could exis Basutoland, only eighteen
had been chosen to form part of the "Code". ci cp based on t h e fact that the sothos courts had
sometimes shown themselves to be "unjust" and "arliit i:iii c- rendering their decisions on the
problems they conceived. As we voj "ns 'l.iii. Sloley's letter, the British government was well
aware of this.

However, it is not difficult to see this as a contradiction if the ci'iiti' es W .
question were so well established that the Laws of Lerotholi were in fact only the expressiu's -
written, how is it that these customs were an object o f privileged abuse from the chiefs * D9 more,
there had obviously been certain basic liaisons in their faith3iiiiil:ii i"n, which 'lleads us to think that
it was in fact more of an elaboration. 11 est ex i'lçiit qUe IQ Conseil avait fait plus que de consigner en
écrit des coutumes bien établis. I tin inomen:
at some point in its work, the Council - and its committee - had taken decisions "iicern:mit what
should be, not just what was de facto, and had therefore effeci ur ili1 tLil t .III of legislation, de
facto.

But had it really been legislated - when legally the Council binds the QOtl\ .Ilt not?
The ambiguity is interesting. The "laws" foriiiulated - or elaborated - by the C'iuscil were
recognized as valid by the gouveiaierrient. Em ccl.i on peut dirk 'qu'il y ai ait

legislation, in fact. But these laws were recognized as legal only as expressions of unambiguously established customs, which in fact, at least to a large extent, they were not. In this sense, it is difficult to speak of legislation.

The paradox lies in the fact that the government had recognized as valid oral customs **rather** than written laws, and thus a set of principles which itself was not always well defined.

It was precisely to define this that the Council set out to do, and the government's endorsement seemed to mean tacit acceptance that written laws should take precedence over oral customs, and that where there were Öou - i.e. several possibilities - in oral customs, the possibility chosen by the Council would henceforth be the only valid one. Putting oral customs down in writing therefore implied a certain ri_idification of the fact that customs, in practice, might not be followed to the letter - or seen from another angle, they intrinsically included the possibility of variations. Thus, a chief's successor was usually the eldest son of his principal wife, but if he seemed incapable of fulfilling such duties, another might be preferred.

On the other hand, the written laws that were supposed to correspond to these customs did not show such finesse: they presented as universal a rule that in fact only took precedence over others. In itself, the drafting of these laws, by "elaq-iating" the customs in this way, rigidified the system. This problem might not have arisen if we were dealing with open-minded judges, who did not follow the "laws" to the letter in any given case. But in order to be faithful to the common sense of certain customs, in certain cases, they had to make a choice between the written code and the customs that the latter did not contain.

Recognizing the legitimacy of the Council's work i'eveii de facto taciteiiiiit liii
recognize limited legislative powers - those o f making a choice eiiire difiei'entes

possibilities offered by Sotho customs. But from what we've seen of the correspondence between Sloley and the High Commissioner, it doesn't seem 'pie the government was aware of this at the time.

The ambiguity did not emerge until several decades later, with the "regency case". Although this case arose in 1943, and therefore outside the period we have set ourselves to study, we will nevertheless look at it in greater detail, as it highlighted the ambiguity of the status of the "Laws of Lerotholi".

After the death in 1940 of paramount chief Seeiso, whose heir son was still a child, a dispute arose over who should take the title of regent. The two contenders were Bereng, Seeiso's younger brother - who had already been a contender for the supreme chieftaincy when their father died - and Mantsebo, Seeiso's widow. According to the Lerotholi Laws, which stipulated that succession was by birthright and not by marriage, the regent had to be Bereng. The case came before the High Court in 1943, and Judge J. Lansdown ruled in favor of Mantsebo. What he said in response to Bereng's claims, based on the Laws of Lerotholi, is significant for our purposes

"No legislative authority or official recognition has been extended to this code; nevertheless it is helpful, though not conclusive, on any question as to the existence or extent of any customary practice amongst the Basuto people... [it] is in no sense written law. Its provisions though reduced to print, do not emanate from any lawgiver. The problem immediately before us in respect of section I is whether the statement it makes is that of a custom so well and firmly established that it has the force of law... The position, as it seems to me, is that while section I sets out the rule more usually followed a contrary practice has crept in and is now in force to such an extent as to make it impossible for me to affirm that the section sets forth a custom so well established that it has the force of law ⁸³.

S. Poulter, *The place of the laws of Lerotholi in the legal system of Lesotho*, p. 38-39

With this declaration - and with his decision in favor of Mantsebo - Lansdown was thus explicitly challenging the points that had hitherto seemed to have been tacitly accepted by the government, which, as we have seen, was not immediately aware of the ambiguity. The Lerotholi Code was not recognized as having the force of law by the government, since the only ones it recognized as such in the sphere of Sotho affairs were the oral customs themselves, and it had never been officially declared that there was strict equality between the two. It may have been the case, but not necessarily.

As for the amendments that had been made to the first version of the Code, they could not be considered laws, since the Basutoland Council had not received legislative authority from the government, and to consider amendments as customs would of course have been paradoxical, to say the least...

As for the "law" at the heart of the dispute in the "regency case" (which defined the principles of succession), this could not be accepted as custom either, as it was not sufficiently well established.

In order to determine whether they could really be considered customs, Lansdown compared the Lerotholi Laws to the definition of a custom in English and Roman-Dutch civil law: for a local habit to be recognized as a genuine custom, it had to have been practised immemorially (over many decades) and without interruption, it had to be certain, and it had to seem reasonable - the last point was, of course, much more subjective. Lansdown felt that Section I of the Laws of Lerotholi - which was the subject of this article - did not meet the last two conditions there were other priorities than those it defined, which questioned their "certainty", and didn't always seem reasonable.

Even if Lansdown's definition of a custom - and in particular the last part - may seem too demanding, the very fact that it referred to the succession of **Mantsebo** - a decision that emanated from Sothos bodies - proved that the practice of succession by birthright was not firmly established.

The "regency case" thus clearly shows that, although they had often been perceived as such before, the "Laws of Lerotholi" were not recognized by the government as the true expression of Sotho customs, to be applied to the letter in the sphere of Sotho affairs.

And yet, for the whole of the period in question - after they had been circulated - they were used as such in the courts of the chiefs. The numerous amendments that modified or clarified the first version were indicative of the importance attached to them in practice. According to Poulter, they were understood by many

"less as an authoritative collection of traditional laws as a definite legislative enactment, and several of them have gained currency as a result of their publication and association with the Basutoland Council that they never had before or are likely to have acquired on their own ⁸⁴".

By the same token, the Council presented itself as the legislative instrument in the domain of sothos affairs.

⁸⁴S. PouÉer, The place of the laws of Lerotholi in the legal system of Lesotho, p 40

CONCLUSION

If we take stock of the period of the Crown Protectorate up to the second half of the 1930s - the limit we have set ourselves - the first and most obvious point to make is that Basutoland managed to retain its unity, to become a true nation, in that the feeling of being Sotho was reinforced at the expense of clan or tribal affiliations. The country thus avoided splintering - in which the presence of the protectorate undoubtedly played a positive role, by its very existence, but also by the British policy of reinforcing the authority of the paramount chief; but Basutoland also managed to avoid incorporation into the Union of South Africa, and did so in spite of British inclinations to the contrary.

On the other hand, as we have seen, the period we have focused on witnessed profound changes in power structures. The importance of these changes may even seem surprising, given the non-interventionist nature of British policy towards the territory, and all the more so as they cannot even be attributed to the policy of the Cape Colony in the preceding period. Certainly, the consolidation of the supreme leader's authority can be directly attributed to Crown policy. But the same cannot be said of the importance acquired by the "Sons of Moshesli" within the cliefferie - and the corresponding decadence of the other chiefs, who were degraded to minor status, nor of the - temporary - loss by the people of their role as a counter-power, which was the origin of the character acquired by the Council. The Council had certainly been created at the instigation of the Government, but with the aim of democratizing the decision-making process - to a certain extent - rather than becoming the gateway to the cliefferie as such.

At first glance, these phenomena appear to have been endogenous, being for the most part and to a large extent the more or less direct consequences of the investment phenomenon. However, British policy seems to have played an essential role in this evolution. Admittedly, this was not a political calculation. However, the fact that the British government was now the supreme holder of power, and that it recognized chiefs as indispensable instruments of government, the nature of their power changed. As Stevens rightly observed, chiefs no longer derived their legitimacy from the consent of those they led, but from the support of the government whose protection the nation needed if it was to continue to exist as such. At least initially, the British government had thought to counterbalance the power of the chiefs as a whole, by strengthening that of the supreme chief; but this was not to be, and all the more so as the creation of the Council in fact amounted to backtracking somewhat on this point.

But this is also due to the fact that supreme chiefs were all the more easily able to make use of placement: some chiefs effectively saw their authority

In other words, those who held their position from their fathers were to lose it, but only to other chiefs placed either by the supreme chief or by other authorities who had themselves been placed in the same way. Directly or not, important authorities owed their power to the supreme chief. But this was not necessarily a limit to that power compared to the situation in which the heirs had previously found themselves: the British presence ensured that both the paramount chief and these chiefs could maintain their position without worrying too much about the legitimacy they might have in the eyes of the population.

For this reason, they could afford to dispense with the pitsos, or give the Council a democratic character.

But this change in attitude on the part of the chiefs was probably also due to changes taking place within society, although it is difficult to assess their impact. We alluded to the fact that a number of chiefs were drinking. More generally, chiefs no longer saw themselves as the "fathers" of the community. Whether this was one of the causes of the abuses, or the consequence of the fact that they now had the opportunity to indulge in such abuses without too much danger to their position, is of course difficult to say.

The development of migrant work could also be a factor: men were increasingly leaving the country to find paid employment. Yet they were the only members of the population who traditionally had access to politics. Emigration therefore reduced the mass of the population most able to act as a counter-power; but here again, it is difficult to assess the impact of the phenomenon.

Whatever the case, from the support they received from the government, from the way in which many of them came to power, and even from some of their functions, it can be said that chiefs became more and more like functionaries.

This phenomenon of bureaucratization can be compared to the evolution that took place at the legislative level: the effort to establish well-defined written laws. Both periods were characterized by greater stability and rigidity than the pre-colonial situation.

But as far as the concern for legalization is concerned, it's debatable whether this phenomenon was solely due to the chiefs' desire to stabilize their powers at a legislative level, or whether this need was also due to a desire to redefine themselves in outfits that were perceived as modest.