"The Struggle to Control Dispute Proceedings in Southern Rhodesia, 1930 - 1970, with special reference to the lower courts"

by

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Abstract

This thesis examines the political role of the Native Commissioners' and Chiefs' courts in Southern Rhodesia on two levels: the macro-political level of state hegemony and the micro-political level of district relations. Thus two chapters are devoted to a focus on Sipolilo District, and the remainder of the thesis sets this in the wider national and historical context, examining the implications of the Sipolilo study for the larger setting.

The reasons for the initial integration of the "traditional" authorities into the state through the recognition and regulation of existing courts is considered. The means by which this progressed first institutionally and later ideologically is traced through twenty-five years. A further move to integrate the Chiefs occurred in the early 1960s, and the changed circumstances are examined.

In both these phases of integration the "traditional" authorities played an active role in staking their claim to control these proceedings. The thesis will examine why both the state and Chiefs were eager to control these proceedings and consider how each made use of the power gained from this control.

The role of the lower courts in extending and consolidating the cash economy and producing other norms is considered. The local nature of these courts made them sensitive to local conditions but the appeal court also extended the normative nature of some of the decisions.

The regional context of the policy to integrate the Chiefs through the recognition of judicial power is considered by contrasting the relevant pieces of legislation from East, Central, and South Africa.

The time period for the dissertation is based on the drafting of the Native Law and Courts Act (1937), the first of its kind in Southern Rhodesia, and the implementation of the African Law and Tribal Courts Act (1969), the last of its kind in the colonial period.

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Abbreviations

ALTC - African Law and Tribal Courts Act (1969)

AR - Annual Report

CC - Civil Case

CNC - Chief Native Commissioner

CR - Civil Record

JSAS - Journal of Southern African Studies

MIA - Ministry of Internal Affairs

NAD - Native Affairs Department

NADA - Native Affairs Department Annual

NAZ - National Archives of Zimbabwe

NC - Native Commissioner

ND - Native Department

NDP - National Democratic Party

NLCA - Native Law and Courts Act (1937)

NLHA - Native Land Husbandry Act (1951)

NM - Native Messenger

PNC - Provincial Native Commissioner

RAA - Rhodesian African Association

RLI - Rhodes-Livingstone Institute

SRANC - Southern Rhodesia African National Congress

SN - Superintendent of Natives

ZANLA - Zimbabwe African National Liberation Army

ZANU - Zimbabwe African National Union

ZAPU - Zimbabwe African People's Union

ZIPRA - Zimbabwe People's Revolutionary Army

Introduction

Judicial and Political Authority

It is only in the last thirty years that historians of Southern Rhodesia and Zimbabwe have considered chiefs to be lackeys of the government. This interpretation of official and semi-official sources has been misleading. To some extent it has been naïve, over-reliant on "chiefs" as passive and exploitable characters. While it is true that the Southern Rhodesian government played a large role in the construction of the office of "chief", bolstering and creating a great deal of "tradition" to accompany the "chief", these men (no chieftainesses were recognised by the government) played important roles and many were indeed perceived as crucial allies at key moments in Southern Rhodesian history. In the 1920s the Native Affairs Department sought the support of powerful African men who could fit into the "traditional" role considered by the government to represent "legitimacy". More clearly, in the late 1950s and early 1960s both nationalists and the government actively sought the support of chiefs.

The extent to which judicial and political authority go hand in hand, and indeed the question of how one relates to the other will be a theme running throughout this thesis. Ladley, analysing the post-Independence period, has argued that the exercise of judicial office generates authority that is transferable to the political

sphere. Indeed, the records of the Native Affairs Department suggests it supported such an analysis throughout the twentieth century. "Chiefs" perceived judicial power as something they could reasonably demand from the colonial state, and did so throughout its existence. This thesis will attempt to show how the two relate within complex political relationships where judicial authority was but a small part of the whole picture.

Some argue that legal change "lags" behind social and economic change: classical marxists, in particular, argue that law is simply superstructural. Other legal theorists argue that legislation can have a directive role in both social and economic spheres. Throughout this thesis it will be demonstrated that the legal, social, political and economic spheres exist in much more complex and involved relationships than proponents of the above arguments are willing to concede.

Under the colonial regime we find both dominant and subordinate legal systems operating. Clearly there is a fissure or disparity between the two; however, each affects the other.[1] The relative strengths of the

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[1] See J.F. Holleman, "Disparities and Uncertainties in African Law and Judicial Authority: A Rhodesian Case Study", African Law Studies, no.17 (1979), in which Holleman demonstrates the persistent disparities between "customary" and statutory law. He also looks at the competing jurisdictions of Native Commissioners' and chiefs' courts and argues that ambiguities engendered by this led to confusion over the locus of authority in the 1970s with political

dominant and subordinate are, at any given time, dependent upon diverse elements, demonstrating that law is never divorced from social, economic and political conditions that obtain. Sally Falk Moore has made an exceptionally clear statement regarding the relationship between the dominant and subordinate legal systems under the colonial regime. Writing of Tanzania she explains,

> From the beginning of the colonial period the legal system on Kilimanjaro must be conceived as having two dimensions. One includes all that came under the immediate direction of government and administration, the other the residual part left to the Chagga to administer. The two were, of course, interdigitated and interrelated in reality, and each affected the other. The residual part was, obviously, historically linked to precolonial "customary law", but from the start was only a segment of the precolonial Chagga system of law-government. Attached to a political order quite differently constituted from that to which it was originally hitched and operating in the framework of a different economy, residual "customary law" was an altered entity from the very beginning.[2]

Those arguing against the concept of a dominant ideology[3] suggest that any such ideology must be all-pervasive and inflexible. On the contrary, dominant ideologies are overarching ideologies that are flexible

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consequences.

[2] Sally Falk Moore, Social Facts and Fabrications: "Customary" law on Kilimanjaro, 1880-1980, Cambridge: 1986, p.95.

[3] See, for example, N. Abercrombie, S. Hill and B.S. Turner, The Dominant Ideology Thesis, London: 1980.

and sufficiently plastic to withstand the pressures of dissent exerted by subordinate ideologies. Through the process of contestation the more dissonant elements of the subordinate are smoothed over to be consonant with the dominant.[4]

In our context the transmission of an emergent or newly dominant ideology arriving with colonialism was hindered by many factors. Indeed, such transmissions are never simple. In Southern Rhodesia colonization was sparse in many districts for several decades following conquest, leading to very little transmission of colonial ideas. Such areas were routinely described by Native Commissioners as remote or "backward". In those areas where there was a substantial colonial presence so much was contested that social upheaval continued for an extended period. As new elites emerged, the interests they represented were increasingly consonant with government or colonial interests.

Control of, or at the very least influence upon, the wider cultural domain is a specific component of legal disputing. Studies of Southern Rhodesia by Jeater[5] and

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[4] An interesting exploration of this theme is found in, Dick Hebdige, Subculture: The Meaning of Style, London: 1979.

[5] Diana Jeater, Marriage, Perversion and Power: the construction of moral discourse in Southern Rhodesia, 1890-1930, Oxford: 1993.

Schmidt[6] have demonstrated this for the era prior to the 1930s. Throughout the colonial period the state attempted to control marriage, divorce, *lobola* transfers, women and emerging commercial relations amongst Africans. One tool that was deployed was the courts. That the disputes concerning these issues were largely between Africans in the period dealt with in this thesis highlights two important aspects of civil disputing. First, it involves the relations of power: the successful litigant in a case gains the backing of the state. Secondly, disputes fulfil a pedagogical role. It is this second role that is particularly significant in the transmission of ideas.

In the struggle to control dispute proceedings in Southern Rhodesia, senior African men demanded official recognition and state backing for the courts they operated, and thereby for the norms they were attempting to instil. In short, they were seeking the state's coercive power to promote their interests. The Southern Rhodesian government, on the other hand, sought an organic connection with the African population by which ideology consonant with colonial interests could be transmitted to the African population more effectively. The government considered courts could fulfil such a function, at least in part.

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[6] Elizabeth Schmidt, Peasants, Traders, and Wives: Shona Women in the History of Zimbabwe, 1870-1939, London: 1992.

Recently several historians of Africa have grappled with issues of the law and the judiciary. Some of these historians have been excited by the untapped material found in legal records, primarily of criminal proceedings. The present thesis differs from these recent studies in a number of important ways. Firstly, I concentrate almost exclusively on civil disputing. I do this for two reasons: in civil disputes we are offered a window upon the issues Africans contested and the means they deployed to do so, while the range of judicial proceedings controlled to some degree by Africans in Southern Rhodesia did not extend to criminal disputes. The second point of novelty in the present study is that it considers the struggle to control dispute proceedings in the colonial era as central to the larger contest between the colonized and the colonizer. This was by no means a simple contest: many layers of interaction influenced positions, events and outcomes.

This thesis sets out to demonstrate a number of points. First, Africans considered that the control of judicial institutions conferred power; it was correspondingly important to gain official or state recognition. This is apparent throughout the period in question, from the time of the Native Boards in the 1930s when Africans across the country were demanding officially-recognised jurisdiction, to the destruction of

the chief's court house in Sipolilo in the late 1970s and indeed beyond. Secondly, in order to "retribalise" Africans and establish the authority of "traditional" leaders the Native Affairs Department considered the cession of limited judicial powers the appropriate act. But this was not a grant of powers, as the official documents and reports suggest; it was, rather, a cession of powers. The Native Affairs Department appears to have considered the delegation of judicial powers to be a safer option than devolving powers of land allocation or extending the franchise to Africans. The Native Affairs Department and the Chiefs believed that the control of judicial powers generated wider political power as well as greater legitimacy and authority.

Thirdly, the control of the courts gave the institutionalised personnel, especially "chiefs", and powerful men of the community, especially storekeepers, remarkable powers in the construction of norms and local "common law". However, this was not done without reference to the state and as such the colonial regime was an interested party in the norms under construction. As a result the ideology of the colonial regime interacted at a very local level with Africans of the area. As the chief and the storekeepers brought pressures to bear upon the population of the reserves, backed by the colonial courts, an explosion of litigation occurred in the Native Commissioners' and chiefs' courts:

Africans were thus propelled into conflict with one another in the courtroom in order to establish their positions with some certitude.

Literature Review

Recently scholars have been taking a closer look at the history of law in Central and Southern Africa.[7] The role of courts in the implementation of law and the legitimation of the colonial state is crucial to this history and in the past few years this topic has been attracting increasing attention. To date, however, the local courts in Southern Rhodesia have not been a focus of an extended historical study.

This literature review comprises two parts. The first considers the amateur ethnographies with easy access to the official domain. Some of the works included here were written by native commissioners, others for those dealing with "native law and custom". The first part aims to provide a sketch of the

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[7] For examples see Sally Falk Moore, Social Facts & Fabrications; Martin Chanock, Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia, London: 1985; A.S. Ladley, "Courts and Authority: A Shona village court", PhD Thesis (Laws), London: 1985; Raymond Suttner, "African Customary Law - Its Social and Ideological Function in South Africa", in Lodge, T. (ed.), Resistance and Ideology in Settler Societies, Johannesburg: 1986; K. Mann, and R. Roberts, (eds.), Law in Colonial Africa, London:1991 and Margaret Jean Hay and Marcia Wright, (eds.), African Women and the Law: Historical Perspectives, Boston: 1982.

development of ideas among the officials administering Africans in Southern Rhodesia. The material that these administrators left us is as interesting for what it reveals about themselves as for what it tells us about African life at the time. The second part provides a wider framework for the issues raised in this thesis. It considers academic and professional works by anthropologists, historians and lawyers. In order to construct the framework it has been necessary to go beyond Zimbabwe, and indeed Africa. I have, however, restricted myself to contemporary works and have not tried to survey the historical development of African legal studies as this has been done elsewhere.[8]

This distinction is not clear-cut. In Southern Rhodesia it is blurred by two men, Roger Howman[9] and J.F.

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[8] See Martin Chanock, Law, Custom and Social Order, especially Chapters 1-3; Sally Falk Moore, Social Facts and Fabrications, pp. 6-10.

[9] Howman's regard for anthropology stemmed from his experience at the LSE under Malinowski. But he was critical of Malinowski's approach. Malinowski, Howman tells us, "used to spend his time drumming it into our heads: There is the form, you must find the function and the functions is part of our whole series of functions that you've got to be able to follow up till you've got a whole institution and all the institutions have to come together in a big society.... I said to him one day if you come...if you got to describe what's inside our African hut and there happens to be a paraffin tin that's taken the place of the pot I said what would you do with it. He said, "I would remove it...(laughter)...it's not from the African culture." I said, "But this is not the problem. We are dealing with a people...at least I am interested in...who are changing almost every year and we want to see what happens." Roger Howman,

Holleman. These two men also represent the bridge between the official, amateur ethnographies and the professional, academic anthropology and history that is the focus of the second part of this review. Howman, (who does not figure in this literature review) served in the Native Affairs Department in several posts, while his colleague and friend Holleman, an academic anthropologist did not. However, both influenced one another and therefore should be noted.[10] Howman wrote several official reports and drafted the African Law and Tribal Courts Act (1969), as well as the occasional article for the Native Affairs Department Annual (NADA). Holleman, for his part, operated in an official capacity, sitting on the Mangwende Commission (1961), writing its report and later publishing this, in a revised form, as Chief, Council and Commissioner. These two men were the leading lights in the study of African "customary" law and chiefs' courts in Southern Rhodesia between 1945 and 1970. Each contributed to the debate concerning the jurisdiction of chiefs' courts and the value of "customary" law. Both were consciously engaged in the politics of these issues.[11]

Harare, 1 August 1991.

[10] Roger Howman, Harare, 1 August 1991.

[11] See J.F. Holleman, Chief Council and Commissioner, Assen: 1969, and interview with Roger Howman, Harare, 1 August 1991.

The work of J.F. Holleman is included here and is of particular significance because of his standing as a professional anthropologist and the interest his early work attracted from the Native Affairs Department and the close ties he had with the Southern Rhodesian government. Howman remembers that Holleman's Shona Customary Law was, like Charles Bullock's works earlier, "pushed into every Native Commissioner's hands".[12] However, Holleman was critical of government policy, particularly the Native Marriage Act (1950).[13] Howman and Holleman first met when Holleman was doing research for this book in Wedza District, in the late 1940s, where Howman was stationed as Assistant Native Commissioner.

Roger Howman was an academically trained anthropologist. He received part of his training at the LSE under Malinowski in the 1930s, but considered it unsatisfactory, mainly because the issues he felt were important, i.e. administrative questions, were not being addressed by the social anthropologists. Howman's father, E.G. Howman, was a Native Commissioner and Roger Howman remained more interested in "practical issues" of administration. He had studied anthropology, at least in

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[12] Roger Howman, Harare, 1 August 1991, see p.28 below.

[13] Prof. Holleman kindly loaned me his copy of a memorandum entitled "Memorandum on Certain Aspects of the Native Marriages Act, 1950", dated November 1950. This document was prepared at the request of L. Powys-Jones, CNC. A copy will be placed with the Britain-Zimbabwe Society archives.

part, because he believed it could inform better administration. What he did find useful, however, in his studies in Britain was his exposure to the sociology of Karl Mannheim. He gave further indication of his interest in administration, rather than social anthropology during his study tour, in the mid-1930s, of the United States, where his hosts had arranged meetings with Black Americans. These he requested be limited to a few; his interest was in Native Americans as their conditions appeared more relevant to those of Africans in Southern Rhodesia.[14]

The influences upon J.F. Holleman were diverse. He was born in Java and his "home background...acquainted [him] with some of the work of the Dutch scholars on Indonesian *adat* law."[15] His father introduced him to anthropological fieldwork in Malaysia. He moved to South Africa where he studied law and anthropology at Stellenbosch and later with Isaac Schapera at the University of Cape Town. Subsequently, he spent six years with the Department of Justice in the south-western Cape, despite his desire to work in Native Affairs. In 1947 he was appointed a research officer of the Rhodes-Livingstone Institute. Although he was attached to the

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[14] Roger Howman, Harare, 1 August 1991.

[15] John Griffiths,"Recent anthropology of law in the Netherlands and its historical background", in Keebet von Benda-Beckmann and Fons Strijbosch, (eds.), Anthropology of Law in the Netherlands, Dordrecht: 1986, p.34.

Rhodes-Livingstone Institute in Livingstone from 1947 to 1952, his association with the Max Gluckman was loose. The Preface to Seven Tribes of British Central Africa makes it apparent that at key moments Holleman was not with the other RLI officers: "Holleman was not at Oxford with the rest of the Institute team when the book was planned and much of the writing for it was done."[16] Looking back over his own career, Holleman notes his major influences as Hoebel, Llewellyn, Schapera and Van Vollenhoven, the Dutch pioneer in the study of *adat* law.

Mann and Roberts have recently asserted[17] that as colonial officials came to view law as a potential instrument of social change they also adopted the evolutionary paradigm employed by the anthropologists Rattray and Meek. In so doing these administrators also expected that through the codification of "customary" law they could "modernize it and incorporate it in a pluralist colonial state or later a modern nation state."[18] This does not hold true in Southern Rhodesia. The copious articles concerning "native law and custom" that appeared in NADA[19] suggest strongly that the

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[16] Elizabeth Colson and Max Gluckman (eds.), Seven Tribes of British Central Africa, London: 1951, p. viii.

[17] K. Mann and R. Roberts (eds.), Law in Colonial Africa.

[18] Ibid., p.5.

[19] NADA began publication in 1923 its name is from the acronym of Native Affairs Dept Annual. Its articles were written almost exclusively by NAD officials. Without doubt it

colonial officials in Southern Rhodesia generally viewed "customary" law as expressive of social norms rather than directive in the formulation of such norms. It was not until the late 1940s that anyone in the Southern Rhodesia administration argued that "customary" law possessed a directive potential,[20] and even then it does not appear to have received serious attention. However, colonial administrators seem to have considered statutory law, e.g. the Native Adultery Ordinance (1916) as directive and "customary" law as simply "natural". However, this is not to assert that "customary" law was accepted by the colonial authorities, on the contrary. The enactment of legislation regarding African marriage and the ever-present "repugnancy" clause, which obliged the Southern Rhodesian government not to recognize as law pre-colonial practises if they were considered "repugnant" to natural justice, is evidence of this.

The early published ethnographic works concerning African courts were written by two prominent Native Commissioners, Charles Bullock and F.W.T. Posselt.[21]

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provides greater insight into the official mind than the African communities so many of its articles are concerned with.

[20] Roger Howman, "The Significance of Law for native administration in Africa", Rhodes-Livingstone Journal, no.8 (1949).

[21] Posselt was one of the Native Commissioners who was recruited from the Natal service. He took up his post with the Native Department, Southern Rhodesia in September, 1908.

Their descriptions of courts prior to the promulgation of the Native Law and Courts Act (1937) complement each other, but more significantly they give us insight into the views of two of the most important administrators proposing official recognition for chiefs' courts. Posselt's book, Fact and Fiction (1935), is important, not only because it is one of the earliest studies of African law and courts in Southern Rhodesia, but also because it was Posselt who, as Acting Chief Native Commissioner in 1934, drafted the Native Law and Courts Act (1937) which was designed "'to give scope to the inherent capacity of a people to be controlled by their own institutions and through their own recognised leaders'."[22] Bullock's contribution is also important as he was the Chief Native Commissioner in 1937 when the law was enacted. Thus we are able to gain some insight into the understanding of African law and courts which prevailed within official circles in this period, and which found official expression in legislation and policy.

Roger Howman writes in the foreword to the reprint edition of Fact and Fiction;

> It is instructive to contrast Posselt with Bullock, his contemporary. The latter, in 1913, considered that the Mashona may well have been degenerating before contact with

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[22] Roger Howman, in the Foreword to the reprint edition, F.W.T. Posselt, Fact and Fiction, 1978. (originally published in 1935)

> civilization so he had no scruples about mission work, legislation and the *pax Britannica*. Posselt, on the contrary, painfully reflected that a primitive people was usually demoralised and debased by its first contact with civilization and, seeing "the good contained in the social and ethical structure", he asked why this good had to be destroyed? As a consequence he was highly critical of Education (evangelical), The Law Department (judicial and punishment) and trends he visualised as promoting "a demoralised mob, unrestrained by ethical influences, insolent, factious and vicious".[23]

The most striking characteristic of this collection of essays is that Posselt avoids the ahistorical stance of social anthropology in the 1930s, choosing instead to intersperse historical and anthropological essays, maintaining a degree of historicity throughout. His major shortcoming is, clearly, an avoidance of economic issues, and the changes they wrought on African life in the colony. However, it is in this respect that we see most clearly that Posselt was pursuing an agenda that had at its head 'traditional' African institutions. One of his aims, stated in the original introduction to the volume, was "to throw some light on their history; to afford the means of appreciating their laws and religious beliefs and culture."[24] Although Posselt acknowledges that social change occurs, "The process of tribal disintegration, disruption, and fusion is still

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[23] Ibid.

[24] Ibid., introduction.

operative, though now due to other causes",[25] he frequently harkens back to an earlier age when the 'tribal system' was stronger.

To some extent the chapter entitled "An Outline of the Legal Ideas of the Vazezuru" is Posselt's attempt to lay a basis for the codification of 'customary' law. He reviews here the jurisprudential aspects of 'law and custom'; the judicial machinery of the Zezuru; and the forms of evidence and the relative weight they carry. There follows a brief review of criminal and civil law, each of these having subsections dedicated to specific 'laws'.

Posselt fails to enquire how these "customary" laws might change. His analysis suffers from inherent conservatism, a belief that things should not change, unless they are being restored to their original state. Within this framework he gives no consideration to the formation of "customary" law, or its adaptation to the radically changing environment in which it is meant to operate. For Posselt it is simply there to be discovered, described and deployed.

Although Posselt clearly distinguishes between criminal and civil law, establishing sections for each, he admits in his first sentence that this is a false dichotomy: "There is no clear division between criminal

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[25] Ibid.

and civil law."[26] In the treatment of individual 'laws', his tenor appears to be a comparison and contrast with similar Western laws. Unfortunately, he does not consider the laws in their own context, nor does he describe them in a systematic manner. For some of these laws he provides a short description of who is held responsible, an example of the delict, and the penalty received. But apart from the definition, the other elements are treated as non-essential, and they are only sometimes included. Posselt confines his discussion to civil law, or more precisely to marriage, divorce, succession and inheritance. These are the same issues to which J.F. Holleman confines his study, Shona Customary Law,[27] which I shall discuss later. This choice of material is largely due to the fact that the overwhelming majority of cases to reach the Native Commissioners' courts were centred precisely upon these issues. The apparent shallowness of the material suggests to some extent the position of Native Commissioners hearing cases in this period, especially given that they were directed to follow "native law".[28] This position could only have left them susceptible to manipulation by interested parties.

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[26] Ibid., p. 54.

[27] J.F. Holleman, Shona Customary Law, London: 1952.

[28] Order-in-Council, 1898, art.50.

In the section devoted to courts, Posselt again describes the Shona system in a Western paradigm. To some extent this seems to obscure the process followed. Posselt describes the different courts that operated amongst the Vazezuru: the village court; the court of the district headman; and the court of the "tribal" chief; the jurisdiction of each, and their relationship to one another. But as throughout the section on the legal ideas of the Vazezuru, the descriptions seek to be normative rather than highlight exceptions or anomalies arising out of contrasting social or political conditions.

Posselt's contemporary and colleague, Charles Bullock,[29] wrote about the courts operating in Mashonaland for similar reasons. His book, The Mashona, was favourably received, the Native Affairs Department even putting up a £300 guarantee for any losses the publishers might incur.[30] Although Jackson had expressed some misgivings concerning the book to the Prime Minister: "however able [Bullock] may be, [the book] cannot be accepted as finally authoritative on all points"; he did

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[29] Charles Bullock, The Mashona, Cape Town: 1927.

[30] H.M.G. Jackson, CNC, to C. Bullock, NC, 20/2/1928, S 138/10.

consider it would be of great value to the training of NAD officials.[31]

Bullock devotes some ninety pages to the law pertaining to Africans of Mashonaland. That is, "the scope of our discussion ...is...the interaction of European and Native law."[32] For the most part this is a discussion of how and why, legally speaking, traditional ways of dealing with disputes were displaced by European law. The precedents of High Court decisions are cited throughout the legal section. We are left with the impression that Bullock, described on the frontispiece as "Native Commissioner, and Examiner in Native Customs and Administration, S. Rhodesia", has written an administrative textbook rather than an ethnography.

Bullock was clearly neither as enthusiastic about the establishment of chiefs' courts as Posselt, nor as romantic about their past. Nevertheless he was willing to state clearly that African courts continued to operate although "they do not form part of our judicial machinery".[33] Bullock's description of the courts and their proceedings is not comparative like Posselt's, but he does include two examples of cases in the chapter he devotes to 'Native Tribunals'. Furthermore, Bullock

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[31] H.M.G. Jackson, Asst CNC, to the Prime Minister, 9/1/28, S 138/10.

[32] Ibid., p. 312.

[33] Ibid. p. 383.

discusses the 'Native tribunals' and the limits of tolerance they enjoyed:

> We may...state the extent to which Native law is operative today. Briefly, it is that there is no recognition of Native criminal law, nor of the competency of Native tribunals to punish crime.[34]

This is a vital insight to the unofficial African courts in the pre-1937 era.

It was another sixteen years before J.F. Holleman began publishing his works on Shona ethnography.[35] Although his treatment of the material is ahistorical, it is a useful source for social history. The greatest limitation of Shona Customary Law is its restriction to that which was legally permitted by the Native Law and Courts Act (1937). Considering that at the time of research there were no more than 173[36] recognised courts operating, it seems unlikely that Holleman did not come into contact with any unrecognised courts or recognised courts exercising jurisdiction beyond that conferred through legislation; indeed he alludes to their existence.[37] In 1960 unrecognised courts were found to

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[34] Ibid., p. 295.

[35] J.F. Holleman, "Some 'Shona' Tribes of Southern Rhodesia", in E. Colson, and M. Gluckman, (eds.) Seven Tribes of British Central Africa, pp.354-395, and Shona Customary Law.

[36] Report of the Secretary of Native Affairs and the Chief Native Commissioner for the Year 1949, Salisbury: 1950, p. 24.

[37] Holleman, Shona Customary Law, p.13.

continue to outnumber the officially sanctioned Native Chiefs' Courts, and the attempt to restrict their jurisdiction had been deemed a failure.[38] So it is unfortunate that Holleman limited his work to that which was constitutionally acceptable to the Southern Rhodesian state. This may be accounted for by the fact that

> Mr. H. Simmonds, then Chief Native Commissioner, convinced [the author] that there was a keenly felt need for a systematic and up-to-date account of Shona customary law, in particular marriage and family law.[39]

The positivist methodology Holleman uses to approach "customary" law underlines his belief that it is simply there to be discovered. Holleman gathered together the senior elders in a number of different districts and interviewed them extensively. The view, therefore, that Holleman received was undoubtedly the dominant one, without identifying any of the contested areas.[40] This interpretation of law did not account for the growing contestation by those challenging patriarchal control.[41]

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[38] Report of the Commission appointed into inquire into and Report on Administrative and Judicial Functions in the Native Affairs and District Courts Departments, (Chair: Sir Victor Robinson), Salisbury:1961, referred to as the 'Robinson Commission'.

[39] Holleman, Shona Customary Law, p. ix.

[40] Holleman, Shona Customary Law, p.x; also personal communication.

[41] An excellent example of such contestation was found in the case Sipolilo Civil Record 12/54, "Stebiya N.F. (assisted by her father SAMU X1145 Sipolilo) versus Ranjisi X8596 Sipolilo", 11-17 May 1954, NAZ S 2033. Here the woman,

As Martin Chanock later noted, the manner in which such information was collected "must be seen...not as part of the process of discovering the rules of customary law but as a vital part of the rule-making process."[42] Thus, it may be argued that Holleman's research adopted colonial understandings and assumptions of "customary" law, and failed to challenge it.

Despite these limitations, Holleman does provide valuable information concerning the functioning of courts and particularly the relationship between the different 'levels' - village headman, ward headman and chief's courts. The material presented be treated with some caution. For example, he writes,

> The functions of the chief are essentially the same as those mentioned in connexion with the ward headman, but, obviously, his authority is much greater. Under tribal law the chief's court had full jurisdiction over members under control of the chief. It acted as a court of first instance in matters so serious that their impact was considered to affect the whole tribal community, such as homicide, witchcraft, and offenses against the chief's person. It acted as a final court of appeal in connexion with all disputes and offenses which failed to

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Stebiya argues her own case (only nominally assisted by her father in order to fulfil legal requirements). Ranjisi contests even a woman's right to do so. Several other arguments concerning the procedure of "native custom" were deployed by Ranjisi to rebut Stebiya's claims. However, on this occasion they were unsuccessful.

[42] Martin Chanock, "Making Customary Law: Men, Women and the Law in colonial Northern Rhodesia", in Margaret Jean Hay and Marcia Wright (eds.), African Women and the Law: Historical Perspectives, p.65.

> reach a satisfactory solution in the courts of the ward headmen. Nowadays, the jurisdiction of the chief, in so far as his courts has been constituted under the provisions of the Native law and Courts Act, is severely curtailed. He still has considerable jurisdiction in civil cases to which Shona law is applicable, but no criminal jurisdiction.[43]

In an article published the previous year[44], Holleman makes the point that not all chieftainships have such an 'obvious' hierarchy, either political or judicial. In one case, we are told, a ruling house "had to pay a price for the exclusiveness of its chieftainship":[45] the chief's court was not recognized as a court of appeal. The manipulation and politics of succession make such normative statements far from obvious. Unfortunately, Holleman's study lacks the rigour that Gluckman applied to the study of the "rituals of conflict".[46]

Shona Customary Law leaves the reader with the impression that, perhaps, no colonial power was present in the region and therefore there had been no "external" factors shaping "customary" law and its implementation. Holleman's later works contain greater context and provide finer texture to his studies. It appears that his experience as a commissioner in the Mangwende Inquiry

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[43] Holleman, Shona Customary Law, p.17.

[44] Holleman, "Some Shona Tribes...", pp.354-395.

[45] Ibid., p. 390.

[46] A. Kuper, Anthropology and Anthropologists, London: 1983, p.139.

(1961) forced him to give greater consideration to power relations surrounding legal disputing and the effect they had upon judicial authority and "customary" law. The Mangwende Commission was appointed to inquire into the problem of conflict between local colonial authority (the Native Commissioner) and African authority (Chief Mangwende). Holleman's experience on this commission led to the publication of Chief, Council and Commissioner, which draws largely on the commission's report. In an article published nearly a decade later, Holleman takes into account social and economic factors, "especially education, money economy and labor migrancy", in his analysis of the changing authority structures under Rhodesian rule.[47] To underline Holleman's shift in outlook it is worth quoting him:

> ...the subsequent exaltation of "traditional" chieftainship [that accompanied community development] as the mainstay of both the old and the new tribal order is as historically paradoxical as it is politically misleading. Some three-quarters of a century of European political dominance and cultural enterprise (mainly in economics and education) had profoundly changed and in many respects seriously weakened the fabric of tribal society. It had not only progressively undermined the traditional basis of tribal authority but changed its very nature and function by imposing upon it a host of duties and responsibilities that are anything but traditional.[48]

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[47] J.F. Holleman, "Disparities and Uncertainties..." p.10.

[48] Ibid., p.15.

It is clear that Holleman's ideas developed over his thirty years of writing.

So far we have looked at the four men with the most influence in the shaping of policy regarding African courts in Southern Rhodesia. The next work that requires some attention is African Law and Custom in Rhodesia, by Bennie Goldin and Michael Gelfand. This is, it must be said, a peculiar work published in 1975 and out of step with legal anthropology being pursued at that time. Goldin was a lawyer and Gelfand a physician with many publications on Shona ethnography. Their main object in writing the book, we are told, "has been to expound and explain African or customary law in Rhodesia as a comprehensive and coherent system."[49]

Its presentation, including a table of cases, but no footnotes or bibliography, suggests that it had two other aims: to be a textbook on "customary" law for the law student, and to be an unofficial codification of that law. Legalistic chapters dealing with, for example, chiefs and headmen cite the legislative provisions for their appointment, removal and duties. These are interspersed with anthropological and quasi-historical chapters dealing with the chiefly succession and their functions. The conflict of these two positions is never dealt with. It is, however, an interesting pointer to

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[49] B. Goldin and M. Gelfand African Law and Custom in Rhodesia, Cape Town: 1975, p. v.

the difficult position in which the chief found himself in the 1960s: on the one hand he was a government representative, while on the other Africans made demands and shaped the way they acted.

On the subject of courts, this book does make some interesting observations, including an explanation of the persistence of unofficial courts. Goldin and Gelfand remark that

> In serious disputes which generate ill-feeling or are likely to disturb the peace of the tribe the parties rely on the chief or headman to settle the dispute speedily, informally, privately and justly. Such disputes are settled in a manner comparable to the concept of arbitration....
>
> The existence of the arbitrative system explains the survival of the *dare* among the Shona or the *enkundeleni* of the Ndebele before tribal courts were established and recognized by law in 1937. The system still exists concurrently with and as an alternative to tribal courts as provided for and constituted by legislation. Thus chiefs or headmen who may exercise judicial functions under legislation also settle disputes but they do so as arbitrators and not by virtue of appointment by the Minister of Internal Affairs (section 6 of Act 24 of 1969).[50]

The most important contribution of this book is as an indicator of the perceptions among the legal profession of African law and custom in the late 1960s when the material was being researched.

The second category of works we need to review here, those published by the professional academics, begins

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[50] Ibid., p.119.

with The Shona Peoples (1976) by M.F.C. Bourdillon, based on fieldwork carried out over a year and a half in 1969-70. The themes Bourdillon deals with are those of culture clashes and social change. He aims to follow in the tradition of Evans-Pritchard[51] and the historical approach he adopts is evidence of this. In this way, this book is a significant departure from Holleman's work. Bourdillon deals with the traditional anthropological issues of kinship and village organisation but also provides an historical background spanning five centuries. He includes chapters on economic change and urbanisation as well as traditional and new religions; there are also chapters on courts and on chiefship.

Regarding chiefship, Bourdillon outlines clearly the theory and practice concerning succession and the disparities between the two that allow for disputes. Those disputes, he suggests, allow a "suitable and popular candidate" to gain "popular consent" and thus legitimacy.[52] This perhaps indicates a shortcoming of his analysis. Power relations appear to play a very small role in this. His description of the power struggle for succession as "practical democracy", merely glossed as power struggles between the ancestral spirits, seems to be tinged with idealism.

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[51] M.F.C. Bourdillon, The Shona Peoples, Gwelo: 1976, p.9.

[52] Ibid., p.128.

Bourdillon describes both the limitations on chiefs and the changes brought about by their changing roles and positions. Again it is only a general outline, and this is a second shortcoming of the book: the reader is presented with little ethnographic detail. But we are informed of general trends such as the modern preference for younger chiefs able to deal with new representative roles in lobbying for schools, clinics and roads from the Rhodesian administration.

> This is an adaptation of, rather than a complete breakdown from, the traditional fatherly chief: the chief is still expected to represent his people with respect to the government and to care for all the needs of his people.[53]

We are also told that the modern chief receives a government salary exceeding "the average earnings of black workers in Rhodesia".[54]

The chapter on courts is probably his weakest in historical content. But Bourdillon states clearly that "the function of the traditional [court] system does not depend on government recognition"[55] and that courts operated throughout the period prior to the Native Law and Courts Act (1937). He notes that the courts' application of statutory law following the African Law and Tribal Courts Act (1969) belied any claims of the

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[53] Ibid., p. 134.

[54] Ibid., p. 134 ff.

[55] Ibid., p.161.

courts to be 'customary'. He also refers to the role of spirit mediums in disputes, urban Africans' perception of "customary" law and courts and the ways in which independent churches deal with disputes between their members.

Claire Palley's formidable work, The Constitutional History and Law of Southern Rhodesia 1888-1965 with special reference to Imperial Control, was written in the early 1960s and appears to have been an attempt to inform the constitutional debates of the time with a liberal and historical base. Of course, the Smith regime, and the subsequent UDI made shortly after she completed the thesis, meant it had little time to do so. But this book is a valuable survey of all constitutional acts in Southern Rhodesia from Orders-in-Council, Letters Patent to specific pieces of legislation dealing with the judiciary. It is presented in an accessible and historical format and should be used as a reference by any scholar requiring an understanding of legal instruments in Southern Rhodesia.

Despite her declaration to eschew political analysis,[56] Palley's sociological comment is apparent on a number of occasions. For example, she points out that the development of the cash economy in Southern Rhodesia led to changes in African practices not taken account of

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[56] Claire Palley, The Constitutional History and Law of Southern Rhodesia 1888-1965 with special reference to Imperial Control, Oxford: 1966, p.vii.

in the state recognised "customary" law.[57] Another important point which Palley makes absolutely clear is that all the practices that fell within the realm of "customary" law in Southern Rhodesia, did not do so consistently.[58] Thus one court in one part of the country may consider a "custom" to be repugnant to natural justice, while another may easily accept it. The conclusion drawn is that a body of "customary" law was never defined in Southern Rhodesia.

A second legalistic study of note is Emmet Mittlebeeler's African Law and Western Custom. The research for this study was done in 1962-63, but the book did not appear until 1976. This time-lapse made a potentially innovative book look out of date and indeed in certain particulars simply inaccurate. However, it is an ambitious study which takes as its premise that in Western society, law and popular custom exist in relative harmony, but that in Southern Rhodesia this was lacking.[59] Following from this, the study sets out to investigate the interplay between African custom and Western law. In the concluding chapter Mittlebeeler states:

> Execution of public policy toward real or assumed African custom in Southern Rhodesia has not been uniform. Approach has varied with the situation, so that some customs have been

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[57] Ibid., p. 541.

[58] Ibid., pp. 508-511.

[59] Ibid., p.2.

supported, some condemned, and some made the subject of compromise.[60]

This book devotes two chapters to the changes which colonization brought to the judicial powers of Chiefs. Another two chapters are devoted to the regulation of marriage and sexual offenses. The two remaining substantive chapters consider witchcraft and homicide. The greatest weakness of African Custom and Western Law is that it relies heavily upon court records for evidence of actual practice. For example, although Mittlebeeler is correct to note that some chiefs were charged with extortion for holding courts prior to 1937,[61] he fails to point out that the vast majority of Chiefs were able to carry on hearing cases with little interference. African Custom and Western Law provides, with Palley's Constitutional History and Law, a useful legal basis for social scientists and historians to further investigations in social and historical legal studies in Southern Rhodesia.

The most impressive work on "customary" law in Central Africa is Martin Chanock's Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia. Unlike the other studies reviewed here, it is primarily a work of analysis rather than description. It also

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[60] Emmet V. Mittlebeeler, African Custom and Western Law: The Development of the Rhodesian Criminal Law for Africans, London: 1976, p.197.

[61] Ibid., pp. 25-38.

differs from them in that it is a work of history. Indeed, Chanock uses the material of the Rhodes-Livingstone anthropologists as a source of social history. In a three-chapter review of material on African law, Chanock takes historians, anthropologists and lawyers to task for their shortcomings in the understanding of 'tradition' and its construction. He declares in the introduction that he will examine the ways in which "traditions are maintained, manufactured and presented"[62], in what circumstances, and by whom. Thus he sets out to introduce history and historicity to the treatment of material in which it has been so lacking. The responsibility for this essentially ahistorical understanding of "customary" law he lays at the feet of the English judiciary and British functionalist anthropologists. His intention is "to occupy this terrain for historical study, and to reunite the subject of law with the economic, social and political history of colonialism in Malawi and Zambia."[63] This work is a powerful analysis of the concepts of 'tradition' and 'custom' and the ways they were manipulated in Central Africa.

From the outset Chanock looks at the transformations wrought by economic change in the region. The two major economic innovations that accompanied colonialism were

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[62] M. Chanock, Law, Custom and Social Order, p.3.

[63] Ibid., p.4.

cash-cropping and labour migrancy. The percolation of cash eroded both the kinship relations and the ideological framework which obtained among Africans. Cash-cropping demanded that peasants work to strict economies thus pushing people away from kinship demands towards leaner contractual relations. Furthermore, the labour required for such production outstripped that which the household could provide. As Chanock notes, this was a transition from one form of labour to another,

> Commercially oriented farmers needed both to cut themselves off from the larger kin group in order to maximise their own control of capital, production and profit, and at the same time mobilise labour from among their close kin....[64]

Later, these farmers used the same ingredients but in a different mix. Norman Long, writing of the 1960s, observed that when such farmers,

> 'did utilise kinship or affinal ties to acquire extra hands...they tried to avoid the buildup of a series of potentially burdensome reciprocal obligations by treating them as ties of a strictly contractual nature.'[65]

But this transition fuelled a further, deeper transformation.

Labour migrancy challenged the elders' control of women and therefore the basis of production as well as reproduction. Young men who were earning cash away from

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[64] Ibid., p.14.

[65] Ibid., p.14, citing N. Long, Social Change and the Individual, Manchester:1968, p.222.

the family home acquired the means to substitute cash for bride service. The local shortages of labour, exacerbated by migrancy, undermined the control of elders over potential wives and therefore over the labour of young men. "This challenge to the political economy run by the elders was intensified when young women started to follow men to the towns."[66] Their dominance in the agricultural economy was threatened and the changing economy altered patterns of settlement.

The development of "customary" law was in response to this social dislocation. As "customary" law was controlled largely by the elders, it is not surprising that, as Chanock remarks,

> It was defensive in spirit, defensive not only against British rulers but against those Africans whose growing involvement in wage labour and market agriculture was leading towards different interpretations of obligations and proprieties.[67]

Chanock shows how the Native Authority Courts in Northern Rhodesia and Nyasaland were established as a means of bolstering the authority of the 'chiefs' and of carrying out routine "administrative discipline",[68] and

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[66] Chanock, Law, Custom and Social Order, p.15.

[67] Ibid., p.4.

[68] Ibid., p.116.

how these courts competed with unrecognised courts as they attempted to assert an exclusive jurisdiction. He also demonstrates how custom was promoted selectively to the status of "customary law", having been vetted by European interests or concerns of the day. But this was not a simple, or mechanical process. In the changing economic and political conditions

> an emerging class conflict, conflict between generations and between genders are all apparent, and claims about custom were a way of legitimating positions in all three.[69]

Integral to the struggle to define customary laws was the control of the judicial process. In Nyasaland, in 1929, prior to the formal recognition of courts run by Africans, the West Nyasa Association demanded that "'all cases, civil and criminal, with the exception of murder, should be settled by the chiefs.'"[70] There was also a struggle between courts, recognised and unrecognised, as different parties attempted to have their interpretation of 'customary law' regularised and accepted by the authorities. In his concluding remarks, Chanock underlines the historical setting in which customary law emerged:

> In Central Africa developed law came first, while the elaborated customary law came afterwards, not an embryonic form of, but a

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[69] Ibid., p.236.

[70] Ibid., p.138.

> product of, the western legal form, the colonial state, and its economy.[71]

Sally Falk Moore's Social Facts and Fabrications: "Customary" law on Kilimanjaro, 1880-1980[72] benefits from a dimension lacking in Chanock's work: fieldwork and oral data. Chanock's is a work of history, Moore is working as a "time-conscious anthropologist".[73] One of the benefits of Moore's approach is that it provides the reader with a view, if not "from below" at least significantly lower down that Chanock's archival study. This work further complements Chanock's in that it is a local study of three villages on Kilimanjaro in Tanzania. Moore's study is an investigation into the Chagga's use of "customary" law in changing contexts.

Moore makes the analysis that,

> Chagga law once was an integral dimension of a political totality, the precolonial chief. The entity called 'customary' law was constituted out of residue left after the colonial modification of the Chagga polity.[74]

The "residue" was never fully detailed, chiefship was modified by the colonial state and the "customary" law of

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[71] Ibid., p.238.

[72] Sally Falk Moore, Social Facts & Fabrications: "Customary" law on Kilimanjaro, 1880-1980, London: 1986.

[73] S.F. Moore, "From Giving and Lending to Selling: Property Transactions Reflecting Historical Changes on Kilimanjaro", in Mann and Roberts (eds.) Law in Colonial Africa, p.108.

[74] Moore, Social Facts and Fabrications, p.317.

the Chagga was marginalised by the colonial state. Despite such interventions by the colonial state, Moore argues that at an unofficial level "customary" law remained a critical element of rural life because "it determined access to land, and because it framed the structure of family and lineage on which the whole system of social support was founded."[75]

It is now accepted that "customary" law is fluid rather than static. But what Moore has attempted to show in an extremely detailed study, by following a single lineage, is how "customary" law has been deployed in changing contexts and how it was thus changed. If anything is wanting in this study it is, perhaps, a more extensive discussion of the larger movements of "customary" law amongst the Chagga.

Mann and Roberts' recent volume, Law in Colonial Africa, representatively brings together anthropologists, historians and lawyers under the same cover. Their stated perception of law is similar to my own. The editors outline this in the Introduction: the contributors view law

> not as a body of immutable rules, institutions, and procedures but as a dynamic historical formation which at once shapes and is shaped by economic, political and social processes. They treat law not as an impartial arbiter guided by fixed rules and procedures but as resource that

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[75] Ibid.

> is used in struggles over property, labor, power and authority.[76]

It is precisely this dynamic complexity that requires further historical study.

Law in Colonial Africa covers three broad areas: the transformation of concepts of property, the association of power and authority with law, and finally strategies deployed in legal disputing. Sally Falk Moore's contribution, "From Giving and Lending to Selling: Property Transactions Reflecting Historical Changes on Kilimanjaro",[77] is most relevant to the processes examined in Chapter Five below. David Groff's contribution[78] is also of particular interest as it illustrates the contest over judicial proceedings in the Côte d'Ivoire. However, he argues the colonial authorities deploy the rule of law as a means of "external legitimation"[79] whereas I emphasise that customary law courts were exploited as a source of internal legitimacy. The contrast is useful for

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[76] K. Mann and R. Roberts, (eds.), Law in Colonial Africa, p.8.

[77] Sally Falk Moore, "From Giving and Lending to Selling", K. Mann, and R. Roberts, (eds.), Law in Colonial Africa, pp. 108-127.

[78] David Groff, "The Dynamics of Collaboration and the Rule of Law in French West Africa: The Case of Kwame Kangah of Assikasso (Côte d'Ivoire), 1898-1922", pp.146-166.

[79] Ibid., p.147.

providing context and the perspectives achieved from different studies.

There exists one thesis on the subject of Shona courts, that by Andrew Ladley, "Courts and Authority".[80] This deserves some attention here. Ladley conducted his study as a lawyer with anthropological training. The work is primarily focused upon the courts established by virtue of the Customary Law and Primary Courts Act (1981), but also gives a broad survey of the history of judicial powers in Southern Rhodesia.

The main thesis that Ladley argues is that by presiding over judicial proceedings the "judge" acquires social authority. This is not a new assertion. Indeed, the Native Affairs Department considered this to be the case in the 1930s when it believed that "traditional" leaders could be propped up by the Native Law and Courts Act (1937) then being drafted. However, Ladley seeks to explain the dynamic by which social authority is generated, a process he terms "interactive causation".[81] This is a process in which both the subjects and the rulers have power, subjects exerting "upward control" on the rulers, and rulers exerting "downward control" on the subjects.[82] Ladley asserts that the dynamic tension of

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[80] Andrew S. Ladley, "Courts and Authority: A Shona village court", Ph.D. Thesis (Laws), London: 1985.

[81] Ibid., p.53.

[82] Ibid., p.59.

"upward" and "downward" control is a source of social authority, while he remains mindful of the myriad external forces that enter the "crucible of an actual hearing".[83] The major limitation of this thesis for the student of the colonial period is that it does not confront the peculiar intercalary position of "chiefs" and the courts they controlled under that regime.

From Francis Snyder's Capitalism and Legal Change,[84] a study of land tenure in Senegal, I draw the notion of subsumption. This concept comes from the sociologist Galeski who states that subsumption

> signifies the subordination of economic activity in the economic system to principles determining the functioning of the economy as a whole. The peasant farm, under the conditions of a capitalist economic order, is usually cited as an example of a subsumed system. This implies that (1) the peasant farm lacks the basic characteristics of a capitalist enterprise, (2) changes in the mode of peasant farming are determined by the laws governing the functioning of the capitalist economic system as a whole, and (3) the peasant farm is acquiring certain features specific to the capitalist enterprise.[85]

Snyder's use of the concept in relation to legal change is based on his marxist conception of law. However, this

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[83] Personal communication, April 5, 1990.

[84] F. Snyder, Capitalism and Legal Change: An African Transformation, New York: 1981.

[85] Snyder citing B. Galeski, Basic concepts of rural sociology, edited by T. Shanin and P. Worsley, translated by H.C. Stevens, Manchester: 1972, p.22.

concept can be valuably extended to those situations in which there are competing forms of law, as I describe above in terms of dominant and subordinate forms. Snyder argues

> that the concept of subsumption and the conception of a transition from one historical form of production to another provide a more useful explanatory framework than would a conception of the articulation of modes of production. The study therefore defined its basic concepts such as mode of production, social formation, and law so as to facilitate a particular historical analysis, namely one that could elucidate the emergence or combination of concrete legal forms and show how such legal changes formed part of a more general transformation.[86]

The reshaping of relationships concomitant with changing economic and political processes was often made evident in the lower courts of Southern Rhodesia. This I argue is part of a larger process of a transformation taking place in the economic and legal domains. But I would also argue that it is much more than economic determinism. In Chapter Five below, I demonstrate the interaction between economic change and the modification of legal concepts not immediately related. Thus we are able to examine a case of how economic, legal and ideological change takes place.

The final work I wish to review here does not fit into either of the categories above. Katherine Newman's

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[86] Snyder, Capitalism and Legal Change, p.292.

Law and Economic Organization[87] is a work of theoretical anthropology written solidly within a marxist framework. The main drawbacks of her book are that it is heavily evolutionist and lacks historicity. But I found it to be a useful antidote to the functionalist analysis upon which so much of legal anthropology has relied. "From Malinowski on," writes Newman, "anthropologists have relied upon a functionalist explanation of law, that law reduces conflict in a society, that it restores equilibrium when the social fabric is torn."[88]

Newman argues that interaction between the forces and social relations of production and social stratification produces social conflict demanding the development of law. The greater the social stratification, the greater the social conflict and the more elaborate the legal system in a given society.[89] Much of the book follows such a deterministic line of argument. However, she does manage to break from this to some degree. In one passage she writes,

> Ideological...representations, including law, should not be understood as simple, passive reflections of economic organization. The historical-materialist position is that they are active (indeed, for Althusserians, semi-autonomous) realms that both justify and

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[87] Katherine S. Newman, Law and Economic Organization: a comparative study of preindustrial societies, Cambridge: 1983.

[88] Ibid., pp.2-3.

[89] Ibid., pp.109-110, p.205.

> continuously re-create the economic base that gives rise to them.[90]

Although Newman's assertions lack the "time-consciousness" of Moore's or Snyder's works, historical investigations of her thesis would prove fascinating.

These works constitute first, those studies of "customary" law written with historical depth and secondly the studies of the lower courts in Southern Rhodesia and Zimbabwe. They represent the main academic influences upon this thesis from contemporary legal studies.

Thesis structure

The tensions in the structure of this thesis that will become apparent to the reader in themselves reflect the discrepancies that existed in the official and unofficial fields of the African courts. There has always been, as a result of these wider tensions, tensions between the centre and the periphery of the state. This thesis cannot tackle all of these tensions, but I hope that these can be exposed here. I ask the reader to be tolerant of what some may consider, the peculiar structure found here, keep the above points in mind and use the following guide to see the logic in the structure.

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[90] Ibid., p.109.

The thesis is largely chronological in its layout. It comprises two parts, but these are not sequentially laid out. One part takes a broad perspective looking at the country-wide and international terrain. Chapters One, Two, Three, Six and the Afterword make up this part. The other part focuses sharply on one locality, Sipolilo, in northern Zimbabwe. Chapters Four and Five constitute a case study of sorts. There seems no way to reconcile the local study within the larger study while maintaining the chronological flow. However, it does appear logical to place that local study within the overarching developments in Southern Rhodesia and beyond. The diverse threads emerging from chapters One through Three are set against the local experience in the following two chapters while Chapter Six considers the implications of that which preceded it at the local and national levels, looking at how they developed. The Afterword demonstrates that the issues raised in this thesis have continued to be important, politically, despite the war and independence.

Chapter One presents the historical setting which lay the foundations for the struggle to control dispute proceedings in Southern Rhodesia. It examines the themes relevant to my argument, but deals with the period pre-dating the more open struggle by Africans to regain control and recognition for the courts and law that concerned them most. It presents the social and economic

transformations that were affecting Africans in this period and administrative history of the Southern Rhodesian state in particular the Native Department, later renamed the Native Affairs Department.

The second chapter provides a very different type of setting. There we analyze the evolution of the Native Law and Courts Act (1937) from the early demands for such an act to its passage through the legislature. In this chapter we also compare the laws establishing Native courts or tribunals in East, Central and South Africa. Sections are also devoted to two other key laws passed in the period 1927 to 1937, the Native Affairs Act (1927) and the Native Councils Act (1937). Both of these sought to formalise relations between administrators and African potentates.

The third chapter looks at the relations between Native Commissioners and the "traditional" leaders throughout the period and seeks a periodization. This is, by its very nature, a difficult topic to pin down. However, the relationship between these two offices was of key importance and, it was felt, required investigation.

Chapter Four is a local history, providing the social, economic and political setting for Chapter Five. But it also gives the reader a greater sense of local issues. It looks at how the colonial state came into

contact with the region and how the locality interacted with the colonial regime.

Chapter Five focuses most intensely upon the workings of the two courts under examination here, the Chiefs' courts and the Native Commissioners' courts. But this is done within the larger social context to display how the operation of the courts, and the law implemented there, may have an impact on community at large, creating and indeed changing norms. To do so, a large section of the chapter is devoted to explaining the bridewealth system, *roora*.

Chapter Six analyzes the role of judicial authority in the relationship of the Chiefs to the state in the period 1950 to 1970. In this period we see the introduction of a third force that challenges this relationship: the nationalist challenge. This three-way tension roughly paralleled the political situation that obtained in the 1920s involving the Southern Rhodesian Missionary Conference, the "traditional" leaders and the Government. In this chapter the extent to which the chiefs had been meaningfully integrated into state structures is assessed and we look at how they acted as a body, perhaps for the first time. We also consider the demands that chiefs are making and the government's reactions to these. Throughout the period there is consideration given to the extension of judicial powers for approved chiefs' courts. Despite the internal NAD

discussions, papers, reports and recommendations drafting of the African Law and Tribal Courts Act (1969) only began in 1962. Furthermore, it is likely that it was enacted solely through the efforts of one man, Roger Howman, who retired almost immediately after its promulgation.

The Conclusion should speak for itself, but the Afterword needs some explanation. The period for this thesis ends with the enactment of the African Law and Tribal Courts Act (1969) which fits neatly with the growing war that changed the circumstances radically. Ladley's thesis, "Courts and Authority" focuses upon the Customary Law and Primary Courts Act (1981), and he makes a strong case for the displacement of chiefs by the new order. But since then wholly unexpected events have occurred: chiefs and headmen have regained control of the primary courts and the government has had to negotiate an uneasy division of jurisdiction with these men who have a peculiar position of being not wholly in the state, nor entirely outside it. Clearly, the control of courts was not only a point of political contestation in the colonial era, but continues to be one today.

Chapter One

New Directions

Introduction

In the period 1890 to 1935 the social relations of Africans in Southern Rhodesia were radically altered. Transforming influences touched all spheres of life. The development of capitalism in South Africa had had an impact upon the entire sub-continent and as the search for primary resources extended into areas north of the Limpopo, and later the Zambezi River, local economies were re-ordered. However, the impact of the penetration of capital was extremely uneven over time, region and the different strata of societies. The colonists' mines and farms created new demands for labour but also new demands for food produce. While much labour was drawn out of the pre-colonial economy, many African farmers found the advent of new markets brought new prosperity. Africans were not wholly excluded from these markets in the early years. However, successful mines and farms were not established in all regions and these opportunities were not open to all Africans alike.

Forced labour, which became known as *chibharo*,[1] and taxation were two instruments employed by the state from the mid-1890s to compel Africans to become involved in

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[1] I follow the standard Shona orthography, whereas Charles van Onselen, Chibaro, London: 1976, followed the standard spelling as it appeared in colonial official reports and correspondence.

the cash economy, but in some areas this simply was not enough. The collection of taxes was patchy, in many areas, for several decades after the founding of Southern Rhodesia. Labour recruitment bureaux also found it easier and more profitable to siphon off coercively African migrant workers heading for South Africa from north of the Zambezi.[2] Both these factors contributed to some areas within Southern Rhodesia becoming quite peripheral to the economic activity of the newly defined "centre" of Salisbury and Bulawayo.

The distribution of political power in the colony was significantly affected by conquest and the economic changes that followed. Conquest took, effectively, over seven years to complete. Although the Pioneer Column entered the region in 1890, and Southern Rhodesia was founded then, two wars followed: the first in 1893, known by whites as the Matabele War and the second in 1896-7, known by Africans as the *Chimurenga*.[3] Pre-colonial raiding by the Ndebele in Shona districts ended with the conquest of Lobengula and the Ndebele state in 1893 by the British South Africa Co. (BSA CO.).[4] The purpose of

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[2] NC Mrewa, AR 1933, S 235/511; see also van Onselen, Chibaro, p.107.

[3] *Chimurenga* is defined in the Standard Shona Dictionary as 1.Riot, 2. Fighting in which everyone joins in. It came to be used to refer both to the Risings of 1896-7 and the guerrilla war of the 1960s and 1970s.

[4] The BSA Co. was the chartered company of Cecil Rhodes which ruled Southern Rhodesia from 1890 to the achievement of

the Ndebele raids had been to impose tributary relations, paid in service, tobacco or young people, with the further strategic aim of controlling the all-important trade routes through to the Zambezi.[5] In the pre-colonial period, external trade was largely conducted via the Zambezi Valley. Following conquest, trade was increasingly oriented towards the south.

The raiders who replaced the Ndebele in the Shona-speaking regions came in search of labour. The removal of young, active men from the local economic and political structures changed those structures themselves. Young men had an opportunity to remove themselves from the spheres of patriarchal control as they could establish an independent livelihood through entering the wage labour market. Young women also found some attraction in the mining compounds and went to them. Some gained their livelihood from selling beer, others through the patronage of foreign African workers. Still others made their living through prostitution.[6] The mining compounds represented a social space "outside

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responsible government in 1923.

[5] D.N. Beach, "The Shona, and Ndebele Power, 1840-1893" in Beach, War and Politics in Zimbabwe, 1840-1900, Gweru: 1986.

[6] E. Schmidt, Peasants, Traders, and Wives: Shona Women in the History of Zimbabwe, 1870-1939, London:1992, pp.92-94.

lineage control entirely."[7] This challenge to patriarchal control was not the result of a temporary disruption of power. Schmidt notes that "Despite the attempt by senior African men and the state to increase patriarchal control in the 1920s and 1930s, African women continued to break these bonds."[8]

At the local level, powerful men exploited, to varying degrees of success, the presence of the new white overrulers in order to enhance their personal positions. This was done in several ways: collaboration, resistance or involvement in the growing peasant economy. In one notable case dating from the 1890s, cunning, guile and deceit were used to depose the local potentate and institute the new one, a renowned ivory hunter and trader, backed by the Southern Rhodesian government.[9]

The judicial authority of Africans varied between 1890 and the 1930s, but it is questionable to what extent judicial *practice* altered accordingly. However, it is clear that the presence of state judicial authorities, such as Native Commissioners and Magistrates, provided

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[7] Diana Jeater, Marriage, Perversion and Power: the construction of moral discourse in Southern Rhodesia, 1890-1930, Oxford: 1993, p. 86.

[8] Schmidt, Peasants, Traders and Wives, p.121; see also Jeater, Marriage, Perversion and Power.

[9] B.P. Kaschula, Delineation Officer, "Notes on Some of the Mhondoros (Spirit Mediums) in the Sipolilo District of Rhodesia", 13 October, 1965, p. 9, in PER 5 CHIPURIRO, Guruve District Administration.

many Africans with a new avenue to pursue "justice", though some regions remained beyond practical access to the colonial state. Some Africans appear to have preferred the treatment they received from the Native Commissioners. The different interpretations of "native law and custom" remained a point of friction between Native Commissioners and "traditional" leaders for much of the period under consideration.

Policy regarding the administration of Africans in this early period was in flux. Beyond the overriding tasks of thwarting incipient rebellion and collecting taxes, the Native Department (ND) made policy on the hoof and local officials implemented it according to the resources at hand. Within the ND there was one persistent policy debate. This debate was framed by the following question: "What role should there be for chiefs?" The Native Department officials made many assumptions about African life in posing such a question. But those assumptions remained. These included the assumptions that "chiefs" existed, that they were important, and that the colonial government could direct their roles. In different periods it was believed that the government could either see to it that the "chief's" authority would wither away, or that it could be bolstered and re-asserted.

The direction of policy in Southern Rhodesia was also juxtaposed with those policies in South Africa, the

British East African colonies and those north of the Zambezi. As a consequence the debate was later framed by Native Department officials and politicians as one concerning Indirect Rule which was considered undesirable in Southern Rhodesia. But as we shall see, in many respects the debate over grand policy obscured the developments on the ground.

This chapter will review the changes that took place in the period 1890 to the early 1930s in order to give context to the contestation for control of the courts that developed subsequently.

Social Transformation

Political conquest, and the rapid transformation of the economy that followed, resulted in social upheaval in African life in Southern Rhodesia. The breaking of Ndebele power by the British South Africa Company in the Matabele War (1893) ended Ndebele raiding in Shona communities but, as noted above, a new form of raiding began as the demand for labour grew, primarily on the mines.[10] Pressures placed on African life by the new regime included taxation, and the expropriation of cattle and of land, as prospectors, miners and farmers settled in the new colony. The new settlers demanded material support from the government in order to make the new colony a success. In the period 1890-1930 these came

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[10] van Onselen, Chibaro, p.14.

mainly in the form of land rights and sufficient labour supplies. Later the demands would include the protection of agricultural markets against local African producers.

The disruption of African political organization that resulted from Rhodesian rule began early. David Beach has recorded instances of this disruption.[11] From 1890 economic activities began to be re-oriented by the new Southern Rhodesian settlers away from the *prazo* holders (the Portuguese settlers in Portuguese East Africa) along the Zambezi towards the Cape or Natal as overland communications developed. The combination of changing economic and changing political circumstances affected apparently resilient African dynasties. Beach cites the case of the Kanota Kasekete dynasty which had remained intact despite the collapse, in the 1870s, of the Mutapa state around it. However, following the BSA Co. conquest, "its southern house took advantage of the onset of Rhodesian rule and the geographical barriers to found the independent Chiweshe *nzou* dynasty."[12]

Labour recruitment began prior to the establishment of the Native Department in 1894, and "headmen" were involved in the process.[13] It is clear that compulsion

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[11] See especially David Beach, The Shona and Zimbabwe, 900-1850, Gweru: 1980.

[12] Ibid., pp. 146-47.

[13] Robin Palmer, Land and Racial Domination in Rhodesia, London: 1977, p.43.

was exerted from a significantly high level in the Administration: in the first years of the century the Chief Native Commissioner, Mashonaland, had "indicated to African Chiefs that they were expected to provide labour."[14] The African police force was used to recruit labour,[15] and the newly instituted Native Commissioners were also active even though this lay beyond their brief, which centred on the collection of taxes. Their brutality has been detailed elsewhere.[16] The Imperial authorities retained supervision of labour legislation and administration and in late 1901 the Secretary of State for the Colonies barred Native Commissioners from "direct involvement in labour recruitment."[17] But throughout the existence of the Native and Native Affairs Departments they were involved to greater or lesser extent in labour recruitment.[18]

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[14] Palley, Constitutional History and Law of Southern Rhodesia, p.177.

[15] Ibid.

[16] Palmer, Land and Racial Domination, p.43. See also van Onselen, Chibaro, p.80.

[17] Ian Phimister, An Economic and Social History of Zimbabwe, 1890-1948, London: 1988, p.26. See also van Onselen, Chibaro, p.80 and Palley, Constitutional History and Law, pp.176-8.

[18] van Onselen, Chibaro; David Johnson, "The Impact of the Second World War on Southern Rhodesia, with Special Reference to African Labour, 1939-48", Ph.D. thesis, London: 1989.

The mining industry relied most upon forced labour in the decade 1903 to 1912.[19] However, the social impact within Southern Rhodesia is difficult to assess as the labour that was supplied to the Southern Rhodesian mines did not come exclusively from Southern Rhodesia. Consequently, it was possible for some districts in the colony to remain relatively unscathed by *chibharo*. Van Onselen has argued that "the relative absence of rural poverty...south of the Zambezi"[20] made Southern Rhodesia a relatively poor recruiting ground for the Rhodesian Native Labour Board. The growth of peasant markets allowed Southern Rhodesian Africans to be a little more discriminating when it came to choosing where and when to enter wage labour. Both the mines and white farmers relied heavily on *chibharo* from the colonies to the north and Mozambique.[21] For example, the Rhodesian Native Labour Board (RNLB) recruiters established themselves in strategic locations, such as ferry crossings on large east-west rivers. There, they "obtained the services of...[Africans]... making their way south."[22] One such ferry crossing was Kanyemba on the Zambezi River in Sipolilo District, and in 1909 the RNLB

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[19] van Onselen, Chibaro, p.117.

[20] van Onselen, Chibaro, p.111.

[21] Palmer, Land and Racial Domination, p.65; van Onselen, Chibaro, pp.104-5.

[22] Ibid., p.107.

recruited "well over 2,000 'independent natives'" there.[23] But it seems likely that the RNLB "recruits" were taken to labour centres via routes that by-passed the plateau region of Sipolilo District by some 100 km, going more directly to the mining centres of Sinoia and Hartley. Sipolilo District does not appear to have suffered the disruption to which some other areas were exposed. Africans in Makoni District, for instance, were required to supply vast amounts of *chibharo* labour in the closing years of the nineteenth century. "Chiefs" in that district were instrumental in supplying labour for railway construction. Resistance to this coercion was made possible through the "determined self-peasantization of most of the African population of the district."[24] External demands resulted in Africans self-consciously transforming the organization of the economy they were involved in. In part, this was an outright rejection of the economy dominated by Europeans in which the role of Africans was rarely anything better than cheap labour. Not surprisingly, in the first decade of this century the R.N.L.B. "overworked" regions in Northern and Southern Rhodesia.[25] This resulted in a pattern in which recruitment focused on an area, and then moved on to

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[23] Ibid.

[24] Terence Ranger, Peasant Consciousness and Guerrilla War in Zimbabwe, London: 1985, pp.29-31.

[25] van Onselen, Chibaro, pp.110-111.

another within a couple of years. The demands placed on a given district were thus extremely uneven over time.

The uneven impact of mining capital upon African communities is witnessed by the fact that many communities, especially those situated close to the mines, responded to the incursion of capital not by selling their labour power but by developing agricultural production to supply the needs of the mine compounds to obtain foodstuffs cheaply. The peasant prosperity that resulted has been acknowledged, but its duration disputed.[26] The emergence of a peasant economy resulted in shifts in local power distribution. Ranger has noted that "In becoming peasants the people of Makoni had decisively broken away from the old tributary system and the rights of chiefs to tribute produce and labour soon lapsed."[27] The traditional order of African life in the region was not simply subsumed by the colonial state and the cash economy; it was under sustained attack.

The risings of 1896-7 led to the removal and replacement of many chiefs, while those who remained came under closer supervision by the Native Department which for several years remained on the alert for any signs of

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[26] See Palmer, Land and Racial Domination; Ranger, Peasant Consciousness; and Benjamin Davis and Wolfgang Döpcke, "Survival and Accumulation in Gutu: Class Formation and the Rise of the State in Colonial Zimbabwe, 1900-1939", Journal of Southern African Studies, 14, 1, 1988, pp.64-98.

[27] Ranger, Peasant Consciousness, p.44.

political agitation and civil strife. However, the relations between Native Commissioners and the local African communities were extremely varied.[28] Some Native Commissioners attempted to exclude chiefs from any role of authority. Others demanded they assist in the collection of taxes, gave them constabulary powers and duties, and allowed them to exercise judicial authority, thereby decreasing the workload of the Native Commissioner. One effect of this collaboration between Native Commissioner and chief was that "chiefs" became increasingly dependent upon the colonial administration for patronage and authority.[29] Traditional sources of authority diminished in importance in the new context. The Native Regulations, Proclamation 55 of 1910, established for the first time a statutory hierarchy of African offices.[30] Although chiefs gained the statutory power to act as constables, and more importantly to prosecute any other African for "insolence or contemptuous behaviour",[31] chiefs were denied the powers to allocate land. Chiefs were also required to collect

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[28] Chapter 3, below, makes an attempt to periodize Native Commissioner - Chief relations. Although this exercise remains, by necessity, in the sphere of generalisations I believe these are useful for the understanding of African administrative policy in Southern Rhodesia.

[29] Ranger, Peasant Consciousness, p.44.

[30] Proclamation 55, 1910, Part 1, Art. 2.

[31] Proclamation 55, 1910, Art. 48.

taxes. Headmen, likewise ranking as constables, were allowed a very small role in the control of land distribution within the reserves. The Regulations stated that "Headmen shall prevent the settlement of fresh kraals in, or the removal of existing kraals from, their sectional areas without proper authority."[32] As such, headmen achieved some authority over land, something chiefs lacked altogether.

The idea of hierarchical "tribes" was, itself, contested terrain over the period 1890 to the 1920s. The idea, which may or may not have prevailed amongst Africans in Southern Rhodesia at the time of occupation, was, after the 1986-97 revolt, clearly attacked by the overall Administration, its Native Department and the missionaries alike. But in time this consensus disintegrated: the mission schools pursued educated enlightenment, which had no place for "tribal" control, the Native Department sought to bolster the "traditional" leaders in an attempt to assert "tribal" control and actively construct a "tribal" ideology, and the Administration mistrusted the pursuits of either the missions or the Native Department.

In 1911 the Native Affairs Committee of Enquiry resolved

> a) That it is desirable to control the natives as much as possible through their own chiefs and headmen. The power of arbitrament amongst

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[32] Proclamation 55, 1910, Art. 40.

> their own people at present exercised by chiefs should be recognised; such powers should be recognised under the control of the Native Commissioner or other District Officer;
> b) All chiefs should be subsidised;
> c) The rule of succession to chieftainship in force among the Matabele should be introduced as opportunity arises throughout Southern Rhodesia. But the Administrator should have power to refuse to recognise an heir who is, in his opinion, unfit for such a position, and appoint some other suitable person in his stead, adhering, as nearly as possible, to the prescribed rule of succession.[33]

This was a strong plea for making use of chiefs' power, the first such statement in Southern Rhodesia. However, the Committee was not hesitant to shape established practices, such as that of collateral succession of chiefs amongst the Shona, to resemble those easily understood by Europeans: the primogeniture of the Ndebele. Those whites concerned with African administration believed that collateral succession resulted in too many ignorant, doddering old men holding chiefly office to make Shona chiefs of any use to the Administration. Progress lay in changing this practice. Traditional sources of authority did not rank uppermost in the Committee's consideration of what made a candidate fit for office. These resolutions, however, were not adopted by the Native Department, but the central thrust, that more use could be made of chiefs, was slowly gaining acceptance. It also marked the first suggestion by

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[33] Report of the Native Affairs Committee of Enquiry, 1910-11, p.8, para.49, SRG 4.

officials from beyond the Native Affairs Department that judicial powers of chiefs, officially removed in 1898, should be restored.

The intense contestation of judicial authority followed, to a degree, the level of support afforded the "traditional" leaders at any given time. From the earliest days of the colony, the BSA Co. administration tried to minimise its costs; it was not interested in governing Africans in any but the most limited ways. The British government, meanwhile, was eager to see Southern Rhodesian Africans treated in a fashion similar to Africans in Natal. The Native Department had at its core, from the time of its establishment, officials who had been trained by and worked in the Natal Civil Service. These men "set the tone of Rhodesia's Native policy, importing the firm paternalism and close supervision that characterised the Natal system."[34] The first four CNCs were amongst the Natal recruits. The training given in Natal treated "customary law" as a key component of Native administration.[35]

Although gold had been the primary motive for the occupation of Southern Rhodesia, farm land was considered an important, if secondary, interest. The members of the

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[34] M.C. Steele, "The Foundations of a 'Native' Policy: Southern Rhodesia, 1923-33", Ph.D. thesis, Simon Fraser University, 1972, p.6.

[35] Roger Howman, ORAL/HO3, p.2.

Pioneer Column were "promised verbally a free farm of 1,500 morgen (3,175 acres) and 15 reef claims of 400 by 150 feet" but many of these farms were sold to speculators before they were even taken up.[36] As it became increasingly obvious that Southern Rhodesia did not possess the gold deposits so many had dreamt of, land for farming and ranching purposes grew in importance. Also, the restriction of African landholding to demarcated reserves served the interests of the emerging capitalist economy.

The initial creation of "native reserves" in 1894[37] was intended to "afford [Africans] some degree of protection against European acquisitiveness."[38] Nor were they meant to be permanent institutions. In late 1902, 96 reserves comprising 24.8 million acres (one-quarter of the territory) received approval in Executive Council, though formal approval from the Colonial Secretary did not come until 1908.[39] As earlier attempts to push Africans off the land and into wage labour had met with little success, the BSA Co. took a number of steps to ensure that the supply of labour went some way towards meeting demand. African access to land was limited further in an attempt to curtail the expanding peasantry.

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[36] Palmer, Land and Racial Domination, p.26.

[37] Ibid., p.30.

[38] Ibid., p.57.

[39] Ibid., pp.59-60.

At the same time taxes were raised in order to increase Africans' needs for cash earnings. However, the wages paid by mines were too low for workers to meet their cash requirements solely through these earnings. Peasants responded by increasing the amount of land under cultivation. The tensions inherent in this situation resulted in great fluctuations in the labour supply.[40]

The Native Reserves Commission of 1914-15 reiterated the professed view of the BSA Co that the reserves were to cushion the impact of European settlement and the cash economy upon Africans. The Commission believed that "as education broke down the tribal system, the need for reserves would diminish."[41] In accordance with this belief, the Commission reduced the total acreage of the Reserves by more than 1,000,000. But it was not only the quantity that was significant, it was also the quality of soil and the location of the reserves. As Palmer notes, the Native Reserves Commission

> cut down many reserves within easy access of the main markets and therefore intensified the squeeze on the African peasantry; while it also reduced some of the larger reserves in the outlying districts, in what was clearly an attempt to curb the 'idleness' and overcome the reluctance of Rhodesian Africans to seek wage-labour within the country.[42]

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[40] van Onselen, Chibaro, p.91.

[41] Palmer, Land and Racial Domination, p.108.

[42] Ibid., p.125.

By 1920, when the Native Reserves Order in Council was passed, the thinking regarding the purpose of reserves had changed significantly. Segregation, rather than "economic development" that envisaged a diminishing need for reserves, emerged as the dominant view in official circles. In 1923 an article in the first Native Affairs Department Annual claimed that Southern Rhodesia's "native policy" was intended to ensure

> the development of the native in such a way that he will come as little as possible in conflict or competition with the white man socially, economically and politically.[43]

This further shift in objectives led to the Land Commission of 1925 and ultimately the Land Apportionment Act (1930).

The Land Apportionment Act (1930) set Southern Rhodesian African policy on a segregationist course. The Act itself established a firmer division of land along racial lines and made it more difficult, and later illegal, for Africans to live as farming tenants in "European" areas. By the 1930s the peasantry was not destroyed, but it had undergone radical changes. The Maize Control Act had created a monopsony that suppressed

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[43] N.H. Wilson, "The Development of Native Reserves", NADA, 1923, p.88.

the prices received by Africans for their maize.[44] In 1933 Chief Mangwende explained "that a great number of natives depended on their sale of cattle to meet their obligations",[45] such as taxes. That same year labour was reported to be plentiful. Forty years after Occupation, the peasantry was under severe pressure but not broken. The peasants found ways to cope with statutory discrimination. However, the end result was that "'a substantial number of groups was drawn much deeper into migrant labour.'"[46]

Clearly segregationist ideology was developing and increasingly Africans were being excluded from the agricultural markets. Although the 1898 Order-in-Council had proclaimed the right of Africans to "acquire, hold, encumber, and dispose of land on the same conditions as a person who is not a native", by 1925 only fourteen farms had been bought by Africans - seven from Southern Rhodesia and seven from South Africa. With the

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[44] Ranger, Peasant Consciousness, p.67.

[45] Mrewa Native Board meeting minutes, 6/6/33, S 1542/N2 M.

[46] Wolfgang Döpcke, "'Magamo's Maize': State and Peasants during the Depression in Colonial Zimbabwe", in Ian Brown (ed.), The Economies of Africa and Asia in the Inter-War Depression, London: 1989, pp. 29-58.

advent of the Land Apportionment Act (1930), nine of these were designated as being within the European Area and the other five incorporated into the new Native Purchase Areas.[47]

The logic of segregationist ideology in Africa required that segregation extend beyond simply land allocation. In Southern Rhodesia in the 1920s policy regarding the governance of Africans began to shift towards an extremely limited form of local government and civil jurisdiction.[48]

Judicial Authority and Practice

Despite the radical changes that occurred between the 1890s and 1930s, many Shona and Ndebele institutions survived basically intact. The institutions of "chiefs" and chiefly courts (Shona: *dare*, pl. *matare*) persisted and were to regain prominence, albeit altered and serving new functions as the powerful men of these communities exploited opportunities arising from weaknesses of the colonial state. In Ndebele society, it has been observed, the patterns of settlement and basic

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[47] Palmer, Land and Racial Domination, pp.279-81.

[48] See pp.99-101 below.

institutions remained intact following the defeat of Lobengula in 1893.[49] This observation holds true for much of African society in Southern Rhodesia following conquest.

The Shona-speaking peoples continued to hold judicial courts, settling disputes throughout the colonial period, although we can see clearly that the attitude of the state towards African courts changed over time. Officially, the possibility of recognising such courts was allowed in 1891 and then withdrawn in 1898 as a consequence of the revolt of 1896-7. Later African courts were "established" by the state with the promulgation of the Native Law and Courts Act of 1937.[50] In 1960 the Robinson Commission recommended recognition of the unofficial courts which, it found, continued to outnumber those established under this Act.[51] This prompted further debate which produced another piece of legislation - the African Law and Tribal Courts Act of 1969.[52] Two more pieces of legislation

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[49] Phimister, Economic and Social History of Zimbabwe, p.17.

[50] See Chapter 2 below.

[51] See the Robinson Report.

[52] See Chapter 6 below.

concerning the lower courts have been passed since independence and the struggle over dispute proceedings is one that continues today.[53]

The colonial state struggled to control, in some meaningful sense, the realm of dispute settlement from the time of conquest. However, the weakness of the state meant that it could not suppress the exercise of judicial power by unauthorized persons, nor could it cope with all the disputes that would come to recognised personnel if they alone were to deal with disputes. In 1891, the High Commissioner's Proclamation gave the Resident Commissioner the power "to appoint a native chief, who requested to be appointed, to exercise judicial functions."[54] This was indirect rule in all but name, following Shepstone's example in Natal though pre-dating Lugard's theories arising from his experience in Nigeria, and their later application in East and Central Africa. African institutions were being maintained and shaped, albeit under the new colonial power.

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[53] See Andrew Ladley, "Courts and Authority: A Shona village court", Ph.D. Thesis (Laws), London: 1985.

[54] B. Goldin and M. Gelfand, African Law and Custom in Rhodesia, p. 20.

These institutions were shaped by many influences, both direct and indirect, brought about by the colonial presence. For instance, the authority of the *matare* was affected both by the increasing treatment of crimes by the police and colonial courts and by the new option of litigants to take civil cases to the Native Commissioner rather than the chief. Later, more direct interventions on behalf of the colonial government resulted in these institutions being manipulated to elicit and construct African consent to European overrule. But this recognition of African institutions was more the result of lack of resources than any developed 'native' policy.

Goldin and Gelfand state that

> until 1937 Africans did not participate in judicial work, no African had lawful authority to try any civil dispute between Africans even when only customary law was involved, and no Africans were used as assessors as permitted by legislation.[55]

Palley concurs with this assertion on the whole, but writes that not "much use was made of the provisions...for the calling of native assessors."[56] But reality was not so neat. Several episodes indicate that official policy may have been circumvented or regularly

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[55] Ibid., p.21.

[56] Palley, Constitutional History and Law, p.514.

breached. In 1896, the NC Chilimanzi reported that he sought to bolster the paramount chiefs' authority by allowing them to settle minor disputes, and that this was well received by the "people generally".[57] The NC Chibi reported in 1898 that he was selectively recognizing chiefs' authority to hear cases.[58] In the same year, 1898, NC Taylor, "made a tour of the [Charter] district and...at the same time...settled disputes about disputed chieftainships".[59] However, such cases may have been interpreted as being political, rather than legal, disputes.

In 1899 Native Commissioners were, for the first time, granted judicial powers, not in their own right but as special Justices of the Peace. Only nine of the twenty-four Native Commissioners were given such powers.[60] Thus it appears not only that the NC Chibi was usurping the prerogative of the Resident Commissioner[61] or the Resident Magistrate[62] in appointing a chief to hear cases in the first place; he was also acting *ultra vires* at that time, since he was hearing cases himself.

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[57] NC Chilimanzi, AR 1896, p.1, N 9/1/2

[58] NC Chibi, AR 1898, N 9/1/4, see pp. 2, 6, 11-12, & 16.

[59] NC Charter, AR, 1898, p. 1. N 9/1/4

[60] Palley, Constitutional History and Law, p.513.

[61] Goldin and Gelfand, African Law and Custom, p. 20.

[62] Palley, The Constitutional History and Law, p. 514.

Palley also states that the Resident Magistrate's power, under the High Commissioner's Proclamation of 1891, to appoint chiefs to exercise civil and criminal jurisdiction over Africans was never utilized.[63] In the period 1891 to 1894 magistrates were not empowered to hear cases involving only Africans, "unless this was 'necessary in the interests of peace or for the prevention or punishment of acts of violence to persons or property.'"[64] Following the conquest of the Ndebele state in 1893, the jurisdiction of magistrates' courts was extended over everyone in Southern Rhodesia. The magistrates' jurisdiction was not infringed until 1899 when some Native Commissioners were granted similar judicial powers as special Justices of the Peace.[65]

Further witness to the circumvention of official procedure comes again from the 1898 annual report of NC Chibi. In Chibi District a woman, Marudauda, was allegedly assaulted by her brother, Makobere. The case was reported to the Native Commissioner, and the alleged assailant arrested. The case was taken to the Resident Magistrate in Victoria. The NC Chibi reported that subsequently "Makobere was returned to me by the R.M. to be tried by Chief Chibi, under my supervision according to Native Custom and Chibi ordered him to pay one head of

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[63] Ibid., p. 514.

[64] Ibid., p.513.

[65] Ibid.

cattle to Marudauda".[66] It may be argued that the Resident Magistrate was acting *ultra vires* in appointing Chief Chibi to try this particular case without the prior approval of the High Commissioner and that therefore the Chief's jurisdiction was unlawful. However, both Chibi and the Native Commissioner appear to have been acting in good faith, and since the High Commissioner was in Cape Town, the Resident Magistrate appears to have opted for prompt action rather than meticulous observation of detail. This is not surprising, as the Resident Magistrates of this early period rarely had any legal training whatsoever.[67]

In 1898 provision for officially recognising African courts was removed.[68] This was in response to the *Chimurenga* and the apparent political authority with which Africans had acted. The colonial administration was not willing to allow such authority to accrue to Africans in such an unchecked manner again. Indeed, Taylor has asserted that,

> The continued usurpation of their [i.e. the chiefs'] traditional powers by the n/cs [Native Commissioners] was decisive. The practice of denying chiefs judicial authority continued but whereas this had been unofficially pursued against the original spirit of the legislation,

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[66] NC Chibi, AR 1898, p.2. N 9/1/4

[67] Hugh Marshall Hole, Old Rhodesian Days, Reprint edition, Bulawayo: 1976, p. 66.

[68] Southern Rhodesia Order-in-Council, 1898; see also Goldin and Gelfand, African Law and Custom, p.20.

> in June 1904 a ruling was handed down from the Attorney General stating that the practice of permitting chiefs to settle minor disputes "should be discouraged".[69]

However, the removal of this provision appears to have affected the Native Commissioners in only one way. From 1898 to 1908, the Native Commissioners' reports simply omit any mention of chiefs hearing cases. In 1936 the Chief Native Commissioner reported that African tribunals had been grudgingly tolerated for the previous forty years. It appears likely that the period 1898 to 1908 was when the African courts were most discouraged.[70] However, it is highly unlikely that very much changed on the ground.

In 1909 the NC Gutu advocated the continuance of a system which allowed the chief and his headmen to settle disputes, arguing that if appeal to the Native Commissioner in the first instance was open to all, the power of the chiefs would be curtailed.[71] Involving chiefs and headmen in the official administration of justice in such a way would, he argued, also have the effect of bringing the chiefs and their courts much further into the ambit

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[69] J.J. Taylor, "The Emergence and Development of the Native Department in Southern Rhodesia, 1984-1914", Ph.D. thesis, London: 1974, pp.368-69.

[70] The CNC wrote, in 1936, that African tribunals were "an institution which has survived forty years of winking tolerance, at times veering on active discouragement." CNC, AR 1936, p.10.

[71] NC Gutu, AR 1909, N 9/1/12.

of the state. That same year the Conference of the Superintendents of Natives recommended Native Commissioners "to encourage the African population to refer petty civil disputes to their chiefs in the first instance".[72] It is clear that the officials of the Native Affairs Department considered that the exercise of judicial authority by chiefs was a means to wider political authority.

The 1910 Proclamation of Native Regulations[73] gave official recognition to the long-standing practice of Native Commissioners settling disputes.[74] In the two previous years the CNC Mashonaland reported that 5,468[75] and 4,744[76] civil cases respectively had been heard by the Native Commissioners in the nineteen districts under his supervision. The publication of these figures appears to have been a challenge to the administration in the Native Department's campaign for greater recognition of its work, and the expansion of its jurisdiction. Without doubt this information was considered by the Native Affairs Committee and led to the recommendations by

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[72] J.J. Taylor, "The Emergence and Development of the Native Department", p.374.

[73] Proclamation No. 55, 1910.

[74] A. Speight, The Statute Law of Southern Rhodesia From the Charter to 31st December 1910, Salisbury, n.d., pp. 115-123.

[75] CNC Mashonaland, AR 1908, p. 19, N 9/1/11.

[76] CNC Mashonaland, AR 1909, N 9/1/12.

Superintendents of Natives outlined above. Obtaining official status for the Native Commissioners' courts was something of a victory for the Native Department over the Law Department. In the first decade of the century the Law Department had rebuked the Native Department, reminding its officials that, "'In all native cases coming before you for investigation please bear in mind that you can not exercise any judicial authority.'"[77] Tensions between these two departments over issues of jurisdiction continued throughout the colonial period.

By 1910, Native Commissioners were beginning to despair of the role that they had envisaged for the chiefs. "Chiefs & Headmen", wrote the NC Hartley, "are of no assistance whatever in controlling Kraals, and although none in this District are subsidized, I do not think they would be any more keen if they were."[78] The NC Hartley considered the Chiefs and Headmen to be intrinsically not up to the job. The NC Charter, however, took the view that the very reason that Chiefs and Headmen were of "little use or value" was that they were not managed effectively. The first step to putting this right was to eliminate the great ambiguity they were allowed in their positions: at times within the state, at others outside state structures. The NC Charter wrote:

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[77] Taylor, "The Emergence and Development of the Native Department in Southern Rhodesia", p.81.

[78] NC Hartley, AR 1910, N 9/1/13.

> Chiefs have not excelled in their duties. The tendency is to separate lesser crimes and deal with them according to their own ways and laws. The principle is 'a chief must eat', i.e., exact fees and fines. This is one of the principal causes of their unsatisfactory positions and failures. The subsidy they receive is far from equivalent to the fees and fines they would exact and it is advisable to either substantially increase their subsidy or grant them power to impose fines in specific cases. All such fines to be verified and executed in the presence of the N.C. Once such powers are granted and a Chief fails in his duties or abuses such power he could be deposed.

He concluded, "At present they are mere figureheads and are practically of little use or value."[79] Clearly this refers to their official function, which broadly speaking was to control their 'followers'. It seems reasonable to assume that the courts over which they continued to preside fulfilled a social need, and in that sense, at least, were considered of some value.

It is interesting that the system proposed by the NC Charter would apparently have conferred criminal jurisdiction on the chiefs' courts. Furthermore, fines would have gone as payment to the chief, rather than to the state. This was a peculiar proposal and does not seem to have made much sense to other people in the Department at the time. Even the idea of making substantial concessions to the chiefs in order to make them more clearly controllable by, and accountable to,

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[79] NC Charter, AR 1910, pp.29-30, N 9/1/13.

the state was ignored. In fact, support for the chiefs as a meaningful part of society was waning amongst Native Department officials. The majority of Native Commissioners' reports over the following decade convey the attitude that the chiefs were of little practical value to the Department. Many years were to pass, and a great deal of politics, before they were to find official favour again.

In 1927 the Government passed the Native Affairs Act.[80] This Act established the framework for the governance of Africans under the "responsible" government achieved by settlers in 1923. This created an official hierarchy of "traditional" offices, although it did not cede any judicial powers to "chiefs or headmen". These official "traditional" leaders were granted the powers of constables.

In 1912 the CNC, Mashonaland, wrote that

> Chiefs and elders of families complain that they no longer control their following as they did in the past....The increased powers granted to Native Commissioners have materially assisted in breaking up these tribal methods of control, and I'm glad to say the results so far have been satisfactory.[81]

This challenge to what was perceived of as "tribes" by Europeans was motivated by a rapidly changing economic

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[80] See Chapter 2 below for further discussion concerning the Native Affairs Act (1927), especially pp.114-118.

[81] Phimister, Economic and Social History of Zimbabwe, citing the CNC, Mashonaland, AR 1912, p.1

environment. In the two decades that followed the arrival of the Pioneer Column, commodity relations amongst Africans developed faster than ever before. In the pre-colonial era there had been intense trading with the Portuguese, but at comparatively distant markets.[82] The arrival of merchant capital in Southern Rhodesia helped develop markets closer to the point of production. However, as Phimister points out, the "consequences of merchant capital's advance were as contradictory as the spread of commodity relations was uneven."[83] On the one hand, dominant classes were bolstered by the increasing social differentiation that developed, while on the other developing commodity relations undermined existing social relations.

The relationships between capital, wage labour and the traditional and neo-traditional orders are extremely complex and I do not intend to try to go into them fully here, but they were integral to the development of Southern Rhodesia's governance of Africans. Already by 1893 headmen were involved in forcefully recruiting labour for the mines. "[O]ne headman who failed to deliver the required quota of labourers was given fifty lashes, fined six goats and three head of cattle, and had

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[82] Phimister, Economic and Social History of Zimbabwe, p.14.

[83] Ibid., p.15.

his rifle confiscated."[84] One of the means employed to induce Africans onto the labour market was the establishment of a tax collection body. In late 1894 "it was decided to set up a Native Department specifically for the purpose" of collecting the ten shilling hut tax.[85] But the Native Department was also involved in rounding up forced labour. A year later "at least half" the Native Commissioners were forcing Africans to work for wages. Thus it may be seen that from the beginning the Native Department and the colonial courts were associated with coercion, violence and the upsetting of existing social relations. This had clear consequences or the relationship between the local rulers, the Native Department officials, and the ruled. As Richard Parry remarks, it seems likely that as instruments of oppression the Native Department was "denied access to the inner workings of the colonised society."[86] In a more vivid illustration of such oppression, Palmer remarks that from the earliest days of the Native Department the

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[84] Palmer, Land and Racial Discrimination, p.43.

[85] Ibid., pp.43-44.

[86] Richard Parry, "Murder, Migrants and the Salisbury municipality 1907-13", paper presented to seminar on "Comparative Commonwealth Social History: Crime, Deviance and Social Control", Institute of Commonwealth Studies, University of London, 1984/5, p.17.

Native Commissioners were associated with the use of the sjambok.[87]

In this extremely fluid economic environment, the African peasantry enjoyed its most successful years, which may account for remarkable social resilience. In the period 1896-1908, the emergence of a successful peasantry amongst Shona speakers[88] afforded some resistance to the incursion of European economic power and to the break-down of social relations amongst them. The economic power of Africans at the turn of the century may be clearly demonstrated. Wages earned on the mines at this time were exceptionally high: in 1903 they ranged between 30/- and 80/- per month.[89] This displays the strength of the peasant sector which Arrighi suggests accounted in 1903 for 70% the total cash earnings of the indigenous African population.[90] This is not to deny that new commodity relations had an impact on pre-colonial social relations. But the avoidance of labour migrancy, made possible by the "minor agricultural revolution",[91]

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[87] Palmer, Land and Racial Domination, p.43.

[88] Ibid, p.71.

[89] Ian Phimister argued this in "Zimbabwean Economic and Social Historiography since 1970", African Affairs 73, 1974, p. 291.

[90] Giovanni Arrighi, "Labor Supplies in Historical Perspective: A Study of the Proletarianization of the African Peasantry in Rhodesia", in G. Arrighi and J. Saul, Essays on the Political Economy of Africa, London: 1973, p. 207.

[91] Palmer, Land and Racial Domination, p. 72.

and high mine wages temporarily averted destructive social impoverishment. Twenty-nine years later these proportions had been more than turned around. In 1932 less than 20% of African cash earnings came from the sale of agricultural produce.[92] The social differentiation that took place in the intervening years is attributable to the incursion of capital and the spread of the cash economy.

In South Africa the prosperity of the mining industry enabled it to destroy the local African peasantry, thus creating a landless working class. In Southern rhodesia the industry never achieved such social dominance and the peasant option was neither eradicated nor boosted by the course of developments on the mines. Prior to 1910 European farmers were uncompetitive in the Southern Rhodesian market. But by this time the myth that Southern Rhodesia had rich gold mines simply waiting to be discovered (the so-called 'Second Rand') had been destroyed and settlers had to secure an income while the BSA Co was looking to pay dividends to its shareholders. At this point, Company and European farmers' interests clearly coincided. To quote Phimister,

> Peasant competition had to be curbed, distinguished visitors were told, because 'if he ["the native"] can work for himself to a great profit he is not likely to work for the white settler for wages'. From capital's perspective, the existing situation was

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[92] Ibid., p. 213, based on Arrighi, *loc. cit*, p. 207.

> intolerable.... For farmers and their allies, the solution was simple: 'put... the native cultivator... in reserves...so far away from railways and markets that the white trader will not be able to buy from him and compete with white farmers'.... After a half hearted attempt to press speculative land companies into releasing some of their possessions to land-hungry white farmers, the state concentrated its efforts on behalf of settler agriculture against African holdings.[93]

In 1909 a rent was imposed on unalienated land both to increase the cost of peasant production and force Africans off the land in order that it might be sold and dividends paid. Grazing and dipping fees made life off the reserves less attractive for Africans. To help Europeans purchase farms a Land Bank offering easy credit was established in 1912.

The Native Department and the Role of "Chiefs"

The 1910s was a decade in which questions were raised around which a major debate of the 1920s would take place. Within this larger debate concerning the relationship of Europeans and Africans in Southern Rhodesia were the related questions of bolstering chiefs, the strengthening of a "traditional" or "customary" order and the role of the African courts. Strands of this debate began to develop as soon as the white government

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[93] Phimister, Economic and Social History of Zimbabwe, pp. 64-5.

began to take seriously the administration of the African population.

Once the 1896-7 Revolt had been suppressed, the Native Department attempted to rationalise the administration of Africans through a form of collectivisation known as 'locations'. "Once the natives are put into location," wrote the Acting NC Mazoe in 1898,

> I consider we will have very little trouble with them, as we can then deal directly with the headmen who will of course be responsible for the activities of his people. In the past I consider very little responsibility has fallen on the headmen, on account of their (sic) being so many petty head men. For instance a man is called an induna because of his being over 3 or 4 huts.
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> The locations to be established should not be less than 100 huts each and more when possible.... Very careful selections of the headmen must be considered [and] as far as possible to choose all headmen who have in former times had power over the natives.[94]

Nearly ten years later the locations had had little success and the Clerk in Charge at Mtoko noted that Africans continued to live "not in large kraals but in small groups of 3 or 4 huts."[95] This clerk chose to make the "subordinate headmen...responsible for the general control of the people" as they were already "recognised by the natives".[96] These are exactly the conditions

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[94] Acting NC Mazoe, AR for the Year Ending March 31st, 1898, N9/1/4.

[95] Clerk in Charge, Mtoko, AR 1907, N 9/1/10.

Palley described as obtaining in Southern Rhodesia after 1898: "The Native Commissioner was the main instrument of governmental relations with the African population, whom he was to control through their Chiefs and Headman."[97] The Native Commissioner represented the main governmental agent in dealings with Africans. This control went beyond just policy as the Native Commissioners depended on the chiefs' work in collecting taxes, reporting crime, obtaining young men for wage labour and settling disputes. As Fields puts it in her book on Northern Rhodesia, the administrators who argued in the 1930s against the formalisation of Indirect Rule were arguing "for the perpetuation of a fiction.... By formalizing the rights and obligations of African rulers, [Lugard] merely integrated them into the colonial state."[98] The ill-defined gap in the administrative hierarchy, that "space" between the white minority government and the African population, represented the domain that the "traditional" leaders struggled to control.

Over the first two decades of Company rule a 'native' policy of strict economy was pursued.[99] Taylor

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[96] Clerk in Charge, Mtoko, AR 1907, N 9/1/10.

[97] Palley, The Constitutional History and Law of Southern Rhodesia, pp.138-9.

[98] Karen E. Fields, Revival and Rebellion in Colonial Central Africa, Princeton: 1985, p. 39.

[99] Taylor, "The Emergence and Development of the Native Department in Southern Rhodesia", p.24.

asserts that it was out of "economic necessity" that the BSA Co. was forced "to acknowledge the impossibility of ignoring the African population of Southern Rhodesia and to recognise their separate identity as a people."[100] The need to involve ever more Africans in the wage labour market combined with the southern African administrative experience of many within the Native Department "led to the adoption of Natal and Boer Republic practice" in Southern Rhodesia.[101] As early as 1910 Native Commissioners' reports displayed evidence of contradictory trends regarding the use of African institutions in local government and demands for clearer policy in general began to appear.[102] The previous year had foreshadowed the centrality of education in the debate that was to take place in Southern Rhodesia. "The desire for education," wrote the NC Inyanga, "is spreading among the younger [African] women and is the cause of endless disputes and it is breaking up the social system rapidly, whether for good or bad remains to be seen."[103] A year later the CNC, Mashonaland, reported with greater certainty, "young people are breaking away gradually from the old tribal system of control....and

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[100] Ibid.

[101] Ibid.

[102] CNC Mashonaland, AR 1910, N 9/1/13.

[103] NC Inyanga, AR 1909, N 9/1/12.

though chiefs and others complain, no steps should be taken to prevent this gradual evolution."[104]

In 1913 there was dissension as to which route should be pursued. At the Colonial Office the Permanent Under-Secretary wanted sufficient reserves to protect 'tribal society' and make possible some form of local self-government.[105] The BSA Co., on the other hand, argued that the reserves were only for the temporary respite of those who could not be quickly assimilated into the colonial economy. The Company took the view that "European civilization was inevitably bringing about the disintegration of the tribal system".[106] In the second decade of this century many in the administration believed that this was its manifest destiny, and such a belief influenced the Native Reserves Commission that sat in 1914-15 and eventually led to the Order-in-Council of 1920.

In the 1920s the Native Affairs Department engaged with the Southern Rhodesian Missionary Conference in debate over policies concerning Africans. During the 1910s there had been shifting allegiances. In 1911 many missions had taken it upon themselves to defend Africans against forced labour, in which the Native Department was

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[104] Phimister, Economic and Social History of Zimbabwe, p.147, citing CNC Mashonaland, AR 1912, p.1.

[105] Palmer, Land and Racial Domination, pp.85-89.

[106] Ibid, p. 88.

implicated.[107] In testimony to the Native Reserves Commission, 1914-15, the Native Department and the missions were in relative agreement.[108] However, following the Order-in-Council of 1920, the Southern Rhodesian Missionary Conference, an organisation comprising most non-Catholic denominations operating missions in Southern Rhodesia, began to make the most of what had been perceived as a curtailment of Native Department authority as the result of a clash with the Land Settlement Department. D.J. Murray has argued that in the 1920s the main political activity influencing the African sector emerged from the conflict between the politically ascendant Southern Rhodesian Missionary Conference and the apparently rather directionless Native Department of that decade. As a constitutionally separate part of the governmental system,[109] the Native Affairs Department (renamed following the achievement of responsible government in 1923) had to prove its worth to the newly 'responsible' Southern Rhodesian government. Throughout the decade it was in competition with the

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[107] Phimister, An Economic and Social History of Zimbabwe, p. 82.

[108] Palmer, Land and Racial Domination, p. 121.

[109] This peculiar situation ended in 1937 through an amendment to the Letters Patent, "integrating the Native Department 'into the public administration of the colony'." Phimister, Economic and Social History of Zimbabwe, p.180.

Missionary Conference and the Native Development Department.

The protagonists attempted to control the sphere of African education. Education had been run largely by the missions. In 1921 the Native Department began inspecting mission schools and sending representatives of the Native Development Department to do the same. In 1924 the renamed Native Affairs Department began holding meetings with chiefs and headmen[110] in order to legitimise claims to represent Africans' interests.

The Missionary Conference pursued a policy which would have established a "distinct sub-department of native education under the Education Department which would operate an inspectorate of African schools".[111] At this time the Conference was in "a position of relative strength"[112] having many good connections in government, including H.U. Moffat. In 1927, the policies pursued by the Missionary Conference were adopted by the Prime Minister, Moffat. Murray argues that

> During the late 1920s and early 1930s, therefore, radical changes took place in the African affairs sector. The Native Education and Development Departments, acting with the missions, refashioned the administrative system, to suit it to the purposes of controlling and guiding African social and

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[110] CNC, AR 1924, p.2.

[111] D.J. Murray, The Governmental System in Southern Rhodesia, Oxford: 1970, p.283.

[112] Ibid., p.285.

> economic development in the rural areas; they attempted to involve themselves with conditions in the urban areas, and, with the organization of the Native Christian conference, educated Africans secured for themselves an accepted place in the political system of the sector.[113]

Having now gained a dominant position with the Education and Development Departments, the missions began to challenge the legitimacy of the Native Affairs Department's authority over the entire African population. The CNC in 1928-30, H.M.G. Jackson, sided with the missions and went so far as to support "the introduction of a system of native boards to provide the basis for a future system of elected local government."[114]

Col. C.L. Carbutt succeeded Jackson as Chief Native Commissioner, having defeated Jackson's attempt to instal his own brother in the post. Carbutt's views were very different and he "believed that representing African interests involved upholding the authority of the chiefs" and "advocated [the] despatch to separate exclusively African colonies"[115] all those Africans who secured education and aspired to positions in European society. After Moffat resigned from the premiership in July 1933, Carbutt set about restructuring the Native Affairs Department and reasserting its authority over "all

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[113] Ibid., p.288.

[114] Ibid., p.289.

[115] Ibid., p.292.

activities concerned with Africans".[116] He saw to it that teachers and pastors who had received favourable attention from the Native Development and Education Departments were ignored in favour of the Department's "agents", the chiefs and headmen. Therefore the "African voice" regarded as legitimate and recognisable in state policy-making circles ceased to be that of the mission-educated in the 1920s and was replaced by the "traditional" authorities in the 1930s and beyond. A deep dichotomy resulted within Shona-speaking regions where the "traditional" authorities had been less inclined to pursue education than their Ndebele counterparts.[117]

The Native Affairs Department was allied with the chiefs and the views of the 'traditional' society, while the Missionary Conference was allied with the Native Development Department and the 'progressive' element in the teachers and educational spheres. By the early 1930s the Missionary Conference began to lose influence, particularly after it discarded its President, John White, as his rhetoric and demands for African representation went beyond what Europeans in the territory were willing to consider, much less accept. In

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[116] James A. Edwards, "Southern Rhodesia: the response to adversity", Ph.D. thesis, London: 1978, p.109.

[117] See T. O. Ranger, "Traditional Authorities and the Rise of Modern Politics in Southern Rhodesia, 1898-1930" in Stokes and Brown (eds.), The Zambesian Past, Manchester: 1966, p. 173.

many ways the Conference's power base was among the European population, although it sought to promote the interests of Africans.

The declining political influence of the Southern Rhodesian Missionary Conference reached its nadir with Moffat's resignation as Premier. The Native Affairs Department asserted its 'jurisdiction' over all aspects of African affairs and countered any encroachment by other government departments. The Native Affairs Department began to 'rationalise' the hierarchy of officials under the native commissioner and one of its first moves following Moffat's resignation was to insist on the publication of a Government Notice "under which teachers in kraal schools were in future to subject themselves to the tribal control of the kraal heads."[118] Having fought hard first to maintain its jurisdiction, the NAD now asserted its authority to keep African education under the control of "traditional" leaders. But this also had the consequence of compelling the NAD to jettison its desire to see "tribal authority" disintegrate; rather, it was compelled to bolster chiefly authority. The following year Carbutt took steps to bolster that authority "'by establishing duly constituted native tribunals'."[119] These views were clearly triumphant in the Native Affairs Department as Carbutt

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[118] Murray, The Governmental System, p.292.

[119] Ibid.

was followed by two men very keen on shoring up 'traditional authority', namely, F.W.T. Posselt and Charles Bullock, though Posselt did not share Carbutt's more extreme views on segregation.

In the previous decade the missions had endeavoured to obtain a beginning for African democratic expression in the form of native boards, which "were intended as embryonic local government bodies".[120] The membership of these boards had been manipulated in such a way as to exclude educated Africans but include chiefs and headmen, thus ensuring they upheld the 'tribal' order which the Native Affairs Department was constructing. In turn, the Native Boards and later Native Councils (established by the Native Councils Act, 1937) were seen as bodies legitimating the chiefs and headmen. The administration developed, in the 1930s, a vested interest in the maintenance of "traditional" law and order.

> This meant supporting the authority of the chiefs and headmen against the subversive prestige of "new men" - in Rhodesia, unlike Kenya, most African chiefs had clung to their "traditional" prestations rather than themselves becoming the most vigorous entrepreneurs.[121]

Thus, the Native Affairs Department attempted to subjugate all of rural African society to its control.

> In the political system of the sector, the one recognized alternative institution to that of

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[120] Ibid., p.293.

[121] Ranger, Peasant Consciousness, p.68.

> the chiefs and Native Affairs Department through which Africans had had access to government [i.e. the Missionary Conference] had lost its influence and importance. The Native Affairs Department and the chiefs remained: Europeans accepted that they could advance African interests in such a way as also to safeguard general European interests. The illusion that this was possible was due to the fact that Africans lacked the power to force access to the political system of the sector, and in these circumstances the Native Affairs Department was able to dictate the characteristics of the supposed interests of rural Africans.[122]

On a different level, the 1920s were also a decade that witnessed the emergence of new forms of organisation by Africans in Southern Rhodesia. At the work place, especially in the mine compounds where some 11,000 Southern Rhodesian Africans were occupied annually[123], welfare and recreational societies developed means of communication that were important to the co-ordination of protest and the organisation of trade unions.[124] For our purposes, it is only necessary to note the Shamva strike of 1927. Although the majority of the miners who took part in it were immigrants, the strike itself does indicate the growth of organisational frameworks that presented alternatives to those experienced at home. That same year the Rhodesian branch of the Industrial and

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[122] Murray, The Governmental System, p.299.

[123] T. O. Ranger, The African Voice in Southern Rhodesia, London: 1970, p.139.

[124] Ibid., pp.138-149; see also van Onselen, Chibaro.

Commercial Workers Union (ICU) was established. Although unable to penetrate the mining compounds in Southern Rhodesia, the ICU reached Africans working in urban and rural areas.

A second influence that began to come into its own from the 1920s was that of religion. The Watch Tower Society spread through the Shona rural areas at much the same time as the ICU was growing, that is in the early 1920s.[125] The significance of these different movements is effectively summarised by Ranger, commenting on the impact of Watch Tower in the Lomagundi district in northern Southern Rhodesia:

> Watch Tower restructuring of society seems to have succeeded in creating united communities of the faithful. But it did so at the price of cutting the faithful off from the rest of Shona tribal society. Shona chiefs, whose authority was unrecognized by the movement, did their best to destroy it.[126]

The zionist churches and the Apostolic churches of Johana Maranke and Johana Masowe were others that offered new social organisation.

It is questionable how much authority the Shona chiefs possessed at this time. The report of the NC Lomagundi, 1920, complains of the chiefs' total lack of authority.[127] But Watch Tower challenged the chiefs'

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[125] van Onselen, Chibaro, p.209.

[126] Ranger, The African Voice in Southern Rhodesia, p.209.

[127] NC Lomagundi, AR 1920, N 9/1/23.

position, however weak, and threatened to displace them. This in turn forced the Native Department to consider that it must choose between allowing the emergence of "detribalised" Africans susceptible to the influences of the independent churches, or on the other hand, "re-establishing" chiefly control.

By the end of the 1920s over 81,000 Southern Rhodesian Africans were working annually for wages.[128] The majority were migrant workers who had the opportunity to experience new forms of organisation first-hand. The millenarian movements, including Watch Tower, and the missions were much closer to the rural homesteads than the trade unions and other organisations experienced by the migrant workers away from home. But all these presented new means of social organisation. Ranger states that Watch Tower was "the first of the twentieth-century mass movements to demonstrate the collapse of chiefly power."[129] Although chiefs' power waned in certain periods it cannot be said to have collapsed, and indeed has been shown to be remarkably resilient.[130]

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[128] Ranger, The African Voice in Southern Rhodesia, p.139.

[129] Ibid., p.212.

[130] Jocelyn Alexander and David Maxwell (eds.), forthcoming, London: 1994?. This volume reassesses the role of chiefs and headmen in Zimbabwean history, arguing they were neither stooges of the colonial regime nor irrelevances in the independent state, but political agents pursuing their own agenda.

The belief in the Native Affairs Department that the "traditional" order had collapsed compelled the Government to decide to chart a course that would mould in the following decade either a neo-traditional order in conjunction with the emerging powerful men as a means of controlling Africans, or implement a more direct form of rule. Moves began to be made towards the construction of a neo-traditional order.

The policy of territorial segregation pursued by Southern Rhodesia was expressed in the Land Apportionment Act of 1930. The Act was intended to put all Africans either in the reserves or in the attached Native Purchase Areas.[131] As such the reserves also served to demarcate the territorial limitations of chiefly power. The problem of dissipated chiefly control had been noted in earlier reports from Native Commissioners. It was expected that this demarcation would help shore up flagging chiefly power.

In the early 1930s work began on legislation that would result in the Native Law and Courts Act (1937) and the Native Councils Act (1937). The drafters of this legislation were eager to deal with the lack of control in the rural areas as well as to meet a need for a political pressure valve. They were, in part, responding to demands made by the African men who participated in

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[131] Palmer, Land and Racial Domination, pp.160-187.

the Native Board meetings throughout the 1930s.[132] But this will be dealt with in greater detail in the following chapter.

Conclusion

In this period, 1890-1935, as we have seen, economic changes had a fundamental impact on social organisation among the Shona-speaking people of Southern Rhodesia. It was not a simple path of change but an uneven search by Africans for a means of survival. The peasant option was exploited. This had the effect of both providing an alternative to labour migrancy and creating a new basis for social differentiation within African society. The economic independence that Africans were able to maintain in this period acted as a barrier to European penetration into the colonised society. But by the outbreak of Second World War, the character of that independence had undeniably been altered. To be sure, Döpcke and Ranger have disproved Palmer claim that all vestiges of economic independence had been shattered by 1939. But the life of rural Africans, on the whole, was becoming increasingly difficult.[133]

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[132] See S 1542/N2. Throughout this file judicial authority is an issue given importance by the Africans attending the Native Board meetings.

[133] Palmer, Land and Racial Domination, p.13; see also Ranger, Peasant Consciousness; Davis and Döpcke, "Survival and Accumulation in Gutu", Journal of Southern African Studies, 14, 1, pp.64-98; and Döpcke, "'Magamo's Maize'", in Ian Brown

The growing number of labour migrants put strains on the traditional order in a number of ways. The migrations resulted in local shortages of labour and an upset in the elders' control of men through marriage. The migrants, overwhelmingly men, experienced new and alternative forms of organisation. Thus in an environment of transforming social relations the nascent trade unions and the churches offered new bases of organisation.

The "traditional" rulers were threatened by other more simple and direct means. Their authority and legitimacy were altered by colonial circumscription of their positions. Although, as I have tried to demonstrate, the official removal of recognition had little impact, more positive interventions such as the selective recognition and later appointments of chiefs by colonial administrators did alter their positions.

The Native Regulations, proclaimed in 1910, were important as they outlined a hierarchy of Native Commissioner, Chief and Headman. Thus, for the first time in the colonial era, chiefs were given the statutory right to appeal to a higher authority for action against an insubordinate Headman. Furthermore, the alternative that Native Commissioners' courts offered, even when not used as courts of first instance, was a means of

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(ed.), The Economies of Africa and Asia in the Inter-War Depression, pp. 29-58.

circumventing chiefly authority. At the same time legislative curtailment of the free movement of kraals that existed in pre-colonial times prevented Africans from voting with their feet. This territorial jurisdiction of the chiefs was further reinforced by the Land Apportionment Act.

We have also seen that the Native Department struggled to exert exclusive jurisdiction over Africans. In asserting its authority it made demands upon those it perceived to be traditional African leaders. It also demanded that those leaders perform as it saw fit, which in all likelihood had little in common with historical forms of leadership. It made these demands while giving little support in return.

In part these contradictory attitudes towards the 'traditional' leaders were a result of confusion and conflict within the Native Department itself. In the 1920s official favour tipped decisively towards the pursuance of policy which would make 'chiefs' and a neo-traditional order an integral part of the administration. In the 1930s chiefs and headmen received greater attention from the state than at any time since the criminal trials that followed the Chimurenga. This *volte face* is an important element in the route towards the Native Law and Courts Act (1937). The chiefs and the Native Affairs Department now found useful allies in one

another and the conditions obtained in which they could work together.

Chapter 2

The Assertion of Rhodesian Hegemony, 1927 to 1937

"to regulate an institution which has survived forty years of winking tolerance"[1]

Introduction

In 1927 the Native Affairs Act began to formalise the relationship between the state and "traditional" leaders; the process was continued in 1937, in the Native Law and Courts Act (NLCA) and the Native Councils Act. In the intervening decade two key pieces of discriminatory legislation were passed, the Land Apportionment Act (1931) and the Maize Control Act (1934). The Land Apportionment Act established the Native Reserves, the Native Purchase Areas and required all Africans living under rent agreements to abandon them within six years. The Reserves restricted African agricultural production to areas remote from markets, and therefore made African producers less competitive. A further consequence of the Act was to define the territorial limits of African authority, which was just beginning to receive a helping hand from the state. The Maize Control Act excluded African peasant producers from maize markets, protecting them for the white farmers at a crucial point in Southern Rhodesia's history. These

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[1] C. Bullock, CNC, AR 1936, p.10.

dovetailed easily with the NAD's ideal of "retribalizing" Africans through the bolstering of "traditional" leaders and chiefly authority. Keeping Africans "tribal" involved frustrating challenges to the shaken chiefly order. This process was part of the development of a neo-traditional order.

This chapter will look at the promulgation of the NLCA as part of the government's strategy to maintain control over dispute proceedings and the demands made by Africans for their courts to be given formal recognition. This will be examined with relation to the surrounding Colonial Office territories and South Africa. The African courts established under various ordinances in these territories will be compared and contrasted. In Southern Rhodesia's Legislative Assembly, politicians frequently made reference to the position of "native courts" in Kenya, Tanganyika, Northern Rhodesia and South Africa. These examples were cited for various reasons - as examples of success, to reassure opponents, and as reasons for caution.

We will also examine the early, formal moves by the government to integrate chiefs into the state structure, no longer simply on a *ad-hoc* basis as powerful individuals with sufficient local influence to deliver tax and labour, but now as officials. The new office of

the colonial regime bestowed authority and power upon its holders. It would be dangerous to assume the new colonial Chiefs lacked all vestiges of authentic traditional authority. However, the Chiefs were eager to legalise their positions within the state while maintaining authenticity within African society. Within the Native Affairs Department it was expected that the chief's position could fulfil a legitimating role for the colonial government. Chiefs were politically adept at moving between state and non-state affairs and duties. Some of these local potentates made use of colonial authority and power to enhance, and indeed, reshape their positions.[2] By examining these issues we will be addressing directly one of the themes of this thesis - that of the co-option of chiefs through the integration of locally powerful institutions. As Richard Gray has stated, councils and courts permitted "chiefs and counsellors to begin to exercise a carefully controlled judicial and administrative initiative in matters concerning the Reserves."[3]

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[2] See Alexander and Maxwell (eds.), forthcoming.

[3] Richard Gray, The Two Nations, London: 1960, p.155.

The Native Affairs Act (1927)

As discussed in the last chapter, the challenge posed by the Southern Rhodesian Missionary Conference to the Native Affairs Department's authority over Africans propelled the NAD to nurture support within African society. This was done by courting a select group of Africans: the "traditional" leaders.[4] The Native Affairs Act which followed was largely a formal statement of Southern Rhodesia's "native" policy and the position of the Native Affairs Department within the overarching government structure.

The Native Affairs Act summarized the hierarchy of offices within the Native Affairs Department from Headman through to the Chief Native Commissioner, and beyond the Department to the Governor. This Act outlined the state duties of those appointed by the government to the offices of Chief and Headman.

> The chief in charge of a tribe shall be appointed by the Governor-in-Council and shall hold office during his pleasure and upon good behaviour and general fitness. He shall rank as a constable within his tribal area....[5]

The chief was held responsible for the "general good conduct of the natives under his charge"; he was required

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[4] This is known to have been happening as early as 1924, when the CNC mentions it in his annual report.

[5] Native Affairs Act, 1927, sec.23.

to inform the Native Commissioner of crimes committed "within his tribal area" and to give warning of any threat of public unrest. Furthermore, he was required to apprehend offenders and to assist in the collection of taxes. Such diverse duties left chiefs in an unenviable position which was open to criticism from many fronts. These duties were accompanied by few powers. Some native commissioners felt it damaging to chiefs' authority and legitimacy to burden them with such onerous duties.[6] In the period 1927-37 the chiefs may well have appeared as government lackeys more clearly than at any other time.

The Chief Native Commissioner was responsible for the appointment of headmen. But the Act states plainly: "In making these appointments the nominations submitted by the chiefs shall, except for good reasons to the contrary, be accepted."[7] Thus the chief was given the power to develop local "administration" within the limitations set down by the Native Affairs Department.

Headmen also ranked as constables and had many of the same responsibilities as chiefs. Their position was much clearer, since they had fewer administrative duties than chiefs. However, a curious clause states, "Headmen

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[6] E.G. Howman to Native Affairs Advisory Committee, August 1931, p.195, S 235/486.

[7] Ibid., sec. 27.

shall prevent the settlement of fresh kraals or the removal of existing kraals without proper authority."[8] This clause gave headmen a degree of authority over land which they are not known to have previously enjoyed. The speed with which the headmen exploited this new power remains unprobed.[9]

Native Messengers also ranked as constables. No "traditional" authority was claimed for this position but it was very important in the administrative structure. Their duties were to convey messages between chiefs and headmen and the Native Commissioner. They were also "to warn natives of collection of native tax, to summon parties to civil cases in Native Commissioners' Courts, and to report to the Native Commissioner any irregularities or crimes that may come to their knowledge."[10] Interestingly the Native Affairs Act includes the following offence for Native Messengers:

> Any native messenger who shall...give out and pretend that he has power and authority to

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[8] Ibid., sec. 31.

[9] Jocelyn Alexander, working on land politics in two districts in Zimbabwe, has found that headmen came into prominence and power as a result of the Native Land Husbandry Act (1951), and it has been headmen, rather than chiefs, who have controlled land allocation. It appears that the roots of that control may have been in this clause of the Native Affairs Act.

[10] Native Affairs Act (1927), sec.36.

> settle any dispute or undertake the settlement of any dispute...shall be liable to punishment....[11]

This suggests that native messengers were considered potential usurpers of Native Commissioners' jurisdiction. No similar clause referring to the chiefs and headmen is included in the Act.

As an extension of the Native Affairs Department's authority over African affairs, the Act gave NAD exclusive jurisdiction over civil proceedings involving only Africans. Previously, the magistrates had held concurrent jurisdiction. This change created a racially divided jurisdiction.

Native Councils Act (1937)

The Native Councils Act was passed in Southern Rhodesia as part of the neo-traditional project there. The Councils were introduced as a refurbished version of the unofficial Native Boards which had been established early in the 1930s as consultative forums. The new Councils were "expressly designed to bolster 'traditional' authority re-invented by the settler state."[12]

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[11] Ibid., sec.40.

[12] Phimister, Economic and Social History of Zimbabwe, p.197.

The Native Councils Act stated clearly that the initiative for such a forum must come from Africans themselves.

> No Council shall be established unless application for its establishment has been made by natives in the area concerned. Whenever natives in any area desire the establishment of a council they may apply to the Native Commissioner for its establishment....[13]

This appears to respond to a question raised by a Native Commissioner in 1935:

> Are we not doing too much and thinking too much for [Africans] and would they not be better men and women if they were forced to do and to think for themselves *through their own organisations, communal or otherwise* and not wet nursed by us as I am afraid they are to-day.[14]

However, the Councils were effectively controlled by the Native Commissioners. Although the Act specified that all Chiefs and Headmen in the area were *ex-officio* members of the Council, the Native Commissioner was the President of the Council and had the power, through reference to the Governor, to appoint "so many other indigenous male natives residing within the area".[15] Although all Africans had the opportunity to nominate

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[13] Sec.3 (3), Native Councils Act (1937).

[14] NC Mazoe, AR 1935, S 235/514, emphasis in the original.

[15] Sec.4 (b), Native Councils Act.

"any suitable person to represent their interests", such nominees were vetted by the Native Commissioner, Chief Native Commissioner and the Governor![16]

These Councils had the power, in a long list of duties, to undertake conservation work, road building, "the provision of facilities for education" and agricultural management. But they had no ability to raise their own revenue and the Native Commissioner controlled the purse-strings, in most cases strictly. The Native Affairs Act (1927) and the Native Councils Act (1937) formed the legislative context within which the Native Law and Courts Act (1937) placed.

Extending Judicial Authority

In 1899 some Native Commissioners, appointed as special Justices of the Peace, had been granted the same jurisdiction similar to that of magistrates. This was largely due to the need to enlarge a judiciary. But this seems to have been only part of the explanation. It also entailed the expansion of and practical access to state institutions. Africans who might have wished to receive legal redress before magistrates were faced with travelling long distances. The empowerment of selected

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[16] Ibid.

native commissioners ostensibly addressed this perceived deterrent. However, we know that Africans rarely felt this compulsion and chose rather to settle disputes with reference to local African authorities. Thus, it appears that the motivation behind furnishing Native Commissioners with judicial powers at this time was more to assert local control than to wrest authority from the chiefs' courts as part of a concerted effort to exert state authority. In the first decade of this century the Native Department viewed its major responsibility as averting another serious conflict with Africans, and as such extending local control was consonant with this task.

In 1910 the post of native commissioner was the judicial authority to hear civil proceedings between Africans and criminal proceedings in which the accused was an African.[17] That same year the CNC Mashonaland, W.S. Taberer, suggested that

> the advisability of granting them [chiefs] power to settle petty disputes within their own districts should also be reconsidered, and, if approved, they would be allowed to charge a nominal fee for hearing the case.[18]

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[17] High Commissioner's Proclamation 55, 1910.

[18] CNC Mashonaland, AR 1910, N 9/1/13.

This was the first time the question of extending judicial authority to chiefs had been raised in official reports of the Native Department. However, the question did not receive serious attention until the mid 1920s.

In 1926 the CNC, Herbert Taylor, wrote,

> A considerable and growing demand on the time of Native Commissioners is made by law suits among natives, who become increasingly litigious as time goes on. I regard this work as an important part of the Native Commissioners' work.[19]

Although we are not informed by the CNC as to why the judicial work was considered of such importance, others do give us their views. From within Southern Rhodesia we get some clues. In 1900 one Native Commissioner reported, "the ready way in which the natives come in to me to settle their civil disputes also show that they recognise the government and are willing to abide by our decisions".[20] This is similar to the perception of the early colonial administration in Nyasaland where it was believed that its "beneficent justice would not only establish its authority but make that authority more acceptable."[21] Despite the fact that in the first years of colonial administration in Nyasaland the new courts

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[19] CNC, AR 1926, SRG 3.

[20] Acting NC Umtali, AR 1900-01, N 9/1/7.

[21] Martin Chanock, "Neo-traditionalism and the Customary Law in Malawi", African Law Studies, 16, 1978, p.87.

enjoyed success, measured by the number of people eager to seek justice there, Chanock argues that they failed to fulfil their early expectations of establishing for the regime legitimate authority. It appears they were largely undermined by two factors. First, the inexperience of the young administrators allowed them to be manipulated by Africans who had established themselves in key positions in the new order and secondly, the courts were quickly overwhelmed with enforcing colonial ordinances in the spheres of tax and labour law.[22]

E.G. Howman, a senior Native Commissioner in the 1920s who was clearly always interested in Shona law and disputing, considered hearing disputes the most effective way of 'keeping an ear to the ground'.[23] Writing of East Africa, Morris argues that the "native courts" there served to bring disputes into official light and were thus crucial to a two-way educative process between district officer and chief. A district officer acquired knowledge of social conditions and "customary" law through his supervision and control of the courts, and was also able to judge the chief's depth of understanding of "enlightened policies and progress".[24] In East Africa

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[22] Ibid., pp.86-87.

[23] Roger Howman, Harare, 1 August, 1991.

[24] H.F. Morris and James S. Read, Indirect Rule and the Search for Justice: Essays in East African Legal History,

the control of dispute settlement and the "resurrection of African fora" was perceived as a means to extend and consolidate political control.[25] The matter was administrative and political rather than professionally "legal".

In 1931 the issue of establishing some form of "native courts" was given official consideration in Southern Rhodesia's Native Affairs Advisory Committee.[26] Both Tanganyika and Kenya had recently established courts, while Nyasaland and Northern Rhodesia were considering such a step. In 1927 South Africa had passed legislation, the Native Administration Act, that regularised the extremely varied situation which had prevailed in that country regarding the administration of African affairs in general. Each province had pursued different policies regarding African courts prior to the Act of Union. Natal policy developed a role for chiefs' courts, unlike the other provinces. This was in response to pressures exerted by the presence of the large Zulu population in the colony and the need to govern them efficiently. In 1883, the Governor of Natal, Sir

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Oxford: 1972, pp.132-33.

[25] Morris and Read, Indirect Rule and the Search for Justice, cited in Chanock, Law, Custom and Social Order, p.60.

[26] Native Affairs Advisory Committee, Aug. 10, 1931, S 235/486.

Theophilus Shepstone, declared "You cannot control savages by civilized law", and argued, "Native Law gives Government greater power of introducing civilized ideas."[27] This belief underlay the administration of customary law in Natal, and as a logical extension the limited role permitted to the chiefs' courts there. As late as 1936 the Southern Rhodesian CNC expressed similar attitudes, but with less jarring language:

> ...we shall give an opportunity for the open growth of a native institution which may foster dignity, status and the re-integration of a half-shattered society. It may also be the means of helping towards a true advance, in so far as it should interpret Native law and enable it to broaden so as to cope with new conditions of life.[28]

It is interesting to note that Bullock here defends the position against the very criticisms that Shepstone suffered: that this policy "did nothing to encourage the advancement of Africans".[29]

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[27] T.W. Bennet, Customary Law in Southern Africa, Cape Town: 1985, citing Shepstone's evidence before the 1883 Cape Commission on Native Laws and Customs, f/n 28, p.43.

[28] CNC, AR 1936, p.10.

[29] Bennet, Customary Law, p.44.

Native Law and Courts Act (1937)

The most striking characteristic of the Southern Rhodesian Native Law and Courts Act (1937) is its brevity. It comprises thirteen clauses, whereas the Native Courts Ordinance of Tanganyika has forty-one. Due to the very different structure of the relevant parts of South Africa's Native Administration Act (1927), it cannot be compared so simply, but it is clearer, much longer and more elaborate than the NLCA.

The Native Law and Courts Act (1937) of Southern Rhodesia was drafted within an ideological outlook very different from its counterparts promulgated in East and Central Africa. Although on the ground it is often difficult to distinguish between direct and indirect rule, it is important to keep in mind the views that were held by those who dominated the drafting of the legislation. In Southern Rhodesia, all those of consequence professed to be against indirect rule, indeed even the Union of South Africa had, for some, gone too far in granting chiefs' courts limited criminal jurisdiction.[30]

The idea of granting chiefs judicial authority had lingered in the Native Affairs Department for many years

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[30] Prime Minister and Minister of Native Affairs, Godfrey Huggins, Debates of the Legislative Assembly, vol. 17, col. 2063.

before gaining prominence and being treated as a subject for serious consideration. In 1910 when the native commissioners were granted magisterial powers the CNC, Mashonaland, wrote, "To the native mind, the only person who can give him justice is his chief, for justice with him is a personal thing."[31] Furthermore, he argued that the "advisability of granting them power to settle disputes within their own district should also be reconsidered, and if approved they should be allowed to charge a nominal fee for hearing the case."[32] The Native Affairs Committee of Enquiry, 1910-11, recommended that the unofficial courts that were operating at the time be recognised and brought under the official control of native commissioners.[33]

Thereafter the subject appears to have been ignored as the view that "tribal disintegration" was more conducive to "progress" came to be accepted in the Native Affairs Department. It was only after the clash between the Southern Rhodesian Missionary Conference and the Native Department in the early 1920s[34] led to a rapprochement between the "traditional" leaders of the

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[31] CNC Mashonaland, AR 1910, p.4, N9/1/13.

[32] Ibid., p.3.

[33] Report of the Native Affairs Committee of Enquiry, 1910-11, p.8, para.49.

[34] See Chapter One, pp.99-101.

African communities and the Department that the subject began to arise in official documents again.

At a Conference of Native Commissioners in 1925 L.C. Meredith, the NC Chipinga, argued that chiefs should be granted the right to try "minor civil cases", "[h]e saw no use in retaining the system of chiefs unless they were given work to do." In order to convince his sceptical colleagues, Meredith deployed the report of a recent Commission on the Cost of Administration and claimed that his proposal could relieve the native commissioners of a great deal of work.[35] His colleagues clearly felt that granting such powers would only increase chiefly authority, an action better avoided. Since chiefs were already trying such cases, they argued it would be best to leave well alone. His superior, F.G. Elliott, the Superintendent of Natives, Umtali, was against the suggestion and cited the "Colony of Natal, Report of Native Affairs Commission, 1906-17, in support of this view."[36] Ironically, within two years South Africa was to pass the Native Affairs Administration Act which provided for chiefs' courts there.

The outcome of the debate was a compromise resolution:

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[35] Conference of Native Commissioners at Umtali, 20-22 October, 1925, S 138/37.

[36] Ibid.

> this Conference is of the opinion that Native Chiefs should not be discouraged from arbitrating in minor Native civil cases, and their judgements when found to be just should be upheld, and if necessary enforced by the Native Commissioner.[37]

Elliott abstained on the vote.

In early 1931 Native Boards were established. These were formal meetings between native commissioners and the Chiefs, Headmen and, depending on the area, a wider circle of African men.[38] The minutes of these meetings document African demands for judicial authority. Although all such demands were worded deferentially, they are clear and persistent. Throughout the Boards' existence, 1931-38, the subject was raised.

The first item on the agenda of one of the very first Native Board meetings was "The powers of Chiefs in trying cases".[39] The minutes of these meetings were circulated throughout the hierarchy of the Native Affairs Department, and the minutes of the Lower Gwelo Reserve meeting were the first to reach the Minister of Native Affairs, who was then Prime Minister, H.U. Moffat.[40]

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[37] Ibid.

[38] NC Gwanda to SN Bulawayo, no. 977/30, 15/1/31, S1542/N2.

[39] Minutes of the Advisory Board Meeting, Lower Gwelo Reserve, 5/2/31, S1542/N2.

[40] H.U.Moffat to CNC, 1350/164, 23/3/31, S1542/N2.

At a meeting held in March, 1931, in Gwaai Reserve, an African by the name of Mhlatshwa proposed a motion calling for the effective recognition of chiefs' courts, and chiefs' judicial authority. The motion read:

> In all Civil Cases the parties should go before their Chiefs first, before complaints are laid at the Native Commissioner's Office, and that, where necessary, the Chief - or his deputy - should attend, with the parties concerned, at the final hearing.[41]

This motion also clearly requested that native commissioners support, rather than undermine, chiefly office.

The NC Nyamondhlovu who had chaired the above meeting appears to have balked at this motion. The Asst. NC for Gwaai Reserve wrote to him requesting he consider the subject and argued that in East Africa Chiefs and Headmen had such responsibilities which relieved the District Commissioners of a great deal of work. Furthermore, the power of review ensured, the reins of control remained within the District Commissioner's hands.[42] The Chief Native Commissioner, Col. Carbutt, forwarded notes on the motion to the Secretary to the Premier stating that the Native Commissioner's attention had been drawn to a circular letter of January that year.

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[41] Minutes of Native Board Meeting, Gwaai Reserve, 27/3/31, S1542/N2.

[42] Asst NC, Gwaai Reserve to NC Nyamondhlovu, no. 201/37/31, 30/3/31, S1542/N2.

The circular had outlined the authority which Chiefs and Headmen could exercise,

> They have no authority to try any criminal case under any circumstances whatsoever, nor have they any jurisdiction in civil Cases, except insofar as the parties to a Civil action may agree to accept the arbitration of a Chief or Headman.[43]

The CNC was keenly interested in applying some sort of uniform policy throughout the colony so as to avoid confusion and cases of extortion being brought against Chiefs or Headmen as occurred a number of times in the 1930s,[44] and presumably earlier.

The Prime Minister, H.U. Moffat, expressed his attitude towards chiefs' judicial authority in a letter to the Governor. He was extremely uneasy about the informality of the courts and asked, "Would it not be well to have the matter put on a proper basis and for formal notice to the Chiefs to be issued on the lines of the C.N.C.'s Circular Letter?"[45]

Contemporaneous with the consideration of the Gwaai Reserve resolution, demands were made at other Native Board meetings for clarification of the authority of

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[43] CNC Circular Letter No., C. 600, 19/1/31, S1542/N2.

[44] Emmet V. Mittlebeeler, African Custom and Western Law, London: 1976, pp.25-38.

[45] Premier H.U. Moffat to Governor-General, 1778/164, 20/4/31, S1542/N2.

Chiefs and Headmen.[46] The call for greater consideration of this issue was coming from other quarters as well. In April, 1931, the Asst. NC Wedza, L.V. Jowett, wrote to his superior, the NC Marandellas, F.W.T. Posselt,

> to suggest the possible expediency of granting to approved chiefs and headmen, a limited and strictly defined civil jurisdiction, under the simplest possible scale of fees, within the areas under their control.[47]

The most interesting aspect of Jowett's proposals, apart from the actual recognition of courts, is that of giving Chiefs and Headmen authority over land and grazing rights disputes. The Native Affairs Department balked consistently over this and only considered extending the African Courts' authority to land and grazing rights in the 1960s.

Jowett appears to have grasped very well the implications of greater integration of Chiefs' and Headmen's institutions into the Native Affairs Department. He summed up his proposals, stating that they would, first, clarify in Chiefs' minds their permitted authority; secondly,"in some small measure discourage premature detribalisation"; and finally, "form a definite basis in the administration of Native areas."[48]

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[46] See S1542/N2 passim.

[47] "Judicial Powers: Native Chiefs and Headmen", Asst. NC Wedza to NC Marandellas, 14/4/31, S1561/10, vol.13.

[48] Ibid.

This document was circulated amongst the members of the Native Affairs Advisory Board for consideration.

When Moffat addressed the 1931 Native Affairs Advisory Committee he made a substantial statement on the issue of the constitution of African courts. It is worth quoting at length as it provides insight into the politicians' thinking on the topic outside the Native Affairs Department.

> The next item of importance [on the agenda] is..., "Judicial Powers of Chiefs". The suggestion was the granting of civil jurisdiction to approved Chiefs and Headmen. That is an innovation in our law and our methods in this colony. I do not like to say very much about it because I do not claim to have any special knowledge, any knowledge such as is possessed by you gentlemen, of the natives. I would point out, however, that it is a matter which has got to be handled very carefully. It is following the methods adopted in Tanganyika in particular, commonly known, I think, as the indirect rule. I will await your deliberation and findings on this matter also with very great interest. As I say, I urge extreme caution in the matter. It does mean departing from what has been the law and the policy of this colony ever since it was started.[49]

It is clear that the devolution of judicial power caused dissonance in official circles, members of the NAD asserting a policy and others, including the responsible minister, expressing scepticism and fear.

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[49] H.U. Moffat, PM and Min of Native Affairs, opening the meeting of the Native Affairs Advisory Committee, 10/8/31, S235/486.

F.W.T. Posselt, who was later instrumental in the drafting of the Native Law and Courts Act (1937) when he held the position of Acting CNC, was an advocate of chiefly authority. He was also ready to bring African opinion into official light. In 1932 he told the Superintendent of Natives in Bulawayo that,

> one of the leading Chiefs in this District [Plumtree] .... urged that Chiefs be empowered to impose fines and corporal punishment to enable them to control their people who are getting out of hand. I state this to show how a native, who knows his fellow men, views the position and the remedies he suggests, in contrast to the remarks made by a high Judicial Functionary. My own observations gathered in this and other Districts I know, confirms the view that lawlessness among the natives is attributed by the thinking class of native as mainly due to our leniency, and the wholly unsuitable form of punishment our law provides.[50]

This further demonstrates that the "establishment" of "Native Courts" was not simply a project initiated by the Native Affairs Department in order to better administer their sphere, but that there were clearly African individuals lobbying for such powers.

These demands and lobbying did not simply mark the beginning of a trend to bestow upon Chiefs and Headmen more authority derived solely from the state, such as their positions as constables. Several native

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[50] NC Plumtree to SN Bulawayo, "Excessive Fines inflicted by Judicial Officers", 18 Nov. 1932, S 138/43.

commissioners commented on the difficulty of the chiefs' position. A senior native commissioner, E.G. Howman, stated in the Native Affairs Advisory Committee that he did not think chiefs should be expected to collect taxes or "perform duties against his own tribe".[51] The authority that would flow from recognition of Chiefs' courts was qualitatively different from the constabulary power to arrest criminals without authority to try them because it would have been support for an *indigenous* institution.

The draft bill presented in 1934 to the Minister of Native Affairs (now Godfrey Huggins) was accompanied by a memorandum from the CNC, the conservative Col. Carbutt. The memorandum emphasized a number of issues:

> The draft follows the lines of similar legislation which is operative in the Union of South Africa, Northern Rhodesia and Tanganyika, to which reference has been made in drafting the bill now submitted. Similar legislation is in force also in Nyasaland and Bechuanaland. We are thus surrounded by territories in which tribal authority is upheld.[52]

Col. Carbutt not only made an argument for Southern Rhodesia not to be "left behind" in policy-making in the region, but also appealed to the politicians to consider

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[51] Native Affairs Advisory Committee, August 1931, p.195, S235/486.

[52] CNC to Minister of Native Affairs, 10/11/34, No. C 4470/34; S1542/C19, vol.3.

the economic expediency involved. The fact that the country was in the midst of an economic depression would have compelled many of the most conservative politicians to devolve power for this reason alone. Carbutt argued,

> Another important reason for the devolution of authority, is that, owing to the increasing work of the Officer of the Native Department, means a relief must be found. A very great deal of their [i.e. the officers] time is occupied in hearing petty native cases, both civil and criminal. In order to maintain efficiency it is essential that we either delegate some of the work to Chiefs and Headmen, or increase the European Staff. I advocate the former expedient, as being likely ultimately to result in greater efficiency and certainly in economy.[53]

In annual reports the CNC hedged on the issue of bolstering chiefly power. In 1931 he stated that civil jurisdiction for chiefs was considered "partly with the object of maintaining the authority and prestige of chiefs"[54] and again in 1934 it was suggested "it may be desirable to strengthen the position of the Chiefs by establishing duly constituted Native tribunals as has been done elsewhere."[55]

Africans appear to have been vigilant in seeing that the government recognise Chiefs' courts. In December 1935, eight months after Col. Carbutt had told Chiefs in

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[53] Ibid.

[54] CNC, AR 1931.

[55] CNC, AR 1934.

Plumtree that they would be given "judicial powers [and the] authority to punish for minor offences", Chief Mpini wanted an update, especially since Col. Carbutt was no longer in office.[56] Charles Bullock, the Acting CNC, responded to this question advising caution to his staff,

> A Bill has been submitted to the Government, members of which find the position not without difficulty. While I am hopeful legislation will ensue, it is not yet advisable to give the Natives a definite promise.[57]

There was certainty in the NAD that, at a minimum, Chiefs' courts with civil jurisdiction must be recognised, but the Southern Rhodesian government was hesitant. Roger Howman later criticised the NAD's policy towards courts as "always very guarded, cautious, half measures - always doomed from the start".[58]

Although there was full support for the establishment of courts within the Native Affairs Department, not all officials came to that conclusion by similar reasoning. The views of F.W.T. Posselt are of particular importance in highlighting another perspective

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[56] Minutes of Native Board meeting, Plumtree, 12/12/35, S1542/N2.

[57] Acting CNC to SN Bulawayo, 3/1/36, L.6217/N2/1/Plumtree, S1542/N2.

[58] Roger Howman, Oral/HO3, p.47. He felt very strongly that even the African Law and Tribal Courts Act (1969) was out of date by the time it was passed. Roger Howman, 1 August 1991.

in the Department because, as Acting CNC in 1934, he was responsible, in part, for the drafting of the Native Law and Courts bill. Posselt believed in giving "scope to the inherent capacity of a people to be controlled by their own institutions and through their own recognised leaders."[59] Bullock was characteristically more pragmatic in his approach to the African courts legislation:

> ...we shall give an opportunity for the open growth of a Native institution which may foster dignity, status and the re-integration of a half-shattered society. It may also be the means of helping towards a true advance, in so far as it should interpret Native law and enable it to broaden so as to cope with new conditions of life.[60]

In the same report, Bullock attempted to assuage the fears of those in the government hesitant to support the bill. He wrote that recognition would allow for effective regulation and that the Chiefs were not to be granted the powers enjoyed in East or Central Africa, or South Africa.

By 1935 the Native Commissioners' Conference had already expressed views which went beyond what the Government was conceding in the draft Native Law and Courts bill. Charles Bullock, then Acting CNC and

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[59] Roger Howman, in the Foreword to the reprint edition, F.W.T. Posselt, Fact and Fiction, Bulawayo: 1978.

[60] CNC AR 1936, p.10.

Secretary of Native Affairs, wrote to the Prime Minister and Minister of Native Affairs:

> For the information of the Honourable Minister I may say that the principles of the Bill are largely those accepted by the Native Commissioners' Conference in 1931; but that, in the recent Conference, the majority were in favour of extending the jurisdiction to criminal cases.[61]

However, in 1937 members of the Salisbury Native Board "expressed unanimous approval of the Bill."[62] Discussion of the bill was the main topic of this meeting. As early as 1936 Bullock had felt sufficiently confident to pronounce that "the provisions of the Bill are acceptable to the Native Chiefs and people".[63]

Many of the Native Board meetings in 1937 focused discussion upon the Native Law and Courts bill about to go before the Legislative Assembly. For the most part these meetings supported the principles of the bill. One meeting in Victoria District was also attended by the "Rhodesian Native Association" which also approved the bill.[64] One meeting displayed a desire for greater

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[61] Acting SNA to PM, 8/10/35, S1561/49.

[62] NC Salisbury, AR 1937, S1563.

[63] Ag. CNC, "Memorandum to Accompany the Native Courts Bill, 1936", 13 Feb. 1936, S1561/59. It is worth contrasting the process of consultation for the NLCA with that for the African Law and Tribal Courts Act (1969) when the Chiefs' Assembly was consulted. See p.387 below.

control to be placed in the hands of the Chiefs and Headmen. Africans were adamant that they should have their civil cases tried according to Native Law and Custom. The Plumtree Native Board felt it made little sense if appeals were to be to Magistrates courts because they didn't believe these courts sufficiently understood Native Law and Custom. Chief Ndabakayena said, "we have our Native Commissioners, Supt. of Natives, and Chief Native Commissioner. To avoid the white man's law our civil cases should not be taken before a Magistrate."[65] Another man welcomed the clarification of powers and support the Act would bring and complained, "in the past many of our young men disregarded our trials."[66] Chief Sipiwe also suggested "that we should undertake the trial of criminal offences committed by juveniles as there is only one way of punishing juveniles, and that is with a switch."[67]

Interestingly, in Mrewa there was "firm agreement" that divorce cases should be tried by the Native

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[64] Minutes of Native Board meeting, Zimutu Dip Tank, Victoria, 23/7/37, S1542/N2.

[65] Minutes of the Native Board meeting, Plumtree, Bulalima-Mangwe, 13/5/37, S1542/N2.

[66] Headman Magcobafuta, ibid.

[67] Ibid.

Commissioner as the bill proposed.[68] Throughout Southern Rhodesia, the subject of divorce was raised at meetings of Native Boards and many demands were made for native commissioners and the government to put a stop to it. This probably gives us an indication as to why Chief Mangwende was eager to rid himself of such an onerous task.

When the Prime Minister and Minister of Native Affairs presented the bill for the second reading in the Legislative Assembly he played down the extent of the change involved:

> "The grant of legal recognition to the jurisdiction of native chiefs in civil cases will regularise an institution which has survived of its own strength, because it supplies a need in maintaining the equilibrium of the native social organisation."[69]

He even went so far as to assert that "As far as I have been able to find out the judicial powers were given to the chiefs at one time, and they have never actually formally been removed."[70] The message the Prime Minister was now keen to convey was that this bill did not represent a departure from prevailing practice. Finally,

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[68] Minutes of the Native Board meeting, Mrewa, 4/6/37, S1542/N2.

[69] Memorandum quoted by the PM, Debates of the Legislative Assembly, 1937, vol. 17, col. 2063.

[70] PM Godfrey Huggins, Debates of the Legislative Assembly, 1937, vol.17, col. 2066.

Huggins assured the Legislative Assembly that it would be "of very great advantage if we can build up the authority of the chief and elders to a greater extent than it exists at present."[71] The undertone in this statement is clearly that a close check would be kept on chiefly authority and there was no reason for the white population to fear another uprising like that of 1896-7.

In the period 1925-1935 native commissioners were, in practice, anything but uniform in their approach to chiefs and the powers they might wield.[72] Not surprisingly, the implementation of the NLCA was not uniform, nor did it bring to the treatment of African courts the uniformity top NAD officials had been eager to achieve. The Act was passed in late 1937 along with the Native Councils Act and in 1938 native commissioners were far more concerned with the establishment of the councils. Only twenty courts were recognised that year.[73] However these were reported to be running smoothly and the NC Mrewa wrote,

> It is noticeable how the usual prevarication of litigants so common in Courts presided over by European officials is practically eliminated in

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[71] Ibid.

[72] R. Howman, ORAL/OH3, pp.46-47.

[73] CNC, AR 1938, p.10.

> the Native Court. It is further noticeable how promptly the Native Court judgements are met.[74]

Some native commissioners simply tried to ascertain existing practice in the area was, and to bring those courts under the official umbrella,[75] while others expected chiefs to take the initiative in applying for formal recognition.[76] Unlike the Native Councils Act, this was not spelt out in the NLCA.

In at least one district the Native Commissioner attempted to use the establishment of courts as a lever to coerce the local people to accept measures they had rejected. In Mtoko the Native Commissioner, Hassell, asked at a Native Board meeting

> how could he recommend to the Government that the Chiefs of this district be given more power when they had just showed, in the discussion on centralisation, that they were against all progress and the betterment of their people.[77]

Calling the Native Commissioner's bluff, "Chief Nyakuna replied that he for one did not want a Court."[78] The NC Mtoko continued in a belligerent tone at the meeting.

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[74] Ibid.

[75] SN Bulawayo to CNC, 28/7/38, 961/Nat.BCC, S1542/N2.

[76] Minutes of Native Board meeting, Wankie, 17 & 18/5/38, S1542/N2.

[77] Minutes of Native Board meeting, Mtoko, 3/5/38, S1542/N2.

[78] Ibid.

The following year the NC Mtoko reflected upon this discussion and made use of the opportunity to emphasize the *quid pro quo* that was involved in his recommending the recognition of chiefs' courts, a "privilege"[79] he wished to grant sparingly. Hassell was rebuked for his actions when the CNC wrote to both him and the Prime Minister to point out that the establishment of Chiefs' courts was not contingent upon the acceptance of other schemes and "opportunities for advancement".[80] The CNC appears to have been intent on encouraging the involvement of Chiefs in the day-to-day administration of African affairs. The NC Mtoko was not aiding this in any way. Despite these shortcomings in the implementation of the NLCA, by the end of 1939 108 courts had been recognised[81], and in 1949 173 had gained official status.[82] Although not many more ever gained official recognition,

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[79] In the minutes of the Native Board meeting of 25/5/39 it is noted that the previous year the NC had not been prepared "to recommend that their Chiefs should have the privilege of their own legally constituted courts, but he said that he now noticed a more helpful spirit abroad and that the three Senior Chiefs... should be given their own Courts.", S1542/N2.

[80] SNA to Sec to the PM (Native Affairs), E. 8323/N2/1/Mtoko, 25/7/39; CNC to NC Mtoko, E.8367/N2/1/Mtoko, 28/7/39, S1542/N2.

[81] CNC, AR 1939, p.9.

[82] CNC, AR 1949, p.24.

many more operated in full view of the native commissioners.

There were instances of official recognition running into problems. Roger Howman related one case in which he met a headman in Wedza in the late 1940s and asked how his court was functioning. Upon discovering that this man had no court, Howman investigated the case only to discover "that some earlier native commissioner made a mistake and appointed the wrong man as [headman] Chamburakira" and that the one legitimate in local people's eyes lived some miles away and heard cases. Howman concluded that government recognition was not enough, the government "had legalised this man, paid him, looked after him, paid him for his business.... Well, he was quite happy to sit there knowing he was illegitimate and take all what government gave him, and nobody went near him."[83]

As suggested above, the influence of the early native commissioners and other Native Affairs Department officials who came to Southern Rhodesia with experience of the Natal Native Affairs Department had a fundamental impact on that outlook. Secondly, the NAD and the government were both keen to emphasize the distinction between Southern Rhodesia and the Colonial Office territories to its north. However, the Native Affairs

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[83] Roger Howman, 1 August 1991.

Department, at least, often turned to the practices of these Territories as well as South Africa when considering new policy. This is probably true of most levels of the Native Affairs administration.[84] The South African influence and the desire to assert distinct policy, or at least appear to do so, contributed to the drafting of African courts legislation in Southern Rhodesia, which was largely out of step with the time-scale of the "development" of Africans among its neighbours, despite assertions of adhesion to just such a policy. In 1937 the Prime Minister, Godfrey Huggins, quoted Lord Lugard in the Legislative Assembly debate concerning the Native Law and Courts Act:

> "If our aim be to raise the mass of the people of Africa to a higher plane of civilisation, and to devote thought to those matters which most intimately affect their daily life and happiness, there are few of greater importance than the constitution of the Native Courts." ...I have quoted these extracts because I believe in them.[85]

In the same speech the Prime Minister stated,

> "The measure of jurisdiction to be granted is less than that given in any part of British

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[84] NC Victoria referred to Kenyan "Native Councils" as well as Transkeian councils in AR 1927, S235/505; see also CNC to Minister of Native Affairs, 10/11/34, no. C. 4470/34, S1542/C19, vol. 3, re: courts legislation in the surrounding countries, and later on, R. Howman, Report on an inquiry into Native Courts, Salisbury:1952.

[85] P.M. Godfrey Huggins, Debates of the Legislative Assembly, 1937, vol. 17, col. 2062.

> Africa - and in that term I include the Union of South Africa, where the government has now granted (in addition to civil jurisdiction) criminal jurisdiction in respect of offences punishable under Native Law. Our policy is conservative and does not necessarily imply this extension."[86]

The Government was willing to make use of the intellectual justification provided by the theoreticians of indirect rule but was also quick to distance itself from the implications it held.

One direction that Southern Rhodesia most emphatically did not follow was the codification of customary law. Natal began codification as early as 1878, although this was not on an official basis, had no legally binding power and was against Shepstone's wishes.[87] However, in 1891 this changed and the codified customary law of Natal gained official status with Law 19 of that year. In Southern Rhodesia the development of customary law followed a very different path. The first attempt to compile a compendium of Shona law and custom was made by Charles Bullock, then Native Commissioner, in 1913 when Shona Laws and Customs was published.[88]

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[86] Memorandum quoted by Prime Minister, ibid., col. 2063.

[87] Bennet, Customary Law, citing E.H. Brookes, The History of Native Policy in South Africa from 1830 to the Present Day, Cape Town: 1924, p.219.

[88] C. Bullock, Shona Laws and Customs, Salisbury: 1913.

However, this book appears to have gained little acceptance amongst his peers. Later, Bullock published a second book, The Mashona.[89] This book gained much more credence within the Native Affairs Department, although some felt it was premature to publish this material and it has been alleged that all the material for the book was collected by E.G. Howman while stationed in Lomagundi District.[90] The CNC, Stanley Jackson, reviewed it favourably and recommended it as a text book for all in the Department. At least one Native Commissioner, who was very grateful for Bullock's book, said, "it is just as well a record of native custom exists, for if the present trends of thoughts and happenings continue there will be few happenings in our native life that can be said to be true and ancient custom."[91] Clearly there existed a desire to crystallize custom, remove its characteristic fluidity, and formulate "customary" law. In 1937 material from Bullock's The Mashona was used as evidence of customary powers of chiefs in an extortion

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[89] C. Bullock, The Mashona, Cape Town: 1928.

[90] Roger Howman, 1 August 1991, stated that F.W.T. Posselt had disagreed vehemently with the writing of such a book. Posselt had felt that not enough was known to warrant publication. Howman went on to say that the material had come from his father's notes and from only a single district.

[91] NC Makoni, AR 1939, S 235/517.

case.[92] Books such as those by Holleman,[93] Storry,[94] Goldin and Gelfand,[95] and Child[96] all contributed to an unofficial codification; indeed, Storry and Goldin and Gelfand may still be found on the shelves of at least one Community Court.[97]

The connection between Natal's administration and the Southern Rhodesian NAD was strong.[98] But interestingly, in the debates concerning the Native Law and Courts bill in the Southern Rhodesian Legislative Assembly, reference is made more frequently to the policies of East Africa. More often than not, these references were cautioning against the adoption of indirect rule, as preached and practised by Sir Donald Cameron, the Governor of Tanganyika from 1925 to 1931.

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[92] Mittlebeeler, African Custom and Western Law, p.27.

[93] J.F. Holleman, Shona Customary Law, London: 1952.

[94] J.G. Storry, Customary Law in Practice, Cape Town:1979.

[95] Bennie Goldin and Michael Gelfand, African Law and Custom in Rhodesia, Cape Town: 1975.

[96] Harold F. Child, The History and Extent of Recognition of Tribal Law in Rhodesia, Salisbury: 1976.

[97] Although I was told that these books were no longer used and simply a legacy of the colonial era, Storry and Goldin and Gelfand remained shelved alongside some South African law books at Guruve Community Court. Interview with Benson Kadzinga, Presiding Officer, Guruve Community Court, July 29, 1991

[98] See p.72 above.

However, it is clear that the simultaneous establishment of Native Councils and Native Courts was perceived as indirect rule. The NC Mazoe wrote in 1936,

> Will any system of indirect rule, and legal control of their own affairs and organisations, assist in bringing them from this slough of apathy? I trust it may but fear the struggle ... will be a prolonged one.[99]

Cameron had argued that the establishment of the Native Courts in Tanganyika was a means of regulating the Native Authorities:

> Native Courts are constituted not only to uphold the authority of the Native Administrations, but also in order that the government may have ready means of ascertaining and testing the manner and measure in which those authorities exercise discipline over their people.[100]

The courts were established as the legitimate forum for discipline. We can also hear in Cameron's words resonances of Shepstone.

The Legislation

We shall now consider the legislation relevant to the establishment of Native Courts in five countries influential upon Southern Rhodesia's policy-making, South

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[99] NC Mazoe, AR 1936, S 235/515.

[100] Sir Donald Cameron, My Tanganyika Service and Some Nigeria, [original London:1939] Second edition, Washington n.d., p.174.

Africa, Tanganyika, Kenya, Northern Rhodesia and Nyasaland, as well as the legislation in Southern Rhodesia itself.[101] The six different countries' legislation regarding African courts may be put into three groupings. The first consists of the South African Native Administration Act (1927). The second comprises the East and Central African ordinances, and the third the Southern Rhodesian Native Law and Courts Act (1937).

I have briefly sketched above the development of policy in South Africa leading to the establishment of African courts on a country-wide basis. The Native Administration Act (1927) regularised an extremely uneven situation. Chiefs and headmen, with the authority of the Minister of Native Affairs, were allowed to hear civil cases "arising out of Native custom" involving only Africans within their jurisdiction. Likewise, chiefs and headmen could be granted the authority to hear cases involving common-law crimes.[102]

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[101] Except where specifically stated the material in this section is derived from the Acts themselves. They are: South Africa, Native Administration Act (1927); Tanganyika, Native Courts Ordinance (1929); Kenya, Native Tribunals Ordinance (1930); Nyasaland, Native Authority Ordinance (1933); Northern Rhodesia, Native Authority Ordinance (1936), Native Courts Ordinance (1936); Southern Rhodesia, Native Law and Courts Act (1937).

[102] Bennet, Customary Law, p.48.

The chiefs' and headmen's courts were directly supervised by the Native Commissioners who had the authority, upon appeal, to "confirm, alter or set aside" any judgements made in those courts. A Native Appeal Court was established to hear appeals from the Native Commissioners' courts. These were to be constituted as follows: a president drawn from the public service and two other members "selected from magistrates, Native commissioners or other qualified persons." These courts also had the option of co-opting African advisors.

The only point at which the African judicial structure was formally linked with the judicial structure pertaining to the other citizens of South Africa was when an appeal against the Native Appeal Court was made. This was laid with the Appellate Division of the Supreme Court. Such an appeal was only possible when the Minister considered that an important point of law was involved.

In the 1910s a Native Court system was developed throughout the East Africa Protectorate and Uganda under similar patterns. This was a reversal of the previous policy to gradually replace the African courts already operating with protectorate courts that had no "traditional" authority. In 1912, it was policy in the East Africa Protectorate "that 'only such councils of

elders as are constituted under and in accordance with native laws and customs and are recognized by the Governor can exercise jurisdiction over the members of the native community.'"[103]

The historical background to the ordinances promulgated in East and Central Africa between 1929 and 1936 is important, especially for comparative purposes with Southern Rhodesia. Initially, for reasons of administrative and economic expediency, the colonial regimes in East and Central Africa (including Southern Rhodesia) were willing to leave the existing African courts intact. The European presence without doubt affected the power relations within which these courts worked. In the East Africa Protectorate recognition of a limited number of chiefs was given in 1897; five years later the Native Courts Ordinance was amended to recognize all chiefs. In 1907 a further Native Courts Ordinance was enacted to consolidated the ordinances previously promulgated.[104] In Uganda the constitutional history was very different. African courts continued to operate there by virtue of treaty agreements. The German

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[103] A. Phillips, Report on Native Tribunals (1945) p.14, cited by Morris and Read, Indirect Rule and the Search for Justice, p.141.

[104] Morris and Read, Indirect Rule and the Search for Justice, p.141.

administration in Tanganyika adopted one policy for the coastal regions and another for the interlacustrine region. On the coast, government-appointed *akidas* administered judicial proceedings between Africans, while in the hinterland "the indigenous courts were recognized and operated under the supervision of the German administrative officers."[105] Under the British mandate, an ordinance similar to that in effect in Kenya was adopted.[106]

When Sir Donald Cameron arrived in Tanganyika from Nigeria he set about introducing the policy of Indirect Rule to East Africa. Central to this policy was the establishment of Native Courts. In Cameron's view these had to be under the control of the Native Administration. Critical of the Tanganyika Native Courts Ordinance (1920), he wrote, "'native courts [were] regarded as part of the judicial machinery of the Territory instead of as an integral part of native administration.'"[107] The Native Courts were not simply an integral part of the Indirect Rule system that subsequently was adopted

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[105] Ibid., pp.142-43.

[106] Ibid.

[107] Cameron to Secretary of State, Confidential Dispatch of 17th Feb. 1927, C.O. 691/88/18087 and D.S.A. 11126, cited in Morris and Read, Indirect Rule, p.145.

throughout the British colonies East and Central Africa, they were essential. The courts gave the Native Authority, or chief, the power to enforce his authority and maintain his "traditional prestige".[108] It was essential, also, that the provincial administration have exclusive responsibility for these courts to ensure that the native authorities developed along the correct lines.[109] Developing the Native Authority meant ensuring that the court was on a secure footing as well as supervising the implementation of, and thereby shaping, "customary" law. The key alteration brought about by the legislation passed north of the Zambezi following the Tanganyikan example was the transference of exclusive responsibility for the Native Courts to the Native administrations in each colony.

In Southern Rhodesia the history of the courts was exceptional. Prior to the 1896-7 Rebellion the African courts were ultimately under judicial control. Following 1898 these courts had no status in law, but *de facto* were under the Native Commissioners in regions of greater government scrutiny and free in the remoter regions. The Law Department still attempted to exercise control over

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[108] Ibid., p.143.

[109] Ibid.

African courts, but the NAD achieved exclusive responsibility for the Native Courts by virtue of the Native Law and Courts Act (1937).

Tanganyika was the first country in East and Central Africa to put Native Courts on a new constitutional footing when the Native Courts Ordinance was passed in 1929 as part of the overall framework of indirect rule as envisioned by Cameron. The extent to which the policy of indirect rule was applied throughout Tanganyika has recently been questioned, and it has been argued that "local circumstances very much affected" its implementation.[110] However, the Native Courts Ordinance (1929) served as a model for the Kenyan Native Tribunals Ordinance (NTO) which followed a year later, Nyasaland's Native Courts Ordinance (1933) and, to a slightly lesser extent, the Northern Rhodesia Native Courts Ordinance (1936). The Tanganyika legislation also had a clear influence on Southern Rhodesia's Native Law and Courts Act (1937), despite Southern Rhodesia's ostensible rejection of Indirect Rule.

The Native Tribunals Ordinance reproduced much of its Tanganyikan counterpart, 38 of its 43 sections are

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[110] Justin Willis, "The administration of Bonde, 1920-60: a study of the implementation of indirect rule in Tanganyika", African Affairs, vol. 92, no. 366, p.67.

substantially the same and many are identical. However, the NTO made several explicit provisions for Muslims in the Protectorate of Kenya. Likewise, the ordinances promulgated in Nyasaland and Northern Rhodesia followed the Tanganyikan model very closely; many clauses were lifted from it directly and were adapted only to accommodate local variations in official titles. In Southern Rhodesia, the Native Law and Courts Act reflected the influence of certain clauses in the Tanganyikan model, but adopted none of them directly.

The East African model constituted courts within the indirect rule framework, the legal wording in Tanganyika being:

> in accordance with the native law or custom of the area in which the court is to have jurisdiction and a native court purporting to be so constituted shall be deemed to be lawfully constituted in accordance with this Ordinance unless the contrary be shown....[111]

Furthermore, the Provincial Commissioners retained the power to "prescribe the constitution of any native court".[112] But the governments in Nyasaland and Northern Rhodesia pursued greater control over the constitution of Native Courts and the legislation reflected this by

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[111] Native Courts Ordinance (1929), sec. 4. The Native Tribunals Ordinance (1930) sec.4 reads precisely the same, substituting "tribunal" for "court".

[112] Ibid.

removing from the relevant clause the words, "...and a native court purporting to be so constituted...".[113] As Morris and Read put it,

> ...despite the emphasis, in the philosophy of indirect rule, upon the traditional nature of such bodies, their authority, in fact, rested upon statute, there being in each of the three [Kenya, Tanganyika and Uganda] territories a Native Authority Ordinance.[114]

Still further regulation and control in the establishment of Native Courts was exercised in Southern Rhodesia where the principle of indirect rule did not underpin the legislation. The Act could not have put it more simply: a "'native court' means a native court established under this Act".[115] It later came to light that unofficial courts persisted, and indeed in the 1960s outnumbered the official ones.[116] Interestingly, the East and Central African Native Courts legislation all included clauses making it an offence for anyone to exercise judicial powers without legal authority.

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[113] See Sec. 4 of the Native Courts Ordinances of Nyasaland (1933) and Northern Rhodesia 1936).

[114] Morris and Read, Indirect Rule and the Search for Justice, p.21.

[115] Sec.3, Native Law and Courts Act (1937).

[116] Report of the Commission appointed to Inquire into and Report on administrative and Judicial Functions in the Native Affairs and District Courts Departments, Salisbury: 1961, also known as the Robinson Report, para. 179, p. 56.

Neither South Africa nor Southern Rhodesia included such provisions in their respective legislation in this period.

The colonial regimes in Tanganyika and Kenya clearly believed that judicial authority was associated with an authority-generating process whether the courts were part of the state or not.[117] Thus, the usurpation of judicial authority was a potential threat and the legislation in these territories included a clause to deal with such an eventuality. The clause reads as follows:

> Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted native court, except in accordance with the provisions of any Order of His Majesty in Council or of any Ordinance, or who shall sit as a member of such court without due authority, shall be liable, on conviction before the high Court or before a Subordinate Court of the First Class, to imprisonment of either [i.e. with or without hard labour] description for a period not exceeding twelve months or to a fine not exceeding two thousand shillings, or to both such fine and imprisonment.[118]

Presumably, this was also connected with the political frailty of some Native Authorities.[119]

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[117] This is the primary argument that is made by Andrew Ladley, "Courts and Authority: A Shona Village Court", Ph.D. London: 1985

[118] Sec.26 of both NCO (Tanganyika) and NTO (Kenya).

[119] See Willis, "The administration of Bonde 1920-60" in which he highlights several weaknesses and insecurity in the

The Native Courts in East and Central Africa, as well as South Africa, were empowered to hear both civil and criminal cases. However, there were limitations to their jurisdictions, both territorial and legal. These courts could deal with Muslim marriages and those governed by "native law or custom", but they could not hear cases in connection with Christian and civil marriages,[120] "except where both parties are of the same religion and the claim is one for dowry only".[121] Nor could these courts hear cases dealing with an offence that allegedly resulted in death, or "which is punishable under any law with death or imprisonment for life".[122] Finally, the courts were excluded from hearing any cases arising from offenses alleged to have been committed in municipalities or townships.[123]

In Southern Rhodesia limited civil jurisdiction was granted to the Native Courts; only such cases as could be

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implementation of indirect rule in Tanganyika.

[120] In South Africa this prohibition extended to "any question of nullity, divorce or separation arising out of a marriage". Sec. 12 (1) (b), Native Administration Act (1927).

[121] Ibid., sec.12 (b).

[122] Ibid. sec. 12 (a).

[123] See sec.12 (c) of both the Native Courts Ordinance (Tanganyika) and the Native Tribunals Ordinance (Kenya) for the slight variations.

determined native law and custom.[124] The exclusion of criminal jurisdiction represented the most significant departure by Southern Rhodesia's policy-makers from the trends in the territories surrounding them. As Charles Bullock, CNC, explained,

> It is thought that circumstances and history are responsible for the fact that the majority of our Chiefs are not at present fitted to exercise such powers as have been granted both to the north and South of our Colony. Criminal jurisdiction and divorce have therefore been excluded.[125]

However, the resistance to conferring criminal jurisdiction upon the Native Courts came from the legislators, not the Native Commissioners who, in 1935, considered the jurisdiction should be extended to include criminal cases.[126] The jurisdiction of Native Courts, then, extended only to

> the hearing, trial and determination of all civil actions and suits which fulfil the following conditions:-
>
> (a) all the parties must be natives; and
>
> (b) the defendant must be ordinarily resident and, at the time of issue of summons, actually residing within the limits of the jurisdiction of the court; and

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[124] Sec.4 (1), NLCA (1937).

[125] CNC, AR 1936, p.10.

[126] Ag. SNA to PM, 8 Oct. 1935, S1561/49. See p.129 above.

> (c) the action or suit must be capable of being decided according to native law and custom.[127]

Furthermore, the Native Law and Courts Act did not proscribe urban Native Courts and indeed many were considered by local native commissioners to be serving an important social purpose, especially in places with numerous migrant workers.[128]

The ordinances in force north of the Zambezi prescribed that the courts administer the native law and custom prevalent in their jurisdiction with the proviso "so far as it is not repugnant to justice or morality or inconsistent with the provisions or any order of the King in Council or with any other law in force in the Territory".[129] But these courts were also required to administer other ordinances and as such implemented both codified "customary" law and colonial statute law. Southern Rhodesia's Native Law and Courts Act included no repugnancy clause, but relied on the relevant clause in

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[127] Sec.7, NLCA (137).

[128] The only study specific to urban African courts is G.L. Chavunduka, A Shona Urban Court, Gwelo:1979. Despite its claims that the Makoni Court in St Mary's Township is unique, native commissioners for Wankie and Gatooma both noted courts operating in the 1950s.

[129] Native Courts Ordinance, Tanganyika (1929) sec.13 (a).

the Order-in-Council of 1898, nor did it provide for the administration of statute law by the Native Courts.

In both East and Central Africa the Native courts were empowered to impose fines and/or imprisonment with or without hard labour for offences "against native law or custom" with the repugnancy clause controlling the jurisdiction.[130] However, only in the Kenyan legislation was it stated that "no native tribunal shall pass a sentence of corporal punishment."[131] In Northern Rhodesia the Native Courts were expressly permitted to order corporal punishment in cases of a criminal nature.[132] In neither Tanganyika nor Nyasaland was there any explicit comment on corporal punishment. Furthermore, the Kenyan Native Tribunals had the power above and beyond that of the Tanganyikan Native Courts to imprison any person who defaulted on the payment of fines.[133] The Northern Rhodesian Native Courts had similar powers,[134] but in that colony the Ordinance included much greater detail on the

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[130] Sec.15 of both the NCO (Tanganyika) and the NTO (Kenya).

[131] NTO (Kenya) sec.15.

[132] Sec.14 (1) (c), Native Courts Ordinance (1936), Northern Rhodesia.

[133] NTO (Kenya) sec.17.

[134] Sec.14 (4), Native Courts Ordinance (1936), Northern Rhodesia.

application of this power. No such powers were granted in Southern Rhodesia.

In both Tanganyika and Kenya the courts were supervised by the Provincial Commissioners in two ways. First, the courts were required to submit, on a regular basis, reports of all cases heard.[135] Secondly, these officers had the right to sit as advisers in the courts or tribunals of his district. The Provincial Commissioners also had the authority to delegate this task to district officers.[136] Furthermore, revisionary powers granted to Provincial Commissioners and District Officers allowed them to alter decisions made in the Native courts either on application of "any person concerned" or simply "of his own motion".[137] The relevant clauses allowed these officers to revise the proceedings, both criminal and civil, of the Native courts: to "make such order or pass such sentence" as was allowed to the Native court; order retrials before the same court or "before any other native court of competent jurisdiction"; and to "transfer any cause or matter either before trial or at any stage of the proceedings,

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[135] Sec 23 of both NCO (Tanganyika) and NTO (Kenya).

[136] Sec.25 of both NCO (Tanganyika) and NTO (Kenya).

[137] Sec.32 NCO (Tanganyika); Sec.30 NTO (Kenya).

whether before or after sentence passed or judgment given to any subordinate court of the first or second class."[138] Thus a great deal of direct intervention was permitted in the judicial aspect of indirect rule. Indeed, the clause authorizing Provincial Commissioners to sit as advisers in Native courts permitted much more direct interference than did the South African legislation.[139] In Southern Rhodesia the Native Commissioners were given powers of revision and intervention identical to those of Tanganyika; however, these were adapted to the limited civil jurisdiction enjoyed by the Native Courts.[140]

North of the Zambezi, colonial authorities maintained a tighter rein on the proceedings and practices within the Native Courts themselves. Although similar powers were granted in Southern Rhodesia,[141] "Little [was] done to formalize court procedure and there [were] no proper records kept."[142] One example of this was that chiefs were allowed to keep 'customary' tokens

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[138] Ibid.

[139] See Sec.12 of the Native Affairs Administration Act, 1927 (South Africa).

[140] Sec.10, NLCA (1937).

[141] Sec.11, NLCA (1937).

[142] Palley, Constitutional History and Law in Southern Rhodesia, 1888-1965, p.538.

paid to the court, unlike in other British African Territories.[143]

Another important difference between the powers of the Southern Rhodesian Native Courts and those of its neighbours was the power of a chief to enforce his decisions. In Southern Rhodesia this was non-existent. Indeed, if the chief's counsellors disagreed openly with his judgment he was required to report this case to the Native Commissioner.[144] Chiefs had "no powers to punish for contempt of court."[145] This was later noted as a serious deficiency of the Native Law and Courts Act.[146] In East and Central Africa the respective ordinances supplied the penalty for contempt.[147] In Southern Rhodesia any failure by a defendant or witness to attend a hearing was treated as an offence and as such entered the preserve of the Native Commissioner's court.[148]

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[143] Ibid., p.539.

[144] Sec.6 (4), NLCA.

[145] Palley, Constitutional History and Law, p.539.

[146] See the Robinson Report.

[147] Sec.19, Native Courts Ordinance (1929), Tanganyika.

[148] Sec.9 (2), NLCA.

The Appeal Structure

In Tanganyika and Kenya appeals from the Native courts were made to a further court presided over by an African appointed by the Provincial Commissioner and designated as an appeal court. In districts where such a court did not exist, the appeal lay "from the Native court of first instance to a District Officer."[149] In Kenya, the Native Tribunals Ordinance also provided for the Provincial Commissioner of the Coast Province to "appoint any liwali or mudir in the Protectorate to be a court of appeal".[150]

Appeals from the Native courts of appeal lay to the District Officer or, in Kenya, to the *liwali* or *mudir*. The next rung took the appeal to the Provincial Commissioner. Finally, in Tanganyika an appeal could be made to the Governor, in Kenya the appellant could "apply to the Provincial Commissioner to state a case for the consideration of the Supreme Court".[151] This distinction between the Kenyan and Tanganyikan structure is significant in constitutional terms in that African court cases could, in theory, once reaching a required level in the appellate structure be transferred to the regular

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[149] Sec. 33 of both NCO (Tanganyika) and NTO (Kenya).

[150] Sec. 33 (c) NTO (Kenya).

[151] All from Sec. 34 of both the NCO (Tanganyika) and the NTO (Kenya), direct quotation from Sec 34 (4) NTO.

judiciary of the colonial state. The Kenyan variation was followed in both Nyasaland and Northern Rhodesia.

In Southern Rhodesia the appeal route led more quickly into courts presided over by whites. An appeal from a chief's court lay with the Native Commissioner's court where, in fact, it was treated as a re-trial.[152] This was similar to the procedure in South Africa. From there the appeal would go to the Court of Appeal for Native Civil Cases, and beyond that to the High Court.[153]

Courts and the formulation of "customary" law

In Southern Rhodesia, where "native law and custom" was never officially codified, the regulation of "customary" law was exercised by the appeal structure. This allowed for local variation but ensured that no value going too much against the interest of the colonial regime would be supported. The relationships between the courts bear further examination for this. The pedagogical role that the Native Commissioners' courts played in relation to the chiefs' courts is demonstrated by the way in which chiefs would follow the lead of the Native Commissioners' decisions.[154] The desire on the

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[152] Sec.11, NLCA (1937).

[153] Sec.21, Native Affairs Act, 1927, Southern Rhodesia.

[154] See Chapter 5 below in which this theme is dealt with in the case study.

part of chiefs to avoid appeals against their decisions compelled them to tailor judicial decisions in accordance with superior authorities. Thus, Native Commissioners' perceptions of what was valid "native law or custom" shaped chiefs decisions. We also know that chiefs and important ('big') people of the community shaped Native Commissioners understanding of what constituted "correct" native custom.[155] It is clear that the interaction was not simple. Native Commissioners did not simply impose an ideal customary law, followed by chiefs and headmen in their own courts. Rather, both levels of court influenced each other. However, on some issues such as commercial debt, discussed in Chapter 5, the current flowed very heavily from the Native Commissioner in the direction of the chief's court.

This interaction did not begin following the promulgation of the Native Law and Courts Act. It began with the occupation of the country in 1890. One case from 1898 concerning an assault upon a woman by her brother resulted in the accused being taken by the Native Commissioner to the Resident Magistrate for trial. The Native Commissioner reported "Makobere [the accused] was returned to me by the R.M. to be tried by Chief Chibi,

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[155] It is interesting to note the number of articles appearing in NADA, especially in its first decade, concerning "customary" law.

under my supervision according to Native Custom and Chibi ordered him to pay one head of cattle to Marudauda [the victim]."[156]

Also, directed by the Southern Rhodesian Order-in-Council to follow "native law so far as that law is not repugnant to natural justice or morality", Native Commissioners were compelled to learn about local customs. Consultations with "an array of 'legal experts', invariably chiefs, headmen and male elders",[157] were sifted inevitably through two filters. The Native Commissioners could first reject any custom they considered contrary to natural justice, and furthermore simply ignore that which they perceived as irrelevant. But it was the "big men" who were informing the Native Commissioners of that which they perceived as important. "Customary" law was not simply "invented", but certainly it was produced or created by men with their own, sometimes contending, agendas.

The simple presence of the Native Commissioner's court in a district shaped chiefly authority, disputing procedure (a discourse) and events. One case which reached the Native Commissioner's court in Lomagundi in 1933 involved a couple married in the Church of England.

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[156] NC Chibi, AR 1898, N 9/1/4.

[157] E. Schmidt, Peasants, Traders and Wives: Shona Women in the History of Zimbabwe: 1870-1939, London:1992, p.107.

The husband disowned his wife and sent her back to her father on several occasions, a common way of stating that the husband no longer wished to be married to his wife. In her testimony Cigareta stated, "He [the husband] said my father was mad to send me back, as he did not want me. He suggested that I bring a suit to Chief Bepura's Court."[158] She instead brought the case to the Native Commissioner's court, by passing Bepura. Another case from the Native Commissioner's court at Sipolilo includes a statement from Chief Matsiwo informing the Native Commissioner of how he would proceed in his own court.[159]

Conclusion

One of the curious elements of the debate within official circles concerning the recognition of courts was the representation of the NLCA as simply acknowledging facts. Why then was the state interested in recognising the courts? On the one hand this could be presented as making no concessions to Africans at all, yet on the other hand the power of Native Commissioners to compel litigants to comply with chiefs' decisions made it beneficial to chiefs. Furthermore, it formally brought

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[158] CR 85/33, 22.10.33, Lomagundi, S306.

[159] CR 1/44, 17.3.44, Sipolilo, S 2033. Unfortunately the advice that he gives is mostly illegible and therefore not worthy of quotation.

chiefs into the state with a status they had not previously enjoyed. The courts gave chiefs (limited) executive powers *within* the state.

The legislation promulgated in Southern Rhodesia ostensibly steered clear of the indirect rule formula adopted by the territories to the north and in East Africa; however, in substance there sometimes was little difference. An aspect of Southern Rhodesia's Native Law and Courts Act (1937) which remains curious is the omission of any clause explicitly making it an offence for unauthorized persons to preside over judicial proceedings. It would be twenty-five years before the usurpation of judicial authority would be considered by those in the Native Affairs Department as a threat to wider authority.

We shall now turn to look at the relationship between chiefs and Native Commissioners, that is the relationship between the individuals who represented the state and those acknowledged by the state to represent African society.

Chapter 3

The Relations between "Traditional" Leaders and Native Commissioners

Introduction

The struggle for control of dispute proceedings in Southern Rhodesia involved the 'big men' of the African communities - the chiefs and headmen - and the Native Commissioners. Because they are the two kinds of office-holders that most influenced each other in our period, it is important to examine their relationship closely. In the first chapter we looked at the larger politics within which the struggle for the control of dispute proceedings was set; now we return to look at that early struggle in greater detail. It is crucial to keep in mind that this chapter is addressing the perception of African and European office-holders "on the ground". Thus, for example, where it is the state that takes over famine management, to the local African the key individual is the local Native Commissioner. He is a representative of the state, but he is also perceived as an individual.

This chapter considers the relations between the native commissioners and chiefs of both Mashonaland and Matabeleland. Although the Native Affairs Department considered Shona and Ndebele chiefs to be different in character, this difference appeared to be based more on the illusory image created by Rhodes at the *indaba* of 1896; the working relations appear to have differed only

slightly, if at all. What is important is that many native commissioners moved between the provinces in their careers and no significant cleavages of policy developed between the two. Local variations were based on local conditions, not ethnicity or provincial jurisdiction. Also, it must not be forgotten that individual native commissioners had their idiosyncrasies, an issue the Native Affairs Department wished to address in the 1930s.[1] The debate within the NAD over uniformity of practice was not restricted to the exercise of judicial authority, but rather was a major theme in the 1930s.

This chapter aims to set out the sources of legitimacy for each of the protagonists as well as the sources of authority they were able to draw upon. The shifting balance of these over time was crucial to the relationship between the "traditional" leaders and Native Commissioners. In later nineteenth-century Mashonaland, African leaders drew their authority from several different sources. In the northern regions in this period, legitimate authority was restricted to a limited number of aspirants to the chiefly position in any given succession dispute. On the mundane level, their positions rested on their ability to keep the peace - by dealing with both internal conflict and external threats. In short, they were political and military leaders. Many were also backed by the larger confederal Mutapa state

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[1] See Chapter 2 above.

centred in present-day northern Zimbabwe and many were affected by the Portuguese *prazo*-holders. The Ndebele state affected those as far north as Guruve with its raiding.[2]

In the 1880s, Beach reminds us, the Shona chiefs still had control of significant gold fields as well as access to much ivory. He points out:

> Their political institutions and territories were small only by comparison with the few super-states of Southern, Central and East Africa. By comparison with most polities of that area many Shona rulers held quite big territories. Most of them owned superb defensive sites.[3]

These chiefly positions were also legitimated by religious ceremony. The spirit mediums played a key role in the accession of a chief.

When, in 1894, the Native Department and the office of Native Commissioner was instituted, the BSA Co. had no clear policy concerning African leadership. In the previous year they had been at war with the Ndebele and following the death of Lobengula in 1893 the Company ensured that no Ndebele paramount succeeded him. The dispersal of political power by supporting "smaller" chiefs at the expense of paramounts was a technique the Native Affairs Department employed up until the late

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[2] D.N. Beach, The Shona and Zimbabwe, 900-1850, Gweru: 1980, p.153.

[3] D.N. Beach, War and Politics in Zimbabwe, 1840-1900, Gweru: 1986, p. 29.

1940s as a means both to dilute that power and to gain new loyalties. When all chiefs were ultimately dependent upon the Government for their positions, those who saw their power thus eroded were seldom in a position to halt the shoring-up of others, but instances have been reported. It was only in the 1950s that the Native Affairs Department reversed these techniques and made a policy decision to concentrate power among fewer chiefs in order to give chiefs, as a group, a more forceful voice. This project also included the establishment of Provincial Chiefs' Assemblies in 1951,[4] although it was not until the following decade that the Government sponsored the establishment of a National Chiefs' Council, an issue to be discussed more fully in Chapter 6.

The relations between native commissioners and the "traditional" leaders may be considered in three periods. The first period, running from the quelling of the 1896-7 rebellion to the early 1920s, is characterised by the native commissioners' general disdain for African leaders or elders. The collapse of "tribal authority" often noted in native commissioners' reports of this period was considered a positive step towards the eventual civilisation of Africans through the work of the missionaries and work itself. This apparent collapse was considered to be "opening-up" African society. It was often attributed to the erosion of chiefly power.

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[4] NC Gwanda, AR 1951, S 2827/2/2/1.

Chiefly power was not itself considered an integral part of that structure. It was not until F.W.T. Posselt offered an analysis of African society as a coherent whole in the 1920s that these views began to change in the Native Affairs Department. In this first period chiefly power was being displaced by other agencies.

In the early 1920s, disdain towards the "traditional" leaders, and the relationship that arose from it, was re-examined for a number of reasons. The chiefs and headmen had not simply faded away, as many native commissioners and other Native Department officials had expected, but rather had maintained some measure of authority and indeed independence. Although it would be an overstatement to say that the Native Department regarded chiefs as a force to be reckoned with, it had recognised that the chiefs represented a resource, with an element of authority, that could be exploited. The conflict between the Native Affairs Department and the Southern Rhodesian Missionary Conference in the 1920s, discussed in Chapter 1, required the Department to move towards an alliance with chiefs in order to maintain its exclusive jurisdiction over "Native Affairs". The maintenance of "tribal organisation" was fundamental to the organisation of the NAD. Free movement of Africans beyond the control of chiefs or lineage heads did not make sense to the Department's conception of the governance of Africans, and indeed

officials' understanding of the natural order of things in Africa.

The second period, therefore, runs from the conflict with the SRMC to the late 1950s, when the intensification of the alliance between Native Commissioners and chiefs was a key issue. The late 1950s is marked by the persistent lobbying by NAD officials for the extension of limited jurisdiction to selected chiefs' courts and the passage of a new Native Councils Act (1957) to replace its moribund predecessor. The period as a whole may be characterised by the formalisation of the relationship: a great deal of attention was paid by both chiefs and Native Commissioners to the <u>form</u> of that relationship. This second period in which chiefs were being built up with formal powers may be usefully subdivided into two further periods. The first runs up to the late 1940s and is characterized by the granting of increased formal powers to an increased number of Chiefs. In the sub-period which followed immediately the Chiefs and Headmen hierarchy was more strictly imposed - one might say that it was rationalised - as many Chiefs were demoted to Headmen and chiefly powers granted by the government concentrated in fewer men. Also there was a shift away from formal relationships to greater ideological interchange as the relationships were consolidated. The growing nationalist challenge clearly sharpened the differences between chiefs who leaned towards greater

involvement with the native commissioner and the state, and those who leaned towards involvement in nationalist politics.

The third period, from the late 1950s to the 1970s, saw this attention move to a much more ideological level. The chiefs were consulted in a new way, and in new forums. But those forums were created by the Native Affairs Department, hence the input was controlled.

This chapter will further explore important themes relating to the chief-native commissioner relationship that cannot be so easily periodized. Consideration is given to the relationship of space and authority regarding the chiefs. Secondly, one of the pre-colonial duties of chiefs was to be suppliers of relief in famine years. As the state took over this role in various forms throughout the twentieth century, this appears to have had a serious impact on the status of chiefs. John Iliffe has raised the issue as one for further study,[5] and here I wish to draw attention to it.

The available evidence, particularly for the early years of colonial rule, is unfortunately largely provided by colonial administrators, especially the native commissioners. This does not discredit it, but it does require careful consideration and interpretation. For example, the native commissioners' comments regarding chiefly power reflects their assessment of chiefs as

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[5] John Iliffe, Famine in Zimbabwe, 1890-1960, Gweru: 1990.

effective administrative tools, rather than any hard evidence as to the actual power of chiefs. Those perceptions are indicative of the relationship between chiefs and native commissioners. It is that relationship, and some of the factors affecting it, that this chapter is addressing.

Displacing the Chiefs

African society was in upheaval after the conquest. In some areas the old order had collapsed, in others it was under challenge while in some it persisted. The impact of conquest was extremely uneven and in 1900 the Acting NC Lomagundi, C.L.D. Monro, wrote:

> The Native Laws and customs have more or less been ignored since the white men came to the country, but still in some outlying Districts one hears of cases in which some Chiefs exercise their authority by imposing fines on culprits for various offenses, and in cases of murder ordering the murderers to be killed.[6]

Beach has suggested that the wholesale re-organisation of Shona political units which took place as a result of the BSA Co. conquest included Africans acting as independent agents exploiting a given situation for their maximum gain. In one long-established dynasty, in the north-east a southern branch "took advantage of the onset of Rhodesian rule and the geographical barriers

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[6] Acting NC Lomagundi, AR 1899-1900, N 9/1/6.

[i.e. the Umvukwe Range] to found the independent Chiweshe *nzou* dynasty."[7]

From the beginning, native commissioners were aware that their presence had an important effect upon the chiefs' position within the new state. In 1901 Alfred Drew, NC Victoria, and later an outspoken critic of the Native Affairs Department,[8] included in his report for Gutu District, for which he was also temporarily responsible,

> When the present [Chief] Gutu was appointed Chief in 1895 he would have been overcome by the other sections of the tribe if the Government had not supported him. The other sections were so much against him.[9]

The dispersal of authority amongst the chiefs had contradictory effects depending upon the standing of the chief. In 1898 Drew noted in Victoria District that the pre-colonial political hierarchy had been considerably compressed by the colonial overlords. Paramount chiefs were reduced to a status virtually equal to that of "small chiefs". When those "small chiefs" received "considerable support" from the government, their authority was nearly equal to that of the unsupported paramount chiefs. Indeed, it appears that Native Department officials further eroded the status of the

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[7] Beach, The Shona and Zimbabwe, pp.146-47.

[8] A. Drew, Articles on Native Affairs (2 vols.), [Salisbury?: c.1920-25].

[9] Gutu, AR, 1900-01, N9/1/7.

paramount chiefs through exploiting "to a great extent...their Sub-Chiefs."[10]

It was also in 1898 that Hulley, the NC Umtali until 1918, remarked upon an entirely different element undermining the chiefs' authority. The payment of Government subsidies, he wrote,

> has the tendency to deminish [*sic*] the power of the chief. The natives saying that now he is supported by the company there is no need for them to supply him with food etc. That now the Native Commissioner is applied to redress there [sic] grievances and the chief is a mere nonentity.[11]

The changing sources of status and wealth had a considerable impact upon the legitimacy and authority of chiefs. This report suggests that for many Africans tribute-labour had lost its meaning or context as part of the 'social contract' of exchanging labour for famine relief. The presence and the activities of the colonisers had already begun to distort the role of the chief towards the people who paid tribute to him in one form or another in Umtali, a town of very early settlement.

This report also provides us with further clues to the erosion of chiefly authority. In pre-colonial times it was a duty of African leaders to organise famine management. This was achieved largely by levying a

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[10] NC Victoria, AR 1897-98, N9/1/4.

[11] NC Umtali, AR 1897-98, N9/1/4.

tribute in grain or labour on the fields to ensure an extra store of grain that could be used in drought or famine years. The loss of authority to levy that tribute resulted in the loss of the ability to supply a scarce resource in time of need. The failure to fulfil traditional duties consequently led to the loss of legitimacy and the breakdown of the 'social contract'.

In 1910 the Native Commissioners were officially granted magisterial powers by virtue of the Native Regulations published under Proclamation 55.[12] This assigned to Native Commissioners still more of the rights and duties of pre-colonial leaders, and indeed the use of a chief's court was considered a form of tribute. The new scheme by no means displaced the chiefs; but it did clearly present the Native Commissioner as an alternative to the chief. The CNC Mashonaland saw the displacement as a long-term process that would come about as Africans came to prefer British-style justice to Shona justice. Commenting upon the newly acquired powers, he wrote:

> For natives to understand our idea of justice, it is necessary for the judicial officer to be in entire sympathy with them, and to understand their train of thought. Such knowledge can only be acquired by long intercourse with them.
>
> To the native mind, the only person who can give him justice is his chief, for justice with him is a personal thing. Under the old regime it was not in his power to question his chief's decisions, it was the chief's personal opinion he asked for. The Native Commissioner

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[12] CNC Mashonaland, AR 1910, N9/1/13.

> is now the person who supplies the blank left through the taking away of the Chief's power, consequent on the removal of the tribal system.[13]

Although the CNC Mashonaland also suggested in 1910 that the issue of granting chiefs judicial powers be "reconsidered", this appears to have been in order to give the Native Affairs Department time to develop policy and programmes that would "develop" African life. He wrote:

> We are gradually breaking down their clan system and with it goes their religion and the restraint of the people; but it must be admitted, I think, that we have not given them any adequate substitute. The tribal system with all its faults was the most potent factor in controlling all human interests, and was a deterent [*sic*] to all crime, and by it alone was family life rendered inviolate.
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> As a consequence of the removal of the old system, the power of the Chiefs is waning and the women both married and unmarried are becoming loser [*sic*] in their morals....[14]

One Native Commissioner, T.B. Hulley, attributed the "gradual decay of the tribal system" to the "spread of education, the facilities for movement from one part of the country to another and the feeling of security the natives possess under a settled European Government".[15] Civilization, in the eyes of many NAD officials, was slowly but surely overcoming barbarism. The chiefs were

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[13] Ibid.

[14] Ibid.

[15] NC Umtali, AR 1910, N9/1/13.

seen as part of barbarism. However, they also perceived the chiefs as the only source of authority that could prevent African life collapsing into anarchy. At this time the Native Department tentatively supported "barbarism" over anarchy.

Around 1910 the Native Commissioners had low expectations of the chiefs in their districts. Indeed, their reports sound as though they were not in very close contact with the chiefs at this time. The NC Chibi, Peter Forrestall, commented,

> Chiefs have performed their work fairly satisfactorily, especially if there is taken into consideration the small amount of authority the Makalaka chief has over his people, and the fear of being bewitched by people he has reported to the Native Commissioner.[16]

E.G. Howman, a Native Commissioner who left a personal mark on the Department, commented in a much more self-critical tone:

> It cannot be said that the Chiefs carry out their duties properly. It is not surprising that this is so, considering that for nearly 2 decades it has been the one endeavour to do away with their power, they cannot be expected to regain their old power and acquire the art of ruling in a few short years.[17]

Over the next decade such comments appeared regularly in the district annual reports. Different Native Commissioners emphasized slightly different

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[16] NC Chibi, AR 1910, N9/1/13.

[17] Acting NC Victoria, AR 1910, N9/1/13.

aspects of their relationships with the chiefs, but the tenor of the reports on chiefs was that their power was in decline and, in any case, it was not worth all that much. In 1915 the NC Hartley, L.C. Meredith, stated that the "Chiefs and Headmen have been fairly satisfactory since I have given them support in the management of their people,"[18] while another remarked that the "average native...prefers...to seek redress if such is needed from the representatives of the Government."[19] But in many areas, the Native Department was only too willing to marginalise the chiefs' influence.

While it is difficult to evaluate the general relationship between Native Commissioners and chiefs from this one-sided evidence, it does appear that it was usually less close than the Native Commissioners cared to admit to their superiors. The exaggeration of the demise of the chiefs, as evidenced in the NCs' Annual District Reports, suggests that the Native Commissioners injected a large dose of wishful thinking into their reports. In 1917 the Superintendent of Natives (SN), Salisbury, and two other Native Commissioners made reports that further suggest the relationships were dependent upon the personalities involved. The SN Salisbury, Taberer, wrote:

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[18] NC Hartley, AR 1915, N9/1/18.

[19] Acting NC Mazoe, AR 1915, N9/1/18.

> In the more remote districts they [e.g. chiefs and headmen] still hold a certain amount of power and authority over their tribes, but in other districts, more in touch with civilization, they are losing control of their following and individualism is creeping in.[20]

From the northerly district of Darwin it was reported that "In the majority of cases their power has vanished."[21] Meanwhile the NC Lomagundi revealed a much more sophisticated understanding of the existing relationship between the chief and Native Commissioner and the possibilities it held for the administration of African affairs in Southern Rhodesia:

> The new Dandawa has done excellent work. He is a power in the [Zambezi] Valley and in the absence of an Official at Urungwe his activity and influence has been of the greatest value. The new Nematambo commands the respect of his tribe, and promises to be a useful Chief.[22]

This clearly displays that the criterion by which native commissioners evaluated the "power" of chiefs was their utility - for whatever reason - to the Native Department itself and not the chiefs' ability to exert their own authority over their "followers".

Roger Howman, later a Native Commissioner and researcher with the Native Affairs Department, has recently supported the view that the relationships were highly individual and lacked policy directives. "It was

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[20] SN Salisbury, AR 1917, N9/1/20.

[21] B.S. Terry, Acting NC Darwin, AR 1917, N9/1/20.

[22] NC Lomagundi, AR 1917, N9/1/20.

only in the 1940s that real kinds of principles of administration appeared. Each NC [prior to this] had his own particular method."[23] But Howman also tells us that the chiefs were actively involved in shaping the relationships between themselves and the native commissioners:

> The first thing a chief had to do when a new man [NC] came was to go and meet and talk to him and weigh him up - and they're pretty good psychologists.[24]

The issue of controlling the African population, and the related question of chiefs' ability to control "their followers" was a persistent problem for the native commissioners. As early as 1913 native commissioners displayed an understanding that they were in some way dependent upon the chiefs. One Native Commissioner stationed in Matabeleland wrote,

> Few of the chiefs or head-men exercise any control over the natives under them. They are, however, necessary as intermediaries between the Government and people.[25]

In 1916, F.W.T. Posselt, the Acting NC, Wankie, elaborated upon this: "There is an increasing tendency to break away from tribal control ....rendering efficient control more difficult."[26] While this was the attitude of

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[23] Roger Howman, ORAL/HO3, p.6.

[24] Ibid., p. 48.

[25] NC Belingwe, AR 1913, N9/1/16.

[26] Acting NC Wankie, AR 1916, N9/1/19.

the Native Commissioners in Matabeleland it must also be kept in mind that the prevailing attitude in the Native Affairs Department was that "the Mashona Chiefs never had the power over their people that the Matabele Chiefs had over theirs, so they are not quite as useful as the latter are."[27] In 1913 E.G. Howman, then the NC Hartley, commented that most of the chiefs in that district "have had the lesson that they are unfit to govern so impressed upon them, that all attempts to reach their people through them have had to be given up."[28]

Only in 1918 was the Native Department able to define a role for, and direct chiefs within the Department. In district annual reports for 1918 and 1919, the participation of chiefs and headmen in the collection of taxes was often noted.[29] The involvement of chiefs in this task appears to have built up the possibility of a long-term working relationship between the "traditional" leaders and the native commissioners. However, it was another ten years before the relationships were formalised in law.

Over this first period it seems that a number of factors may have acted as catalysts in what was widely perceived as the decline of chiefly control. First was

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[27] SN Victoria, AR 1914, N9/1/17.

[28] NC Hartley, AR 1913, N9/1/16.

[29] see District Annual Reports, 1918, N9/1/21 and 1919, N9/1/22.

the increasing involvement of younger men and women in migrant labour systems. Secondly, the chiefs' "sovereignty" was brought into question by the very presence of the Native Commissioner and the opportunity of appealing to him in civil cases, which was being taken by more and more Africans. Thirdly, there was the loss of control of land. Fourthly, the famine in 1916 raised more acutely than ever the question of who best could mobilise emergency food supplies. Fifthly, the missions appear to have been disruptive of the old order; and sixthly, native commissioners manipulated the institution of chieftainship in various ways, resulting in confusion and general erosion of legitimacy and authority.

Each of these factors affected the relationship between chief and native commissioners. The latter had been labour recruiters and tax collectors from the outset. Taxation, of course, was a primary reason for joining the wage-labour market, and Africans were likely to regard native commissioners as providing access to the new domains of the labour centres, largely beyond patriarchal lineage control. Furthermore, the Native Marriage Ordinance (1901) had undermined the control of lineage heads over women. Indeed, the Native Adultery Punishment Ordinance (1916) was a response by the NAD to "lobbying" by the "traditional" leaders to regain some of the lost control. Jeater has argued:

> The 1916 NAPO had been instigated by...rural patriarchs, even though it reflected a European

> concept of adultery. The following year, the 1917 Native Marriages Ordinance appeared to consolidate their legal power in these matters with a law insisting upon the details of 'customary marriage'.[30]

How closely tied the native commissioners and the missionaries were perceived to be is difficult to assess. However, it is clear that the chiefs considered native commissioners to be the most appropriate persons to approach in order to exercise some restraint upon the missions.

A specific area in which chiefly authority was eroded was that of famine relief management. Loss of the ability to be the providers in time of famine led to the erosion of chiefly legitimacy and authority. This role of provider was taken over, progressively, by the state. In 1903 native commissioners played but a minor role in famine relief,[31] but this changed rapidly over the next nineteen years. Iliffe considers the famine of 1922 to be the first in which the state clearly took on the responsibility of famine relief management.[32] But the 1916 famine was, perhaps, the one in which authority was most lacking in rural society. Famines acted, I would

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[30] Diana Jeater, Marriage, Perversion and Power: the construction of moral discourse in Southern Rhodesia, 1890-1930, Oxford: 199, p. 308.

[31] Iliffe, Famine in Zimbabwe, p.31.

[32] Ibid., p. 68.

argue, as crisis points in chiefly power. As such, the 1916 famine is crucial for this study.

The 1916 famine coincided with a period in which chiefs received very little support from European agencies. The authority of chiefs and headmen appears to have been at a low ebb and one of the roles in which the legitimacy of traditional leaders was anchored had been seriously eroded. State intervention in this area was not yet particularly active, but the inability of the chiefs to provide was apparent. Increasing numbers of men went to work on the mines "voluntarily" as well as swelling the number of RNLB recruits in famine years,[33] further undermining the status of chiefs as community providers.

This source of legitimacy was clearly linked to the authority to demand tribute labour to work his fields that would then in turn reap a harvest that could be shared by the community in times of hunger.[34] As the Southern Rhodesian government demanded that the chiefs deliver *chibharo* labour for the mines in the early decades of this century, the legitimate demands that chiefs were able to make on their followers appear to have worn thin, making it increasingly difficult to demand labour on their own fields. The consequent failure to provide in times of need further diminished

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[33] Charles van Onselen, Chibaro, London: 1976, p.109.

[34] M.F.C. Bourdillon, The Shona Peoples, Gweru:1976 p.114.

their credibility. When the state took an active role in managing famine relief, individual Africans could see a new individual, the Native Commissioner, providing where the chief was failing.

Lan offers an important analysis of the matrix of land, production and chiefly legitimacy. He writes:

> The cycle of exchange which had for so long bound chief, ancestors and living men together in an unequal but flexible relationship finally broke apart. In the past, certain days of each month had been set aside for the followers of the chief to carry out agricultural tasks on his fields. This labour was given in return for access to land, the inalienable possession of the chief's ancestors. The grain that resulted from this labour was returned to those who produced it either directly, in times of famine, or indirectly in the form of beer contributed by the chief for consumption during the annual rituals at which the royal ancestors were requested to provide the rain. Now three separate cycles emerged. In the first the state exchanged cash with the chiefs for loyalty. In the second the chief's male followers, no longer able to rely on the royal granaries or on trade to support them in time of need, offered their labour power to the market in exchange for wages. And in the third exchange contributions of grain for the annual rain-bringing ceremonies were made, in Dande at least, by the heads of individual households.[35]

Although Lan may be criticised for presenting an oversimplified picture, here his analysis is valuable. However, he overlooks the role of the state in famine management, especially from 1916 onwards. As it had been the chiefs' obligation to distribute famine relief, the

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[35] David Lan, Guns and Rain, Harare: 1985, pp.137-38.

state in assuming this role could have no other effect but to weaken the chiefs' legitimacy and deepen a developing cleavage between the average rural African and the chiefs who were claiming a role of authority.

Other ways in which the Native Commissioners were displacing the chiefs included the division of a "tribe" between several established chiefs,[36] the revival of chieftainship and the demotion of chiefs.[37] Long before the rationalisation of African leaders in the late 1940s, demotion was an option used against recalcitrant chiefs.

For example, in 1917 Chief Makoni was demoted.[38] In 1920 he was deposed. That year the NC Makoni also reported that

> The Chiefs and Headmen have very little power and it is becoming increasingly necessary to deal with natives as individuals and not through Chiefs. The Chiefs are not desirous of retaining their power as it means responsibility and they are not anxious for this.[39]

Presumably the responsibility was accompanied by very little influence and was therefore not very attractive.

The use of legal instruments to impose the formal hierarchy that began around 1920 may also been seen as an early step to bolster and shape the "traditional" leaders in such a way as to serve the Native Department's needs.

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[36] NC Umtali, AR 1917, N9/1/20.

[37] NC Makoni, AR 1917, N9/1/20.

[38] Ibid.

[39] NC Makoni, AR 1920, N9/1/23.

At the end of the decade headmen were prosecuted for the first time under Proclamation 55, 1910, for failure "to carry out the orders of their Chiefs";[40] similarly a chief was "prosecuted and fined for impertinence to the Native Commissioner".[41]

In 1920 the NAD began to address the question of what it actually wished the Chiefs and Headmen to do. The minutes of the Conference of Superintendents of Natives that year read,

> Chiefs and their Powers: Adoption of uniformity of system throughout the territory as regards their duties and powers. Inducements to be given to Chiefs to engage their sons as messengers, if necessary the latter to be paid small salaries by the government and recognised as Special Constables.

This was already in practice in the Victoria Division, and the Conference of the Superintendents of Natives in 1920 resolved, 'That the system adopted some years ago in the Gutu district of paying Chiefs' messengers £1 per annum in respect of their services be extended to other districts as need arises.'[42]

Although the question was being addressed, it is questionable whether the NAD was having much impact in this respect. The following year the Asst. NC Buhera reported that it was increasingly necessary "to station

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[40] NC Selukwe, AR 1919, N9/1/22.

[41] NC Umzingwane, AR 1920, N9/1/23.

[42] Minutes of the Conference of S/Ns held at Salisbury, August 31 & September 1, 1920, p.2, S 138/37.

Native Department Messengers in different parts of the Reserve to take the place of Chiefs and Headmen in enforcing observance of Laws and Regulations."[43]

In many respects, chiefs' powers had been displaced by the intervention of native commissioners, directly or indirectly. But in the early 1920s several factors brought into question whether this led to increased Native Affairs Department efficacy. First, the lack of organic connection the Native Department had with African society undermined the Department's authority and legitimacy both within African society and beyond. It was because of this that the Southern Rhodesian Missionary Conference was able to threaten the Department's dominance in all spheres of Native Affairs.[44] Secondly, the Native Department did not have Africans who could act in an intercalary position, interpreting Departmental policy. Thirdly, the economic depression that hit Southern Rhodesia from 1922 put a squeeze on government finances, including that of the Native Department, and "traditional" leaders offered cheap staff. The Department was short-staffed and simply needed more people to carry out its basic work. The displacement of chiefs primarily to preclude the emergence of powerful Africans did not serve any positive purpose for the Native Department.

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[43] NC Charter, AR 1921, N9/1/24.

[44] See pp.99-101 above.

Another major element that filled the power vacuum in rural areas immediately after the 1896-97 rebellions were the missions. Missionaries exploited the window of opportunity opened when African resistance was broken, and over the next two decades expanded and consolidated their influence. For the missions, it was "a period of great power and influence during which they were, as sour Native administrators remarked, the real rulers of large areas of rural Mashonaland."[45] The missions disrupted the old order through education which schooled children in christianity, offered refuge to young women from patriarchal control and introduced an entirely new form of marriage that undermined some of the most basic forms of social control in African society.

Building the Chiefs

In response to the challenge from the Southern Rhodesian Missionary Conference in the 1920s, the NAD began to form an alliance with the "traditional" leaders, by bolstering the offices of chief and headman. The Native Affairs Act (1927) provided the strongest legislative framework to date, and this was followed by the Native Law and Courts Act and the Native Councils Act of 1937. These legislative measures put the native commissioner-chief relationship on a more formal footing.

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[45] T. O. Ranger, Revolt in Southern Rhodesia, 1896-7, London: 1967, p.338.

Despite these measures, individual relationships determined the real terrain. In order to gain an understanding of what was happening on the ground we must go through the general trends as expressed in native commissioners' reports.

In 1924 Col. Carbutt, the SN Victoria and later CNC, proposed that the Native Affairs Department adopt his own practice of putting new chiefs on probation with a subsidy; should the chief prove himself worthy, he might remain as chief with an increased subsidy. But

> where an Acting Chief or Acting Headman repeatedly fails in his duty, it be competent to entirely withdraw his subsidy, and appoint a native Government representative through whom the duties usually performed by the local Chief are carried out.[46]

This early attempt to manipulate the selection of the office holder, whatever that office might be, appears also to have been the last, if not the only, proposal to separate formally the "government representative" and the "chief": Carbutt suggested that "while allowing the natives to recognise the hereditary man for their own purposes, it would be better for the Government to appoint and pay its own representative."[47] Discussion of "chiefly succession" carried on for years afterwards as officials tried to formulate policy regarding it; and

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[46] Proceedings of the Conference of NCs of Victoria Circle, Oct 9-10, 1924, p.5, S 138/37.

[47] Ibid.

intertwined with succession was the role the chief could perform for the NAD. However, no uniform policy was ever adopted and native commissioners were left to treat local situations individually.

Despite the recognition given to chiefs by the Native Affairs Act, and the fact that many native commissioners were recognising chiefs' courts in anticipation of the NLCA, one native commissioner felt in 1934 that it was still appropriate to note "the fast waning authority of Chiefs and Headmen".[48] The perception of collapsing chiefly authority was uneven throughout the country, but it is not surprising that it was an Assistant Native Commissioner who ventured to report, against the grain of received wisdom in the Native Affairs Department, that "Chiefs and Headmen...appear to retain a surprising degree of authority over their tribesmen."[49]

In anticipation of new legislation in the form of the NLCA and the Native Councils Act (1937), and to address the problem of "waning authority", individual Native Commissioners took action locally. In 1935 the NC Charter, F. Hulley, vowed that "An attempt will be made

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[48] NC Nyamondhlovu, AR 1934, S 235/512. It is only in 1936 that any official displays any awareness that it is a pretty tired thing to claim. The NC Bubi wrote "It is almost cliche to say that their position with their waning authority and the gradual detribalisation of their people becomes yearly more difficult." AR 1936, S 235/515.

[49] Asst. NC Que Que, AR 1934, S 235/512.

this year to revive the Chiefs' interest in civil cases."[50] That same year the NC Mtoko and future CNC, L. Powys-Jones, urged in his annual report that

> every effort should be made to foster the tribal and family control, and I hope that the proposal to grant increased powers to Chiefs will be approved and soon be an accomplished fact.[51]

These increased powers, of course, were conferred by the Native Law and Courts Act two years later. Over a period of twenty years the attitudes of the Native Commissioners regarding chiefly powers had been reversed. No longer were they expressing satisfaction at the perceived inevitable demise of the chiefs; rather, they were moving as quickly as possible to bolster those positions and accord them limited judicial powers. Indeed, there was even the desire to extend these powers to include adjudication over some petty crimes. The objective was to ensure that a "tribal" structure that could be useful to the NAD administration of Africans would be effectively established.

In 1939 the NC Gwanda reported that the chiefs and headmen "welcomed the re-building of tribal control."[52] In other areas the effect of the NLCA was less obvious. From Makoni it was reported that the Native Commissioner

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[50] NC Charter, AR 1935, S 235/514.

[51] NC Mtoko, AR 1935, S 235/514.

[52] NC Gwanda, AR 1939, S 235/517.

was appealed to from the headmen's decisions "almost as a matter of course - to seek some more favourable (to them) decision."[53]

The "re-building" largely manifested itself in the construction of tradition. The assertion of chiefly authority through legal apparatuses such as the Native Affairs Act and the NLCA in a sense made chiefs dependent upon the state for their positions beyond simply that of their appointment. Chiefs' authority now derived from the state. The NC Makoni, F. A. Phayre, reported in 1939 that

> it is just as well a record of native custom exists, for if the present trends of thoughts and happenings continue there will be few happenings in our native life that can be said to be true, and ancient custom.[54]

Since the Native Affairs Department itself never codified African "customary" law in the sense in which this was done in other British colonies, this "record" is presumably the ethnography-cum-administrative textbook by Charles Bullock, The Mashona.[55]

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[53] NC Makoni, AR 1939, S 235/517.

[54] Ibid.

[55] The Native Affairs Department Annual may also be considered a sort of record as this journal constantly published ethnographic writings by members of the Department. It is interesting to note that many of the articles dealt with "customary" law, displaying the belief of most people in the Department that this was a true expression of African custom.

The "re-building" also took more concrete forms, as in the construction of court houses solidly supported by Native Commissioners throughout Southern Rhodesia as a means of improving the chiefs' courts' "dignity, status and effectiveness".[56] Chiefs had been quick to make use of such symbolic power from as early as 1937 to legitimate and consolidate their positions.[57] In Mtoko a chief requested that the Native Commissioner, Phayre, build a court house for him.[58] One eager Native Commissioner declared that the date of the opening of such a building should be recorded as "A red letter day in the history of the Reserve" and explained,

> Such tangible evidence of the importance of the Chief, together with the facilities for modern judicial and administrative functioning of traditional power, should have incalculable influence, and that the Chief and his people appreciate such facilities is beyond doubt and expressed in many ways.[59]

In court procedure not everything was so simple and straightforward. The NC Charter, F. Hulley, displayed an ignorance of the structural weaknesses of the court structure when, in 1938, he reported that

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[56] Federation of African Welfare Societies, Report on an inquiry into Native Courts, Salisbury: 1952; Policy, Inferior Courts, Loc. 21.18.11R, box no. 100827, Records Centre.

[57] CNC, AR 1937, p. 10.

[58] NC Mtoko, AR 1939, S 235/517.

[59] Asst. NC Wedza, AR 1948, S 1563.

> The chiefs, as a whole, have not made any progress in controlling their areas, nor are they capable of deciding any case where there is not agreement between claimant and debtor.[60]

The structure certainly made it easy for a disputant to use the chief's court simply to discover his opponent's arguments before going to a court that was competent to order a settlement. However, some native commissioners did see this weakness and made efforts to counteract it. The NC Victoria, Jackson, referred Africans from the Reserves to the chiefs' courts in order to reinforce the chiefs' authority.[61] In the early 1960s this became a matter of policy both as a means of relieving the Native Commissioners' workload and bolstering the chiefs' status and authority.

The onset of the Second World War placed new demands on the relationship between chief and native commissioner. The conscription of African labour was intensified for the war effort. Such labour was used both for specific projects such as the construction of aerodromes,[62] and as a means of boosting the flagging production of the white agricultural sector.[63]

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[60] NC Charter, AR 1938, S 235/516.

[61] NC Victoria, AR 1938, S 235/516.

[62] NC Hartley, AR 1942, S 1563.

[63] David Johnson, "The Impact of the Second World War on Southern Rhodesia, with Special Reference to African Labour, 1939-48", Ph.D., London: 1989.

In 1942 the NC Hartley made a most interesting report which suggests that some chiefs, at least, were very agile in making use of their state backing to increase both their authority and their legitimacy:

> In my opinion Chiefs have done well in this year of compulsory labour and rising prices. Chivero started badly when called upon to produce labourers for the defence of the Colony (Norton Aerodrome) but was lectured and quickly realised that his big chance had come to regain the functions of a chief. The Chief's position in their tribes has appreciated considerably during the year, and their judicial work (only Mashanyangombe has actually been appointed) has been of considerable assistance to this office. I estimate that they save the services of one full time A.N.C., a fact which might be taken into consideration when fixing their subsidies.[64]

Chiefs were not simply alienated, which would have been contrary to government aims rather the new demands placed on chiefs provided them with an opportunity to assert their authority. Moreover, it appears that control of civil disputing was at once a symbol of that authority, and a legitimating tool. In Gwanda the Native Commissioner reported that the "Native Courts have operated smoothly and tribal control is gradually being reclaimed."[65] In another district, Sebungwe, the chief appeared to make no use of state support to assert himself. His position, we are told, was so bad that he "was deposed chiefly at the request of his people who

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[64] Ibid.

[65] NC Gwanda, AR 1942, S 1563.

felt that the tribe was disintegrating under his mismanagement."[66] In this case the Native Commissioner was clearly in close contact with a group of community leaders who may, as is often the case, have been self-styled.

We may observe further interaction between the Chiefs and the Native Commissioners through the medium of legal appeals for the retrial of cases heard in the Chief's court. In 1938 the NC Marandellas, Morkel, commented upon the "marked tendency" of unsuccessful litigants to simply try again at the Native Commissioner's court. He suggested that a deterrent fee of £2 be charged to prevent excessive appeals.[67] In the main, Native Commissioners were eager to uphold Chiefs' decision, both to maintain the Chiefs' authority and prevent a flood of retrials at the Native Commissioners' courts. As early as 1947 the NC Shangani stated that all the civil cases in that district were first heard by the Chief.[68] It was another fifteen years before this became prevalent practice in Southern Rhodesia.

Ten years after the passing of the NLCA, courts were still being granted formal recognition. The reports for 1947 of two Native Commissioners make clear that the policy of supporting, and indeed extending, Chiefs'

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[66] Danson, NC Sebungwe, AR 1941, S 1563.

[67] NC Marandellas, AR 1938, S 235/516.

[68] NC Shangani, AR 1947, S 1563.

powers was still endorsed by the local administrators.[69] However, the NC Selukwe was frustrated by the elderly incumbent of the Ndema chieftaincy. "His judgements in Civil Cases can only on rare occasions be upheld by this Office and consequently his followers usually bring their cases direct to this Court."[70] It appears that some chiefs, at least, became adept at making use of their relationship with the Native Commissioner and the court he presided over. The NC Belingwe commented upon this in 1952 when he reported, "If a case is presented to a Chief and he is uncertain as to the most popular decision he will send the case on to the Native Commissioner and so avoid trouble himself."[71] Although this particular case may simply reflect a changed attitude on the part of the Native Commissioner who suggests the Chief is taking an active decision, as opposed to his colleagues who had always stated that it was the litigants who made the decision to take the case further, it also indicates that chiefs are using the authority of the NAD to avoid their own authority being undermined by the appeal process. Rather than laying himself open to blame for an unpopular decision, the chief instead put the onus on the Native Commissioner who, unlike the Chiefs, had the authority to enforce his own decisions.

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[69] NC Bubi, AR 1947, S 1563; NC Selukwe, AR 1947, S 1563.

[70] NC Selukwe, AR 1947, S 1563.

[71] NC Belingwe, AR 1952, S 2403/2681

It was also during the War that a renewed emphasis was placed upon "development" in the African sector, in both agriculture and trade. In 1944 the Native Production and Trade Commission, also known as the Godlonton Commission, displayed great interest in the role chiefs could play in promoting development. Significantly, the Commission remarked on the "constant stream of elderly, apathetic and ultra-conservative chiefs who are most unlikely to insist on modern methods of agriculture or...secure obedience to their orders". It asked whether collateral succession could be abolished in favour of primogeniture, in order to ensure the appointment of younger, more "progressive", men who might be trained in preparation for chiefly office. The Commission asked, "would...the restoration of the authority of the chiefs with strictly limited powers of punishment for disobedience...be the best means of ensuring better discipline among...Natives?".[72]

In testimony to the NPTC, a representative of the Southern Rhodesian Native Association linked two issues that would permeate the politics of the chiefs for at least the next forty years: land and chiefly power.

> We have another thing: we want land to be increased because there are many Africans in the Reserves and they are increasing more.

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[72] "Matters referred for the written memorandum by F.W.T. Posselt", Native Production and Trade Commission, vol. 1, p.138, 1944, ZBJ 1/2/3.

> Then the chiefs must have more power to control their own people in the Reserve.[73]

Aaron Jacha, a Bantu Congress representative, asserted that although the chiefs had little influence, "if they could be given power the people would follow them." The commissioners were interested in the specific uses to which such powers could be put. For instance, they asked if this could be power to compel people to farm particular crops in a particular way. The response was disappointingly ambiguous: "Yes, if it is discipline it is only persuading. It must be persuasion."[74] However, this may suggest the tightrope which "traditional" leaders had to walk in order to maintain both authority and legitimacy as well as satisfy the demands of both government and their African "subjects". By 1946 the CNC was reporting that

> Several Native Commissioners comment on progress made in development and other work in native reserves where chiefs are of the progressive type; but the majority of officers report chiefs to be inefficient and of little value, due to old age and lack of education.[75]

In 1945 the NC Umtali, reported "All Chiefs are old but command respect"[76] but two years later the new Native

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[73] Bamingo to the NPTC, vol. III, p. 567, 1944, ZBJ 1/1/1.

[74] Aaron Jacha to the NPTC, vol. III, p. 536, 1944, ZBJ 1/1/1.

[75] CNC, AR 1946, p. 13.

[76] NC Umtali, AR 1945, S 1051.

Commissioner took the view that this "District is cursed with ineffectual chiefs...[though]...generally their followers are not at all allergic to the authority of the Chiefs."[77] Perceptions of chiefs' abilities clearly depended largely on the individual occupying the office of Native Commissioner.

By 1946 the NC Mtoko, S.E. Morris, considered that the Native Law and Courts Act was defunct and that the African social structure had collapsed due to the appointment of too many chiefs and the excessive multiplication of "tribes". This, he concluded, was making the administration of the Reserve still more difficult.[78] In contrast, in 1948 the NC Gwanda felt that the only "traditional" leaders whose authority could be relied upon were the kraalheads.[79] The Asst. NC Wedza also expressed support for devolving power to the kraalheads.[80] Departmental officials were clearly divided, one group favouring increased centralisation of chiefly power; the other favouring decentralisation.

Rationalising and Consolidating the Chiefly structure

Following the Second World War the NAD began rationalising the hierarchical structure for Chiefs and

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[77] NC Umtali, AR 1948, S 1563.

[78] NC Mtoko, AR 1946, S 235/518.

[79] NC Gwelo, AR 1948, S 1563.

[80] Asst. NC Wedza, AR 1948, S 1563.

Headmen that had been created by the Native Affairs Act (1927). Again, the purpose was to increase the chiefs' authority and control over rural Africans. This process of reducing the number of chiefs, often by demoting an individual's status to Headman, was accompanied from 1951 by the creation of a national structure of chiefly consultation. Building upon the feeble foundation of local councils, provincial assemblies were created in 1951 and in 1961 the first national chiefs' council met. Thus a clearer delineation of those chiefs willing to engage with the state, on the state's own terms, and those inclined to disassociate themselves from it, emerged with the establishment of each new structure. However, in this chapter we will deal only with the local impact, Chapter 6 deals with the establishment of the provincial assemblies and the National Chiefs' Council.[81]

The legislative measures enacted between 1927 and 1937 were commented upon in 1946 by the Native Commissioner for Darwin district, who gives us some insight into the perceptions of their impact on the ground.

> During the year four petty chiefs were appointed as headmen under chiefs of more standing. This process of reducing the number of chiefs in the district from 24 will continue until some more cohesive order is achieved out of the present rather chaotic scene. The establishment of Native Councils and Native Courts, now in hand, should stimulate this

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[81] See pp.360-364 below.

> endeavour and restore a measure of authority to the chiefs. The older chiefs, however, are most vehement in decrying the institution of Native Councils in their tribal areas.[82]

The Second World War had clearly disrupted the implementation of policies. Councils and courts were introduced far more slowly than had been hoped. Furthermore, a vast array of social and economic factors was having a significant impact on rural society following the War and it is questionable whether the policy initiatives of the pre-War era had as much relevance after. The NC Darwin now recommended that the number of chieftainships in the district be reduced from 25 to seven.[83] Other districts planned less drastic "rationalisation" but the total number of chiefs was reduced from 328 in 1945[84] to 237 in 1969.[85]

In 1948 the CNC reported that the "petty chieftainships" were being brought under the control of the "important" ones as a means of increasing authority. Furthermore, the option of paying larger subsidies to the Chiefs was given consideration as a way of inducing "younger educated men to accept office where they are

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[82] NC Darwin, AR 1946, S 235/518.

[83] NC Darwin, AR 1948, S 1563.

[84] Southern Rhodesia Central Statistical Office, Official Year Book of Southern Rhodesia, no. 4, 1952, Salisbury: 1952, pp.107-8.

[85] Rhodesian Parliamentary Debates, 1969, vol. 75, col. 1467.

eligible."[86] Clearly the CNC had been disturbed by the report from Gwaai which stated "Mpande a direct decendent [*sic*] of MZILIKAZI has declined to accept the Chieftainship at the present allowance offered."[87] It was simply easier for young men to earn more money in wage employment.

At the end of the 1940s the chiefs' voices did begin to appear in official documentation. In his report for 1949, the CNC stated:

> Though some are ultra-conservative and quite unable to adjust themselves to the tempo of modern progress, the majority of chiefs and headmen have carried out their difficult duties well within the limits imposed by the loss of tribal authority and prestige arising from disruption of tribal controls, and with one or two exceptions have remained steadfastly loyal in the face of increasing pressure put upon them to dissociate themselves from unpopular Government measures. They realise the necessity for works of communal benefit and are anxious to assist, but justifiably complain of the lack of sanctions to enforce their orders, which in consequence they are reluctant to give when they know in many cases that they will be treated with contempt.[88]

In 1950 the CNC declared that the present policy was to "revive the authority of the chiefs":

> With this end in view, I am considering the whole present set up of Native Courts and Native Councils, and during the coming year it

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[86] CNC, AR 1948, p. 23.

[87] Asst. NC Gwaai, AR 1948, S 1563.

[88] CNC, AR 1949, p. 27.

> is hoped to submit proposals to the Government which will increase the judicial authority of Native chiefs in their courts....[89]

In order to place the duties of the chiefs on a more contractual basis and thus strengthen the case for granting them greater judicial powers, the CNC proposed to the Minister of Native Affairs a revised scale of subsidies. "If these are approved all native chiefs and headmen will receive substantial increases and they will be expected to play a greater part in the administration of their areas."[90] However, these were not approved.

By 1951 Native Commissioners had begun to report on the impact of the rationalisation of chieftaincies. In Belingwe the Native Commissioner considered the whole policy a debacle.

> The reorganisation of chieftainships has so far not proved a success and in some cases has produced a new problem. The deposed chiefs have drawn into their shells. The chiefs who have additional followers added take no notice of the fact, the general public will neither recognise their new chief or give up their old one.[91]

However, in Gwanda the chiefs were said to "appreciate their increased and more onerous duties"[92] while the "people themselves" wholly accepted the new situation.

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[89] CNC, AR 1950, p. 6.

[90] Ibid.

[91] NC Belingwe, AR 1952, S 2827/2/2/1.

[92]NC Gwanda, AR 1951, S 2827/2/2/1.

In Charter the Native Commissioner reported simply that "Chiefs and headmen...are exercising their authority to a greater degree."[93]

The Chief Native Commissioner expressed cautious satisfaction with the results of the "re-organization". It had enhanced the chiefs' position "and increased the respect in which they are held in many cases".[94] However, in 1953 as the implementation of the Native Land Husbandry Act (1951) drew closer, the CNC began to see the changes in a new light. The chiefs' assistance in this development scheme was considered crucial. But the selection of young, educated men as chiefs, he wrote,

> often lands the Native Commissioners with the more exasperating problem of coping with the influence of a man who 'is anything but helpful to the Administration', who has the subtle ability to manipulate threads behind the Native Commissioner's back, who easily degenerates into an autocrat with a swollen head.[95]

However, removal was clearly not a simple matter. The Chief referred to in this report (in all probability Chief Mangwende) was not dismissed at this stage. In Darwin, the Native Commissioner regarded "the senior chief Dotito" as an obstacle to development work, but regretted that "sufficient cannot be proved against him to support a recommendation for his removal from

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[93] NC Charter, AR 1952, S 2403/2681.

[94] CNC, AR 1952, p.33.

[95] CNC, AR 1953, p.17.

office."[96] Although chiefs had to exercise political agility to retain influence with "on the one hand their masters and on the other...their vassals", at least one Native Commissioner felt that the subsidies received by Chiefs and Headmen kept their loyalties sufficiently divided as to make the expenditure politically wise.[97]

The NC Lomagundi's report for 1952 demonstrates very clearly how the Native Commissioner and chief could work together.

> Chief Zwimba's section appears to be settling down under his leadership. The well recorded judicial work he does in his Court is probably partly responsible for this. His people are being made to realize that his decisions are not merely words, but are followed up by action if the claim is not satisfied and this is increasing their respect. It was found necessary to call up one of the defeated claimants to the chieftainship in front of the principal men of the section and issue him with a public reproof and a written and verbal warning and order to refrain from attempting violence and stirring up antagonism against the Chief, since when this hopeful aspirant has gone to ground.[98]

At least some native commissioners had realistic expectations of the Chiefs under their jurisdiction and were willing to give them effective support. Many, however, were inclined to credit Chiefs and Headmen with some sort of "natural" authority and legitimacy despite

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[96] NC Darwin, AR 1951, S 2827/2/2/1.

[97] NC Hartley, AR 1951, S 2827/2/2/1.

[98] Hooker, NC Lomagundi, AR 1952, S 2403/2681.

the fact that their positions had been transformed from anything that might reasonably be termed traditional. At least one Chief was keen to emphasize the natural or supernatural aspect of chieftaincy. Chief Willie Samuriwo was asked what led to his accession.

> That I am not able to explain, it is the work of God. Even myself I did not expect to be appointed chief, I was just a commoner and I was preparing to open a farm.[99]

In 1955 the NC Victoria, B.B. Fitzpatrick, advocated a reversal of the rationalisation policy. This was due to action by the "demoted" chiefs as well as to the way in which they were seen by Africans.

> All of those who were 'demoted' from Chief to Headman still act as though they were chiefs and will not submit to the control of the Government-appointed Chiefs of their respective areas. In the eyes of the people of these areas those headmen are accorded the status of chiefs.[100]

The following year the same Native Commissioner recommended a solution to the local power struggle that appears to have been a result of the rationalisation.[101]

The implementation of the Native Land Husbandry Act (NLHA) between 1954 and 1963 brought with it new government demands upon Chiefs. These included demands for labour in the Reserves and the enforcement of NLHA

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[99] Willie Samuriwo (chief), 6 May, 1977, AOH 3, p.22.

[100] NC Victoria, AR 1955, S 2827/2/2/3.

[101] NC Victoria, AR 1956, S 2827/2/2/4.

land divisions. Volunteer labour was not forthcoming and the chiefs were compelled by native commissioners to recruit *chibharo* labour for the agricultural development work.[102] This led at least one Native Commissioner to state in 1955: "Many [chiefs and headmen]...fear that the implementation of the Land Husbandry Act will take away what little power they have left."[103]

The opportunity for extending the Chiefs' and Headmen's authority which the NLHA permitted is conveyed in the Native Commissioners' reports. In 1955, one reported "Four of the headmen were appointed this year to assist Chief Chinamora to exercise more control of the four zones established in Chinamora Reserve under the Native Land Husbandry Act."[104] In Insiza District the chief used the opportunity to regain authority through vetting all applications for land. The Native Commissioner there lamented that the chiefs lacked criminal jurisdiction as, in his judgement, this would have facilitated the implementation of the NLHA.[105] In Lomagundi District all the chiefs were able to produce *chibharo* labour as required for the Act.[106]

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[102] NC Lomagundi, AR 1955, S 2827/2/2/3.

[103] NC Belingwe, AR 1955, S 2827/2/2/3.

[104] NC Goromonzi, AR 1955, S 2827/2/2/3.

[105] NC Insiza, AR 1955, S 2827/2/2/3.

[106] NC Lomagundi, AR 1957, S 2827/2/2/5.

One Native Commissioner, Caslam, noted that some chiefs ignored the opportunities for increasing their authority.

> There was a slackening of co-operation by Chiefs in connection with the provision of labour for development work. It cannot be said that chiefs are real leaders, and their disinclination to take responsibility in judicial matters does nothing to enhance their standing with their followers.[107]

But the mid-1950s was a period of confused relations between NCs and chiefs. The NLHA had had a strong impact upon communities and some NCs considered it to have a "detribalising" effect, and challenged many chiefs' legitimacy. The exercise of authority by chiefs was being more strictly monitored than before.[108] The chiefs were increasingly surrounded by demands and constraints. In 1956 the NC Gwelo, D.C.H. Parkhurst, expounded this with great clarity:

> In the face of so much authority converging on the rural African from the Native Department, the Native Agricultural Department, the Veterinary Department etc., from the Messengers, the Demonstrators, the Native Development Fund staff etc., and the Native Councils, it is small wonder that the Chiefs inquire, "Where do we stand?" They are now barely symbolic of a tribal system which is fast receding.[109]

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[107] NC Mazoe, AR 1956, S 2827/2/2/4.

[108] NC Umtali, AR 1956, S 2827/2/2/4.

[109] NC Gwelo, AR 1956, S 2827/2/2/4.

It is clear that although the NAD had made policy to bolster the chiefs' authority - a new act to introduce limited criminal jurisdiction was already being drafted - individual NCs remained split on the issue. Indeed, the governance of Africans contained a fundamental contradiction and the NAD was not ready to deal with a new dynamic which was apparent to at least some native commissioners: the NLHA was overtly modernising; the bolstering of "traditional" leaders was the opposite. In 1956 the NC Hartley, R.A. Webster, pointed out the strains in pursuing these policies in the current political climate:

> Considering that detribalisation is being hastened with the implementation of the Land Husbandry Act, the Chiefs and Headmen can be said to have co-operated in about as high a degree as can be expected from these mainly illiterate and ancient types, trying to hold sway among a people rapidly developing a new nationalism of their own.[110]

The emerging African nationalism of the late 1950s compelled the NAD to seek greater mutual understanding with the chiefs and deepen the alliance. This included the development of the Chiefs' Assembly. In 1957 the CNC reported,

> Chiefs are being drawn even into the complexities of today's modern administrative machinery which so often requires changes in policy. The Provincial Chiefs Assemblies fulfil a most useful and important channel of

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[110] NC Hartley, AR 1956, S 2827/2/2/4.

> direct communication between Government and people.[111]

Clearly the chief's question "Where do we stand?" had been legitimate. The NAD seemed unable to provide a simple answer. But we can see that the CNC believed, or wished others to believe, that the chiefs could speak effectively for the people to the Government. The chiefs' voices, now expressed in the Chiefs' Assemblies, were accorded prime legitimacy with the government. This was, clearly, to counteract the growing African nationalism.

In Buhera the Native Commissioner emphasized the exclusive authority of the "traditional" leaders. In response to an African National Congress (ANC) representative in the district, he wrote:

> This office...has made it known that it does not recognise any local authority other than the tribal representatives, though willing to lend a sypathetic [*sic*] ear when and where necessary.[112]

He also noted that the chiefs were compelled to "work effectively and amiably with European authority" in order to receive protection against "any tendency to usurp their functions by outside influences".[113] In Charter the Native Commissioner felt it was necessary to organise a

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[111] CNC, AR 1957, p.28.

[112] NC Buhera, AR 1958, S 2827/2/2/6.

[113] Ibid.

two-day meeting to instruct the "traditional" leaders "in their powers and duties."[114]

Nationalist politics infiltrated local lineage politics and relations between chiefs and native commissioners. In the Maranke Reserve, Umtali District, in 1958, a challenger to Chief Maranke's position was described as being inclined towards "the subversive activities of the African National Congress". Maranke, for his part, became "bitterly opposed to Congress" and endeavoured "to use his animosity towards Congress as a lever to force the administration into making irregular concessions and appointments of his own supporters."[115] The chief was demanding payment, as it were, for his loyalty. The three Chiefs in Buhera were convinced of the necessity to "work effectively and amiably with European authority (which in turn supports them as the duly appointed tribal heads against any tendency to usurp their functions by outside influences)...."[116] As a result, it is asserted, their "traditional" support and respect was maintained. In 1959, in Lomagundi, the Native Commissioner asked that Chief Zwimba's request for four new headmen should receive attention at the earliest possible moment because his loyalty to the government in face of the African National Congress had been

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[114] NC Charter, AR 1958, S 2827/2/2/6.

[115] NC Umtali, AR 1958, S 2827/2/2/6.

[116] NC Buhera, AR 1958, S 2827/2/2/6.

exemplary.[117] One Native Commissioner, Staunton, opined that the general hostility of chiefs and headmen towards the ANC generally had been a matter of self-interest, "due to the fact that they do not want to lose any of their power to Politicians."[118]

In 1961 Chief Chinamora made use of the Council of Chiefs to inform the Minister for Native Affairs that he was against the introduction of freehold tenure which resulted from the NLHA: "The Chief...can be the only person who has the right to allocate land to anybody who has no land."[119] Most of the others present agreed with him. Chinamora went on to point out that the Government would have to rely upon the chiefs to deliver African support:

> We Chiefs will greatly assist the Government....We elders, we pledge ourselves to the Government. Whenever he shall be in difficulties, we'll die with them; not youngsters, they will never do it.[120]

The chiefs were beginning to take a much more prominent role in shaping their relationship with government officials. However, it must be kept in mind that this Chiefs' Council, like the provincial assemblies, was a

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[117] NC Lomagundi, AR 1959, S 2827/2/2/7.

[118] NC Wedza, AR 1959, S 2827/2/2/7.

[119] Meeting of the Council of Chiefs held in the Federal Assembly, 18 May 1961, Records Centre 6.1.9F/84256, Internal Affairs.

[120] Ibid.

creation of the NAD and the chiefs admitted to it cannot be considered representative of the chiefs throughout Southern Rhodesia.

J.F. Holleman later attributed this changed view of chiefs to

> the very pressure of the political tide, which not only widened the gulf between white and black Rhodesians generally, but also drove white government and tribal chieftainship closer together as comrades-in-arms against the common enemy of African nationalism.[121]

In the 1920s the alliance had begun when the NAD and "traditional" leaders perceived a common enemy in the missions and the mission-educated. By the early 1960s it had become, with respect to those Chiefs willing to work with the Southern Rhodesian Government, much more than an alliance. Chiefs were part of the administrative machinery in the localities and would soon meet as a national body, first in the "Indaba" and later in the Rhodesian Senate.

Space and Authority

In 1930 the Land Apportionment Act (LAA) established the system of African reserves which lasted until the end of the colonial period and survives today, in some respects, in the form of "communal lands". For our purposes its most important effect was to concentrate

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[121] J.F. Holleman, Chief, Council and Commissioner, London: 1969, pp. 341-2.

African settlement in a way the 1914-15 Reserves Commission had not.

Prior to the Reserves Commission of 1914-15 native commissioners from across the country reported that as Europeans occupied farms, African communities were being broken up, contributed to the collapse of chiefly power.[122] The Native Reserves Commission, and the BSA Co., considered this a positive step. The official view in that period was "that the reserves were for those who could not immediately be assimilated into European conditions" and that education would overthrow the "tribal system".[123]

Although official support for chiefly authority might at first appear to contradict Land Apportionment, the two strategies were in fact complementary, serving the interests of Native Affairs Department, and even that of the chiefs in regaining lost power. By the 1930s, when the Land Apportionment Act was implemented, chiefs' power was further circumscribed, and the NAD began to discuss how to develop African power within the "tribal" framework. For the most part this meant recognizing Chiefs' courts for limited types of disputes and

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[122] NC Mazoe, AR 1913, N9/1/16; NC Mazoe, AR 1914, N9/1/17; NC Umzingwani, AR 1914, N9/1/17; NC Matobo, AR 1915, N9/1/18.

[123] Robin Palmer, Land and Racial Domination in Rhodesia, London: 1977, p.108.

expanding "local government" through the Native Boards and later Native Councils.

Many African communities had been dispersed as a result of the original occupation of land by European farmers. Any territorial integrity that had existed before the Occupation had largely vanished by 1915. This had a significant impact on chiefly powers. In 1913 the NC Mazoe, Alfred Drew, observed that "the system of chiefs has been considerably interfered with by the taking up of farms."[124] Far to the south the NC Matobo remarked:

> Only in large native reserves can the old system be fostered - where the natives are broken up into small communities on privately owned land etc. it is impossible for the Chiefs and Headmen to retain any power with the loss of their power their usefulness ceases. Every day it becomes more evident that we will have to deal with the natives individually and not collectively.
>
> The gradual breaking up of the tribal organization means the end of all concerted union although it means very much more work it also means very much more safety.[125]

Following the passage of the Land Apportionment Act it was reported that certain chiefs' authority was restricted by the fact they continued to live on privately owned land.[126] The territorial demarcation of chiefs' dominion was perceived to be fundamental to the

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[124] NC Mazoe, AR 1913, N9/1/16.

[125] NC Matobo, AR 1915, N9/1/18.

[126] Asst. NC Bulawayo, AR 1931, S 235/509.

assertion of their authority, since without it people could escape a chief's authority simply by leaving his territory.[127] The rigorous establishment of the Reserves was the first step in this demarcation.

After the Second World War there was a further step taken towards shoring up the chiefs' authority by demarcating their jurisdiction. As early as 1940 it was noted that although all the people of a given "tribe", that is those under the authority of a single chief, might be in a reserve, his authority could remain weak due to the intermingled settlement of different groups respecting the authority of various chiefs.[128] In 1943 a clear internal demarcation was made of the Sipolilo Reserve to accommodate an immigrant group under Chief Bepura. But in 1947 the demarcation of chiefs' areas within Reserves was carried out as a matter of policy. The NC Shangani believed that "Tribal control and effective supervision should now be much easier."[129] By 1951 the chiefs in Gwanda were said to have felt their authority had increased partly as a result of the demarcation.[130]

Thus restrictions on settlement was perceived by both NAD officials and "traditional" leaders to be a tool

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[127] Bourdillon, The Shona Peoples, p.112.

[128] NC Chiweshe, AR 1940, S 1563.

[129] NC Shangani, AR 1947, S 1563.

[130] NC Gwanda, AR 1951, S 2827/2/2/1.

to increase control and authority. The Reserves spatially limited, but also concentrated, the exercise of chiefs' power, and those very Reserves were established and administered by the coercive power of the state. The Reserves cannot be argued to have been elements in the buttressing of chiefly power (indeed the overcrowding in the Reserves in the late 1950s and early 1960s became a challenge to chiefly power), but it is important to note that this was not a simple relationship.

Many issues surrounding the Native Land Husbandry Act had a direct impact on the chiefs' authority. These included registration of those living in reserves, the division of lands, destocking, demands for the expansion of the reserves, extension work and the sale of land rights. Chiefs were called upon by the NAD to conscript labour for the implementation of the NLHA,[131] and land was allocated by NAD officials within the Reserves. These new allocations were made without reference to the authority of chiefs, headmen or kraalheads. However, these allocations were not strictly adhered to by the Africans working the land. Ploughing often went beyond allocations, into streams and boundary beacons were moved.[132]

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[131] For example, NC Lomagundi, AR 1957, S2827/2/2/5.

[132] See for example, NC Charter, AR 1956; NC Marandellas, AR 1956; both S2827/2/2/4.

By 1959 land rights were exchangeable commodities. Prices ranged from £10 to over £500 for 8 to 10 acre holdings; grazing rights fetched £5 each.[133] In 1961 the Chiefs raised strong objections to land sales in the Reserves and the so-called freehold tenure introduced by the NLHA because it was perceived to undermine chiefly authority. Chief Chinamora stated that only the chief might have the right to allocate land to those without and that land purchases usurped his authority.[134] In 1963 at least one chief was taking direct action and had allocated "some 200 acres...in his area in the grazing are."[135] Chief Chirau "pointed out that the Land Husbandry allocations had led people to believe that the Chief was no longer an authority."[136]

New Authorities

As David Lan has observed, "the authority of the chiefs was presented as a natural rather than a social

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[133] See NC Ft Victoria, AR 1959; NC Insiza, AR 1959; NC Bubi, Ar 1959; all S2827/2/2/7.

[134] "Meeting of the Council of Chiefs held in the Federal Assembly", 18 May 1961, Records Centre 6.1.9F/84256 Int. Aff.

[135] DC Mazoe, AR 1963, S2827/2/1/3.

[136] "Summary Report on chiefs Provincial Assembly Meetings: Mashonaland North and South", W.H.H. Nicolle, 20 April 1964, Records Centre, 28.11.8F/98431. See Chapter 6 below for a greater discussion concerning land in the 1960s.

phenomenon."[137] But the use of the term "big men" becomes particularly appropriate when the alternative authorities that emerged are considered. As we have just seen, the alienation of land to white farmers often had the effect of eroding chiefly power. White farmers often became the most immediate authorities, or "big men", and in some instances disputes were taken to these men for settlement. One Native Commissioner reported as early as 1913 that chiefs and headmen had lost power to the European farmers "to whom the natives seem to think themselves directly responsible."[138] Missionaries also adopted the role of "big men". At least one exercised quite strict authority.[139] Orlandini, the Dutch Reformed Church missionary based in Gutu,

> and his staff of African evangelists, teachers and messengers had judged cases, collected fines and 'taxes', recruited labour and accumulated huge numbers of cattle often defying the authority of the Native Commissioner.[140]

Orlandini was evicted in the mid-1930s because of the disruptive behaviour he had sponsored. Other churches

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[137] Lan, Guns and Rain, p.173. See also Willie Samuriwo, 6 May 1977, AOH 3, p.22.

[138] Acting NC Melsetter, AR 1913, N9/1/16.

[139] Benjamin Davis and Wolfgang Döpcke, "Survival and Accumulation in Gutu: Class Formation and the Rise of the State in Colonial Zimbabwe, 1900-1939", Journal of Southern African Studies, 14, 1, pp.64-98.

[140] Ibid., p.64.

also operated civil courts in a much later period.[141] African churches in northern districts, and perhaps elsewhere, also sought to resolve judicial disputes between their members within the church in the 1960s and 1970s.[142] However, these attempts were not always successful.[143]

The Native Commissioner was, of course, supreme among the new authorities, although his position differed considerably from the others. The post of Native Commissioner was formally placed in a hierarchy which included the chiefs and headmen below him. The farmers and missionaries were alternatives to the chiefs, not simply superiors. Throughout this century the authority of the "traditional" leaders in the rural areas was challenged by new social phenomena. Despite the fact that these men presented their positions as natural phenomena and their occupation of them as supernaturally legitimated, those around them with religious and/or economic power encroached on their authority.

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[141] NC Sipolilo, Civil Record 3/66, 10/1/66, Guruve Community Court.

[142] Lan, Guns and Rain, p.150.

[143] Roger Gondari vs. Andrea Katuwa, CR 3/66. 10.1.66, Guruve Community Court.

Conclusion

Neither the "traditional" leaders nor the Native Commissioners represented a monolithic group at any time before the 1960s, thus making comment on the way each interacted with the other extremely difficult. However, it is possible to identify certain phases in the relationship between them over the course of our period. These four periods may be dated 1897 to the early 1920s, the early 1920s to 1950, 1951 to 1959, and from 1959 to the 1970s. In the first period, Native Department officials rarely considered the "traditional" leaders a section of African society worthy of special attention. In the early 1920s this perspective was fundamentally overturned by the Native Affairs Department's need to forge closer links with African society. The second period may be characterised by the formal integration of Chiefs and Headmen into the state along with institutions with some organic connection to African society, such as the Chiefs' courts and others without, such as the Native Councils. The third period was one of intense interaction. The Native Commissioners were demanding that Chiefs take part in the implementation of the Native Land Husbandry Act (1951), the Chiefs were increasingly being ideologically integrated into the state and the government's fight against the nascent nationalist movement put the Chiefs and Headmen in an extremely difficult position. In the final period, the government

actively constructed a national platform for Chiefs and Headmen. This was an attempt to legitimate the Rhodesian regime that is remarkably similar to the tactics deployed by the Native Department to legitimate itself in the 1920s.

By 1961 many NAD officials were ready to agree with Roger Howman that interference with the chiefs had been extreme, "we have split tribes, moved them about, created chiefs, amalgamated them, deposed some + undermined their judicial and land powers - so we cannot pose too strongly as their supporters".[144] The splitting and amalgamating of groups as the Native Commissioner saw fit may be considered as a form of political patronage. There are cases cited that show Native Commissioners both granted and withheld such patronage based on a chief's loyalty and political utility.

Chiefs were well aware that they were having to tread a tightrope. When the NAD did offer limited coercive power to bolster authority, this had to be used only judiciously because legitimacy had been so badly eroded due to many factors. Consequently few "traditional" leaders were able to make as much use of it as the Native Commissioners had wished. Indeed, some chiefs went so far as to reject the backing of coercive power, as in the case of labour recruitment in Lomagundi

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[144] Memorandum for Discussion on the Future of Chiefs: Native Affairs Advisory Board, 20-22/3/61, Salisbury, Records Centre 6.1.9F/84256, Internal Affairs.

in 1945,[145] thus increasing their legitimacy, and arguably their authority. But as noted above, there were different responses by different chiefs in different areas.

It is clear the perception of collapsing authority was, at least in part, a figment of the NAD's collective imagination, a wish that persisted beyond policy decisions, as well as a frustration with what was hoped for and expected of the "traditional" leaders. The persistence of this perception well into the 1960s is difficult to explain, although the civilising mission remained a fundamental part of the average Native Commissioner's way of thinking and this was in contradiction with the shoring up of "traditional" life.

Although the Native Affairs Act (1927) formed a legal relationship between the state and chiefs that, legally anyway, integrated the chiefs by making it part of their duties to report any potential unrest, and "to supply for the defence of the Colony and for the suppression of disorder and rebellion within its borders, and [the Governor-in-Council] may call upon chiefs personally to render such service", chiefs still maintained a legitimacy that appears to have been beyond the state and remains somewhat difficult to explain.

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[145] Johnson, "The Impact of the Second World War on Southern Rhodesia", p. 308, and NC Lomagundi, AR 1945, S 1563.

State authority did not destroy chiefs' legitimacy before 1965.

In Chapters Four and Five we turn our attention to the study of a specific district, Sipolilo, in order to examine in close detail, the impact of the themes discussed both in this chapter and the preceding one. In Chapter Six we return to the national level and follow the development of relations between the "traditional" leaders and the state. There we will examine how, from the mid-1950s onwards, the Chiefs and Headmen were wooed both by the nationalists and the government and how the government offered ready-made and protected roles for them. Finally we examine the extension of judicial powers in the African Law and Tribal Courts Act (1969).

Chapter Four

Sipolilo District

Introduction

With this chapter we will now turn our attention to a single administrative district in order to focus upon the finer dynamics that play a part in the development of political and social power in the rural communities and, especially to provide context for an examination of the role of local courts in the following chapter. In order to give the reader a better understanding of these dynamics, the social, political and economic history of the district will be traced. This chapter introduces the district, Sipolilo, selected for the case study in this thesis. As this thesis attempts to make links between the political activity of rural communities and that at the national level, it is necessary to devote a substantial part of the discussion to the fine texture of local study.

The outline of historical developments and conflicts in Sipolilo district will provide the setting for the sharper focus to come in the next chapter. There we will examine the roles played by the courts, both those of the Native Commissioner and of the Chiefs, in mediating between the demands of new and old interest groups in the district. We will also consider how social norms are instituted. Furthermore, chapters 4 and 5 together will provide insight into the local dimension of the larger

national political machinations to be discussed in Chapter 6.

Sipolilo District was selected for the case study due to a number of its unique features. Firstly, the district remained on the periphery of the Rhodesian economy until after the Second World War. The comparatively late economic development of the district allows us to trace the social and political consequences of that development with greater clarity. The rapidity of the monetisation of the district economy has also facilitated analysis of its impact and made possible the use of oral sources. Secondly, the different ecological regions in the district have allowed for a study of the differential impact of the economic capabilities upon social institutions and the accumulation of power and the examination of the role of courts in these different, but associated, settings.

These distinguishing features are not sufficient to dismiss its comparative relevance. On the contrary, this case study gives us insight into other areas and, indeed, national trends precisely because the empirical data is far more obtainable than it is for other districts in and earlier periods. The pace of change in Sipolilo District in the period under examination brought much of that change and the response to it, into sharper relief, as Palmer noted in 1977,

> the guerrillas initially obtained their greatest popular support in the Centenary,

> Sipolilo, and Mount Darwin areas in the north-east, where alienation of land to Europeans had taken place only in the past twenty years and the people's resentment was therefore of recent origin.[1]

This chapter aims to present the politics of the district, the role of Africans and representatives of the colonial state in that political activity, and the economic and social setting in which the case study material will be placed.

The District, the land and the people

Lomagundi District, created in 1897, was one of the original administrative districts and covered a huge portion of Southern Rhodesia.[2] Sipolilo formed a part of it. A portion of what became known as Sipolilo was in the heartland of the pre-colonial Mutapa state;[3] however, the rest of Guruwe, as the land was then known (hence its post colonial name - Guruve), ruled by "the *soko/wafawanaka* Nhova-Chingowo dynasty" may have been only a tributary to the Mutapa state, or may have maintained its independence.[4] But it is clear that the Nhova-Chingowo dynasty existed in close political as well

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[1] Robin Palmer, Land and Racial Domination in Rhodesia, London: 1977, pp.245-6.

[2] See Map 1.

[3] D.N. Beach, The Shona and Zimbabwe, 900-1850, Gweru: 1980 p.115.

[4] Ibid., p.114.

as geographical proximity to the Mutapa state. Beach informs us that in the later 1880s when the Mutapa state was in terminal decline,

> the Chingowo dynasty had recently begun to suffer renewed Ndebele raids, and in 1889 the Chingowo ruler was willing to make a treaty with Ribeiro [a *prazo* holder] and the Portuguese government representative Vitor Cordon in return for guns.[5]

Thus we may observe that the Chingowo dynasty at the time of European occupation was under attack and attempted to remain self-reliant.

Until 1912, Sipolilo was administered as an integral part of the Lomagundi district, after which it was administered as a sub-district with an Assistant Native Commissioner in charge. However, there had been some colonial administrative presence there prior to 1912. From 1904 to 1916 "an office was opened at Kanyemba on the Zambesi",[6] one of the most important points of entry for Africans from Northern Rhodesia and Nyasaland seeking employment in South Africa and to a lesser extent Southern Rhodesia. The dates coincide with the decade in which the mining industry was most reliant upon *chibharo* for its labour sources and the Rhodesian Native Labour Bureau had agents operating in the area.[7]

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[5] Beach, The Shona, pp.153-54.

[6] "Kraal Appreciation Report: Sipolilo Reserve", Office of the Land Development Officer, Sipolilo, Ref. No. LAN.20/2/56, November 30, 1956, p.2. S 138.

[7] Charles van Onselen, Chibaro, London: 1976, p.107.

In 1954 Sipolilo was elevated to a full district with its own Native Commissioner. For the remainder of the colonial period the district gained in importance as it became increasingly involved in the central Southern Rhodesian economy and later was one of the frontlines in the liberation war. In 1965 Sipolilo's name was altered to one considered more "authentic", Chipuriro, a more accurate orthography of the Shona pronunciation. Following independence the name was changed again, to Guruve, a pre-colonial name associated with the *soko/wafawanaka* Nhova-Chingowo dynasty in the area.[8]

The southernmost tip of Sipolilo District is just over 100 km north of Harare, and west of the Umvukwes Range (see map). The major physical feature of the district is that it is bisected by the Zambezi Valley escarpment and is bordered by both Zambia and Mozambique. This has meant it has been the first port of call for many incoming migrant labourers, and was a point of entry for all the nationalist guerrilla armies which fought in the liberation war.[9]

The Valley comprises the northern portion of the district (also known as Lower Sipolilo) and lies some eight hundred vertical metres below the plateau - or

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[8] Beach, The Shona and Zimbabwe, p.70 and p.114.

[9] Basil Davidson, Joe Slovo, and Anthony R. Wilkinson, Southern Africa: The New Politics of Revolution, Harmondsworth: 1976, Part Three, Chapter Four. See also David Lan, Guns and Rain, Harare: 1985, p.126.

Upper Sipolilo.[10] Forty years after the first "pilot track"[11] was built, only four roads and one "track" cross this formidable barrier which stretches for nearly 80 km along an east-west axis within the district.[12] A surprising number of people move up and down it by foot. But it undeniably remains a barrier and was still more of one in the past. Indeed, legends of the settlement of the area refer to it as the point beyond which the colonising people were not to look, much less travel beyond.[13]

The southern and eastern boundaries of the district follow the Umvukwes range. Again, these are boundaries not simply imposed by colonial administration, but that also have their place in local mythology.[14] This mountain range forms the northern end of the Great Dyke and is laced with minerals; mines both ancient and modern are dotted along it. However, in the main area of Sipolilo

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[10] See Map Sheet SE-36-1 Mhangura, 3rd edition. In his description of the region Lan writes that, "the road falls 6000m into Dande in fewer than 15 km." (p.9) This is clearly wrong as Mt Kilimanjaro, Africa's highest peak, is only 5860m.

[11] Asst. NC Sipolilo, AR 1951, S 2827/2/2/1.

[12] See Map Sheet SE-36-1 Mhangura.

[13] Files of the District Administrator, Guruve, PER 5. Subsequently referred to as DA PER 5

[14] According to "official mythology", Chingowo and his followers decided to part company with Mutota at Mvurwi, Chingowo moving westwards over the Umvukwes range, Mutota travelling northward to the Zambezi Valley. DA PER 5.

District there are only two gold mines, "Agatha and Ella" and "Eureka". "Eureka" mine is also prominent in local oral history. This will be elaborated upon later in this chapter.[15]

Ecological and consequent economic differences mark the dissimilarities between Upper and Lower Sipolilo. The district is comprised of three different ecological zones.[16] The plateau is described as an "intensive farming region" with moderately high, and more importantly reliable, rainfall. The Horseshoe Block of farms to the east and north of Sipolilo Reserve lies almost entirely within this region. The Nyakapupu Purchase Area and Sipolilo Reserve lie wholly within this zone. Intensive farming of crops or livestock is characteristic practice in this ecological zone. Many farmers combine agricultural production with animal husbandry to guard against years of severe drought to which the country as a whole is prone.

The second region is the escarpment. Although this area receives moderate rainfall, this is offset by generally high temperatures and the fact that the rain is sporadic and heavy, and therefore not always beneficial to crops. The Zimbabwe government comments that "the region is...subject to fairly severe mid-season dry

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[15] See p.279 below.

[16] "Zimbabwe 1: 1 000 000 Natural Regions and Farming Areas", Dept. of the Surveyor-General, Harare: 1984.

spells and therefore is marginal for maize, tobacco and cotton production, or for enterprise based on crop production alone."[17] Mixed farming, therefore, predominates. Approximately two-thirds of Kachuta Reserve lies within this region, the other portion in the plateau region. Bakasa Reserve is wholly within the escarpment region. Below the escarpment is the Dande area. This region endures the hardship of "fairly low rainfall", sporadic droughts, and generally unreliable rains. Only limited drought resistance crops are successfully cultivated in this region, and the presence of tsetse fly prevents cattle surviving in the area.

Despite these distinctions, there are significant similarities in the cultural sphere. People both above and below the escarpment speak the same dialect of Shona, Chikorekore. Many spirit mediums move through each area and senior ancestors such as Mutota and Chingowo are respected throughout.[18] Also, there has been a regular movement of brides from the Valley to the plateau, just as there has been a movement of brides from Upper Sipolilo, over the Umvukwes into Chiweshe. Thus a significant level of constant interaction has taken place throughout this century. This pattern of bridal movement has been influenced largely by Shona concepts of incest and the different levels of bridewealth demanded. Due to

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[17] Ibid.

[18] DA PER 5.

the infestation of tsetse fly in the Zambezi Valley, plateau Korekore could have access to brides without losing cattle.[19] It has had the effect of nurturing and maintaining close cultural links between Upper and Lower Sipolilo.

The Communal Lands (formerly Tribal Trust Lands and prior to that, Reserves) comprise by far the greatest area of Sipolilo district. Below the escarpment the Dande Communal Lands and the Dande Safari Area cover the entire valley area. But above the escarpment there are three Communal Lands: Bakasa, Kachuta and Sipolilo. The first two were created in 1960 by the Select Committee on Resettlement of Natives.[20] Sipolilo Reserve dates from the immediate post-Rising period.[21] There was a further block of land reserved for African settlement in the district, the Nyakapupu Native [African] Purchase Area on the eastern boundary of Sipolilo Reserve.

The number of Africans living in Sipolilo Reserve grew in the middle of this century, almost literally by leaps and bounds as forced removals under the Land Apportionment Act (1930) and its subsequent amendments corralled people into the Reserve. In 1932 Africans

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[19] Shadreck Chitsiga, Ruwinga, 9/12/91, Guruve Communal Lands.

[20] "The Select Committee on the Resettlement of Natives", Second Report, Table 'H', 1960, p.63, SRG 2.

[21] Palmer, Land and Racial Domination, p.65 and p.259.

designated as "Chief Sipolilo's people" living in the district, but on newly designated European Crown Land, were forced into the Sipolilo Reserve.[22] That year 18 165 Africans were estimated to live in the district. Only 6 573 people lived in the Reserve, while 10 332 lived on Crown Land and 1260 on alienated land.[23] In 1943 a further large-scale forced removal, this time of "Bepura's people" from the Damba region to the west of Sipolilo Reserve in Lomagundi district, increased the population of the Reserve. This also involved removals within the Reserve in order "to make room for Chief Bepura and his Vandamba people".[24]

By 1947 the African population of the district had more than doubled its 1932 level, reaching 40 424. Of these, 21 656 were on the Reserve, and 17 589 on unassigned land, i.e. the Zambezi Valley.[25] Thus in the space of less than a generation, the population density of Africans in Sipolilo Reserve increased more than threefold. The restricted availability of arable land literally squeezed the peasant producers and forced them to seek further options. In 1957, 26 954 people lived in Sipolilo Reserve; 23 433 were on the unassigned lands of

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[22] "Kraal Appreciation Report: Sipolilo Reserve, 30th November 1956", S 138/43.

[23] NC Lomagundi, AR 1932, S 235/510.

[24] Ibid.

[25] NC Lomagundi, AR 1947, S 1563.

the Zambezi Valley while 20 were settled on farms under Labour Agreements. The total population had reached an estimated 51 979, a 28% increase over ten years.[26]

The removal of "Bepura's people" in 1943 followed the successful eradication of tsetse fly - a campaign the colonial administration had involved them in - from the Damba region they inhabited, making the area suitable for white settlement. The CNC's office hinted at the inequity of this, but it also served its purposes to an extent:

> For many years past Chief Bepura and his tribe have resided in a Tsetse Fly area on unoccupied Crown Land in the Lomagundi District, and from time to time at the request of your department this Chief and his people remained in the area in question as their services were required for anti-Tsetse Fly operations undertaken by the Entomological Department.
>
> The area is now deemed to be free of Fly, and the land is required, I understand for post-war European settlement. It is now therefore necessary that this Chief and his tribe should be removed elsewhere.
>
> Arrangements for this removal have been made by the Native Commissioner, Sinoia [Lomagundi], who has ordered these people to enter the southern portion of the Sipolilo Native Reserve where there is only sufficient land for a portion of the tribe. It is desired that the balance of these people enter No. 2 Area [Nyakapupu] adjoining the native Reserve, thus preserving the entity of the tribe.[27]

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[26] NC Sipolilo, AR 1957, S 2827/2/2/5.

[27] CNC's Office to the Secretary, Dept of Agriculture and Lands, "Removal of Chief Bepura", 14.8.43, S 2806/1996.

Maintaining the "entity of the tribe" was considered by the Native Affairs Department to be of prime importance. In an earlier communication the NC Sinoia wrote to the CNC,

> If allowed to do so Bepura and his people would scatter and squat on farms and Crown Land outside the 'Doma' area with the result the tribe would cease to exist. An example of this is Chief Nyabira and his people. He has neither Chieftainship nor chief nor tribal area.
>
> What has been done for Bepura is quite the best thing under the circumstances.[28]

In this case we have a clear example of how the Land Apportionment Act was a tool applied as and when required. It may also be seen that by this time the Native Affairs Department was interested in bolstering "tribal" integrity as a means of bolstering the chief's own power. Ironically, the people who had lived in the Damba area were actually resettled in two distant reserves, Sipolilo and Rengwe thus demonstrating that the Native Affairs Department's notion of "preserving the entity of the tribe" owed more to ensuring that Africans remained under some form of "Native Authority" than the maintenance of any organic notion of community.[29] The

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[28] NC Sinoia to CNC, 21.4.43, S 2806/1996.

[29] This view persisted into the 1960s when a programme of Community Development was instituted, but the definition of "community" applied was on the basis of what African authorities were recognised communally. See A.H.K. Weinrich, Chiefs and Councils in Rhodesia, London: 1971.

real fear by the 1950s - and this had become the basis for the Reserves - was that Africans might simply "scatter" and become collectively uncontrollable.

The Economy

Informants still speak of a time when there was trade with the Portuguese. However, the trade in ivory which was at its height "from the 1850s until the end of the 1870s"[30] was of little consequence in the local economy by the turn of the century, while the cattle trade with the Tete Portuguese had also lost its significance; indeed, Portuguese traders were no longer active in Upper Sipolilo. In the nineteenth century the district had been considered crucial to the ivory trade between the Ndebele state and the *prazos*.[31] Indeed, it appears that the man known as Chipuriro who succeeded the *Unhova* in the 1890s and was recognised as the chief (i.e. Chief Sipolilo) by the Southern Rhodesian government was a well-known elephant hunter.[32] This trade was moribund by the 1910s.

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[30] Ian Phimister, Economic and Social History of Zimbabwe, 1890-1945: capital accumulation and class struggle, London: 1988, p.14.

[31] D.N. Beach, "The Shona and Ndebele Power, 1840-1893" in War and Politics in Zimbabwe, 1840-1900, Gweru: 1986, p. 34.

[32] "Notes on Some of the Mhondoros (Spirit Mediums) in the Sipolilo District of Rhodesia", 13/10/65, p.9, in DA PER 5.

The new trading focus that began to develop from this time was increasingly oriented towards the south, namely Salisbury, Bulawayo and further afield to South Africa and its ports.[33] As a result Sipolilo became increasingly peripheral to the Southern Rhodesian state and economy. It remained so for several decades. Indeed, Lan claims that the Southern Rhodesian state, imposing taxation and re-organising chieftaincies, did not reach the Valley until 1920,[34] although official documentation reports an office at the Zambezi River crossing of Kanyemba,[35] probably for the purposes of labour recruitment.

As Phimister has noted, the "consequences of merchant capital's advance were as contradictory as the spread of commodity relations was uneven."[36] I would also argue that, especially prior to the Second World War, the "advance" of merchant capital and the spread of commodity relations was tentative, included several retreats, and involved the abandonment of areas by itinerant traders in times of recession. This was particularly true in outlying or remote districts such as Sipolilo.

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[33] Lan, Guns and Rain, p.18.

[34] Ibid.

[35] "Kraal Appreciation Report: Sipolilo Reserve", Office of the Land Development Officer, Sipolilo, Ref. No. LAN.20/2/56, November 30, 1956, p.2. S 138.

[36] Ibid., p.15.

The penetration of merchant capital bolstered dominant classes by aggravating social differentiation; on the other hand the developing commodity relations undermined existing social relations and upset "the balance within and between indigenous class forces."[37] Some people took positive advantage of the changes this wrought. Women and men took the opportunity to escape some of the patriarchal structures that dominated their lives. Others used them to enhance their position in African society by adapting to the new situation and by incorporating elements of the pre-colonial social order into the colonial one in new and innovative ways for their own benefit,[38] e.g. the inclusion of a cash element in *roora* that appears to have emerged in the 1920s. The introduction of cash allowed elders to demand cattle and cash for their own daughters, and it also allowed them to offer cash to fathers and guardians in the Zambezi Valley.[39]

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[37] Phimister, Economic and Social History of Zimbabwe, p. 15.

[38] See Diana Jeater, Marriage, Power and Perversion: the construction of a moral discourse in Southern Rhodesia, 1890-1920, Oxford: 1993, especially Chapter 8, and Elizabeth Schmidt, Peasants, Traders and Wives: Shona Women in the History of Zimbabwe, 1870-1939, London: 1992.

[39] Shadreck Chitsiga (24/11/91) and Amai Muzurura (11/12/91). Diana Jeater's book, especially Chapter 8, "'Tradition' and Power: Transformation of African Marriage, 1914-1926" is also very important on the role of developing commodity relations in changing forms of African marriage in central Southern Rhodesia.

Throughout the twentieth century the local economy of Sipolilo District has been based on agriculture. Pastoralism was limited in the early twentieth century due to the presence of tsetse fly above the escarpment at this time. Tsetse fly infested the northern reaches of the plateau into the 1910s. Before the Second World War there was no mining and little commercial farming anywhere in the district. Early prospecting in the district yielded low expectations of gold, and chrome mining did not become a serious concern until the Second World War when its strategic significance made its extraction a potentially profitable enterprise. White commercial farmers began colonizing the district in 1946, although the neighbouring districts of Mazoe to the east and Lomagundi to the south offered employment opportunities.

It appears that Africans in this district held slaves into the present century. One informant told me that when his father was required by "the British" to account for the men at his homestead during tax registration, he made out that his own slave was his son-in-law. This slave reportedly had come from Tanganyika.[40] This may say as much about the position of sons-in-law in Korekore society in the period of early Rhodesian contact as about slaves in the territory. At least one source

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[40] Interview with Shadreck Chitsiga, Ruwinga, Guruve Communal Lands, 24/11/91.

considered the *mugarira*[41] to be effectively bonded labour.[42]

The monetisation of the economy in Sipolilo District was slow and uneven. Cash was often scarce, and there was no consistent flow of money into the district before the Second World War. There was little to attract capital into the district, with only one mine, far from the railhead, and little government support to settle Europeans in the district. One possible indicator of early involvement in wage labour and the cash economy generally is the payment of taxes. Taxes were paid, in cash, by the people of Upper Sipolilo from the first decade of this century,[43] (though not until 1920 in the Valley).[44] But the Native Affairs Department had difficulty collecting those taxes over the next two decades and by 1918 chiefs and headmen were pressed into service on behalf of the Native Affairs Department in the

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[41] *Mugarira*: son-in-law in service-marriage. The verb from which this noun is derived, *kugarira*, has an interesting series of meanings including, "Lie in wait for"; "Work for father-in-law in lieu of paying *roora*"; and "Sit decently". All of these are taken from the Standard Shona Dictionary.

[42] File of Rev. T.D. Samkange, "Rovora Inquiry, 1932-34", in the possession of Prof. T.O. Ranger who I thank for allowing me access to this file.

[43] D.N. Beach, Mapondera, 1840-1904, Gweru: 1989, p.30.

[44] Lan, Guns and Rain, p.18.

collection of taxes.[45] In 1929 it was reckoned that tax collection in the Sipolilo sub-district was slower than in most others, though by no means the worst.[46] But this may have been due as much to the deficiency of the Native Affairs Department in collecting taxes in outlying regions as to the scale of African participation in wage labour.

Two mines dating from the pre-colonial period have been found in the district: the 'Eureka' and the 'Agatha and Ella' mines. The first has been worked intermittently since pre-colonial times and in the current century has produced between 1000 oz and 5000 oz of gold.[47] It is situated in the Reserve lands, three kilometres from Guruve town. In 1965 the District Commissioner considered it not to be "a successful undertaking";[48] however, 'Eureka' was a working mine again in 1991. The 'Agatha and Ella' has not produced at all this century.

Although the District Commissioner, Sipolilo, claimed in his 1965 annual report that the 'Eureka' mine

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[45] See the District Annual Reports, 1918 and 1919, N 9/1/21 and N 9/1/22.

[46] Sipolilo ranked as the thirty-first slowest "payer" of forty-five districts. CNC Circular Letter No. C. 480/29, 25th October, 1929,
S 235/452

[47] R. Summers, Ancient Mining in Rhodesia, Salisbury: 1969, p.45.

[48] DC Sipolilo, AR 1965, Records Centre.

was the only mine in the district,[49] other sources make frequent reference to chrome prospecting and chrome mines on both sides of the Umvukwes.[50] For the most part the chrome seams are small and poor but they did offer Africans an opportunity to earn cash close to home. Africans in Sipolilo District appear to have prospected independently in the 1950s, sold their mining rights,[51] contracted out and taken on contract work.[52] William Zwitete, for example, was promised £1000 by a local white farmer "for the sale of my mine".[53]

In 1937 farm labour wages ranged from 9s. to 15s. per thirty-day ticket in the Lomagundi District, of which Sipolilo formed a part. Similarly, mine labourers received 12s. 6d. to 25s. per ticket. Labourers in both sectors were provided with "accommodation, food and attention during sickness" by the employer.[54] By 1955

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[49] Ibid.

[50] Interview with Tom Blomefield, 8/12/91; William Marazini Zwitete v. Weston Mucherwa, CR 34/61, 6.3.61.

[51] William Marazini Zwitete v. Weston Mucherwa, CR 34/61, 6.3.61.

[52] Mawani Philip X2477 v. Ravu Keniyadi, CR 84/61, 12.5.61, GCC, claiming "£5-10-6d....For 3 tons of chrome dug for Defendant". See also CR 256/60, 25.11.60 and CR 123/61, not heard, both in GCC.

[53] William Marazini Zwitete v. Weston Mucherwa, CR 34/61, 6.3.61.

[54] NC Lomagundi, AR 1937, S 1563. No statistics for Sipolilo alone were available.

farm labourers were receiving £2.5s. to £3 per ticket while their mining counterparts received £4.10s. per ticket.[55] Not surprisingly, farm labourers were keen to supplement their wages with sideline enterprises. These included the raising of small livestock such as poultry or rabbits for personal consumption and for sale in the compound. These sidelines were clearly important to the workers' livelihood. One farm worker demonstrated this when he took out a civil action demanding compensation for the killing of his rabbits and guinea pigs by a colleague's dog.[56]

The viability of peasant production in Southern Rhodesia as a whole has been studied by several scholars and the debate continues as to when, if ever, it collapsed. Palmer asserts "By 1939 virtually all vestiges of African economic independence had been shattered".[57] However, Africans continued to exploit the peasant option. Many were forced by economic circumstances to take a growing part in the wage and cash economy, but did not abandon agricultural production. In Sipolilo it was only after the Second World War that such opportunities arose locally.

Although more specific information is not available, it is apparent that in the Lomagundi district in the

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[55] NC Lomagundi, AR 1955, S 2827/2/3.

[56] Romondo v. Koloni, CR 91/62, 21/6/62, GCC.

[57] Palmer, Land and Racial Domination, p.13.

1920s and 1930s a significant investment was made in ox-drawn ploughs. In 1927 353 ploughs were owned amongst the 12 654 taxpaying men of the district.[58] By 1937 the number of ploughs in the district numbered 2674, owned amongst 15 499 taxpaying men.[59] This is a change from a plough being owned in every other village, to three ploughs being owned in each village! In that decade the number of cattle in the district nearly doubled, increasing from 17 232 to 33 154. However, estimated yields did not make any comparable increase, rising only by a meagre 5550 bags, from 119 100 to 124 650.[60]

The Maize Control Act (1931), designed to benefit "small white farmers against both large-scale growers and peasant producers",[61] quickly had its effect in Sipolilo. In 1932 the Asst. Native Commissioner reported,

> The cost of hired transport and the lack of native-owned transport makes the disposal of maize through the Maize Control Board an impossibility. The local market for all kinds of grain (including mealies) is both limited and confined to trading for goods, exclusively.[62]

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[58] General Statistical Returns, 1927.

[59] General Statistical Returns, 1937.

[60] General Statistical Returns for 1927 and 1937.

[61] Phimister, Economic and Social History of Zimbabwe, p. 174.

[62] Asst. NC Sipolilo, AR 1932, S 235/510.

The inability to obtain cash for their crops served to further debilitate producers who needed to pay for bags and transport in cash.[63] In this time of economic hardship, the outlying district of Sipolilo was marginalized.

Following the promulgation of the Amended Maize Control Act (1934), a law more protectionist than its predecessor and favouring small-scale white producers, the Asst. Native Commissioner noted "a considerable quantity of unsold maize in the Sipolilo Reserve" and could foresee no promise of future improvements in the local market. The market for African produce had quickly atrophied. The Asst. Native Commissioner remarked, "in fact one farmer, who in the past has traded comparatively large quantities of maize, has stated his intention to grow [only] his own requirements."[64]

The 1940s was a decade in which Africans increasingly sought part-time wage labour.[65] Clearly, Africans had been forced out of many markets by the discriminatory legislation. As a result, many Africans were compelled to supplement their meagre income through wage labour. Although the NC Lomagundi noted the uneven development of markets across Southern Rhodesia in 1941, he failed to

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[63] NC Lomagundi, AR 1932, S 235/510.

[64] Asst. NC Sipolilo, AR 1934, S 1563.

[65] "Select Committee on the Resettlement of Natives, Second Report", 1960, para. 52, p. 17.

comment on why production had collapsed in the remoter areas which previously had good production records. He claimed, rather naively, that "[t]here is little difficulty in marketing produce and stock in the southern part of the district. In the more remote parts there is not a great deal to market."[66] In 1942 white farmers were guaranteed 12s. 6d. per bag by the government, while Africans were receiving only 8s. per bag. This price was "'better than [in] previous years.'"[67]

In 1942 an average of 308 Southern Rhodesian Africans were in employment in Sipolilo district. However, "the majority of farmers [were] as a rule short of labour.... [Furthermore,] A shortage was reported on the Chrome mines on the Umvukwes".[68] A contributory factor had been the reduction in the food rations in a year of scarcity which had led many Sipolilo residents to seek work further afield. Labour recruitment caused "great difficulty" that year and men refused to work in the labour gangs.[69] This was despite the fact that "'the more remote Mashonaland districts' [had been] identified

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[66] NC Lomagundi, AR 1941, S 1563.

[67] S 961/1, Minutes, 13/3/42, cited in Johnson, "The Impact of the Second World War on Southern Rhodesia".

[68] Asst. NC Sipolilo, AR 1942, S 1051.

[69] Ibid.

as targets to increase the supply of *chibharo* labour.[70] Within African society in Lomagundi district, those with relatively good harvests took advantage of the scarcity of maize in 1942. The Native Commissioner commented that this opportunity "solved the marketing problems in certain areas."[71]

Despite the pressures of falling yields, increased marketing restrictions imposed by the government, and a decrease in available arable land in the Reserve due to the resettlement of "Bepura's people", the local people in Sipolilo broadly maintained a viable land base in the Reserve following the Second World War. In Southern Rhodesia as a whole, the late 1940s was a period of relative rural prosperity due to destocking, the sale of vegetables and maize.[72]

In 1946 white settlers, many of them Europeans, arrived in the district: they settled the Horseshoe Block of farms that border the Sipolilo Reserve to the east. The farms offered local Africans new opportunities for wage labour closer to home. These farms grew tobacco and maize, as well as raising beef cattle. For many years Africans were able to find work on these farms, simply

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[70] D. Johnson, "The Impact of the Second World War on Southern Rhodesia", p.232.

[71] NC Lomagundi, AR 1942, S 1563.

[72] D. Johnson, "The Impact of the Second World War on Southern Rhodesia", pp.260-268.

clearing the land, or "stumping" as it is called locally. The new settlers were followed the next year by the first permanent stores in the Reserve.[73]

The years 1946 and 1947 presented an interesting conjunction of political and economic forces in Sipolilo. The settlers had brought new capital to the area, while Africans capitalising on the wartime boom moved out of the urban wage labour sectors to establish stores of their own in the district. The precise period of the establishment of the stores appears either to have been opportunistic, or fortunate. For these were drought years, and grain distribution for famine relief relied on private traders.

> In towns these were often Indians, while African storekeepers controlled trade in remote districts like Mount Darwin, but in rural areas European traders generally had the largest share of business.[74]

Sipolilo appears to have followed the pattern of neighbouring Darwin district.

In Sipolilo it is possible to chart the growing prosperity which accompanied the development of the district after the Second World War. In 1942 only 3213 bags of maize were sold, and the majority of these to

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[73] Maj. Shadreck Chitsiga, Ruwinga, Guruve communal Lands, 9 December, 1991.

[74] John Iliffe, Famine in Zimbabwe, 1890-1960, Gweru: 1990, p.100.

farmers near the Reserve.[75] However, in 1947, a drought year, the Asst. Native Commissioner reported 32,000 bags of maize were sold.[76] In 1952, 33,000 bags were sold, which was said to be a "record".[77] This number was surpassed in 1953,[78] 1954, and 1955 when 46,635 bags were sold.[79] In 1956, when there was small decrease in the number of bags sold (44,021), the Native Commissioner reported,

> Not many years ago the Sipolilo district had an adequate quantity of grain in store. But the ease with which a native can now dispose of his crops has altered this. Invariably there is now a slight pre-harvest scarcity of maize.[80]

The land base maintained in Sipolilo Reserve made it possible for local Africans to demand semi-skilled labour as ploughmen and later as tractor drivers on the newly settled, nearby commercial farms.[81] Local Africans also took contract work that would allow them to earn cash without abandoning their own fields. Contract work was

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[75] Asst. NC Sipolilo, AR 1942, S 1563.

[76] NC Lomagundi, AR 1947, S 1051.

[77] Asst. NC Sipolilo, AR 1952, S 2827/2/2/2, vol. 1.

[78] CNC Form 1.b., Sipolilo, Year ending 1/12/53, S 2404/4.

[79] NC Sipolilo, AR 1955, S 2827/2/2/3.

[80] NC Sipolilo, AR 1956, S 2827/2/2/4.

[81] Tom Blomefield, Tengenenge Sculpture Community, 8 December, 1991; and Willie Karambwe, Ruwinga, 12 December, 1991.

obtainable in both the agricultural and mining spheres.[82] As a consequence of this comparatively strong land base, migrant labour from north of the Zambezi, especially Nyasaland, became more attractive to many white farmers.[83] This organisation of labour is indicative of the weakness of commercial farmers in the district as well as the relative strength of the local people.

In 1951 the Asst. NC Sipolilo made interesting remarks concerning the recruitment and retention of labour in the district:

> Labour in the district is not plentiful but one receives very few complaints. Employers seem more philosophical than they used to be and obviously realise there is little they can do to get more labour.
>
> The majority of employers go to great lengths to keep their labour but their ignorance of the Pass Laws and laws of Masters and Servant makes the settling of their problems a difficult matter.[84]

That same year the Economic Survey of Southern Rhodesia commented that nationally labour remained scarce "because a large part of it is inefficiently used."[85] By 1955 the farmers' position had strengthened to some extent and the

[82] CRs 49/60, 1.2.60; 256/60 25.11.60; 45/61 n.d.; 123/61 n.d.; 22-25/62, 16.3.62; 27-31/62, 21.3.62; 40-45/62, 27.3.62; 48-52/62, 6.4.62.

[83] Tom Blomefield, Tengenege Sculpture Community, 8 December, 1991.

[84] Asst. NC Sipolilo, AR 1951, S 2827/2/2/1.

[85] "Economic Survey of Southern Rhodesia", March 1951, para. 428, p. 86, S 2811/3.

European farms in the district mostly had sufficient labour, an average of 75 Africans working on each farm. However, retaining this labour required farmers to act tactically. Consequently, "large amounts of credit...[were]...advanced to native employees"[86] thus creating a risk of non-payment should a worker decide to leave. The following year, the Native Commissioner reported that European farmers had sufficient labour.[87]

By 1956 3,524 indigenous Africans, men, women and "juveniles", were employed in the district. The following year this number decreased to 3,106. Although this decrease is largely accounted for in the number of juveniles and women employed, the total number employed remained relatively constant. The mines could attract labour but, as the Native Commissioner noted, "just over a third of farmers in the district report a shortage of labour. Another 344 adult males would put them right."[88]

In 1956 the Native Commissioner reported that the average number of employees on the farms was 66, and in 1957, 71. Foreign men accounted for 25 and 30 respectively of these averages. Indigenous men at the same time accounted for 17 and 20 of the total,[89] women and juveniles making up a third of the workforce. How

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[86] NC Sipolilo, AR 1955, S 2827/2/2/3.

[87] NC Sipolilo, AR 1956, S 2827/2/2/4.

[88] NC Sipolilo, AR 1957, S 2827/2/5.

[89] Ibid.

many of these were local to the district is very difficult to determine. Both women[90] and men sought refuge in the new domains, and they were eager to find a distant farm or mine where they could settle, at least temporarily.[91]

Africans also sub-contracted labour. The number of disputes this practice gave rise to is probably not indicative of the frequency with which it was used to obtain labour or goods and it would be dangerous to attempt any such extrapolation. Such contracting appears to have been most prevalent on tobacco farms and in brick-making.[92] In 1948 Ndziradzokufa was offered £10 to assist "in making and burning 100,000 bricks". Ndziradzokufa expected meals to be supplied (as we have seen, a common practice in other forms of labour); his employer, Zinyama, did not.[93] In 1961 a man named William was

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[90] see Diana Jeater, Marriage, Perversion and Power, pp.117-121; and Elizabeth Schmidt, "Negotiated Spaces and Contested Terrain: Men, Women, and the Law in Colonial Zimbabwe, 1890-1939", JSAS, vol. 16, no. 4 (1990), pp. 622-648. Both studies highlight how women made use of the new domains that emerged on the farms and mines to escape patriarchal control.

[91] Willie Karambwe, Ruwinga, 11 December 1991; and in discussion with Colleen Karambwe. See also van Onselen, Chibaro, p.123.

[92] Asst. NC Sipolilo CR 12/48, 26.7.48, S 2033; NC Sipolilo CRs 49/60, 1.2.60; 45/61 n.d.; 22-25/62, 16.3.62; 27-31/62, 21.3.62; 40-45/62, 27.3.62; 48-52/62, 6.4.62. GCC.

[93] Asst. NC Sipolilo CR 12/48, 26.7.48 S 2033; the subsequent case, CR 13/48, was brought by Ndziradzokufa against a fellow employee Chimukuzumbo.

contracted to make and burn bricks at 32s. 6d. per thousand. He subsequently subcontracted the work to another man, Joseph, at 30s. per thousand.[94]

Some idea of the wages paid on the tobacco farms for contracted workers may also be obtained from the disputes that arose in the civil courts. In 1958 one Jimi, a sub-contracted labourer pruning tobacco on the farm of Mr. A. S. Ford, was to be paid 2s. 3d. per day.[95] In 1959 group leaders were paid 25s. per week, while "older girls" were paid 15s. per week and a girl too young to give a sworn statement received 12s. 6d.[96] In 1962 Mr. Thompson of Deall Farm offered a contract for "suckering". This contract paid 30s. per acre. For the individual worker this amounted to 25s. per week, and for two workers 4s. 2d. per day each. One of these workers put in a total of 46 days, the other 44. Again, the issue that brought this to the attention of the courts was the inclusion of rations in the contract.[97] Most of those engaged on contract by tobacco farmers received five to six weeks of work. It is quite clear from the civil case records that those engaged on short-term contracts expected rations to

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[94] NC Sipolilo, Joseph v. William CR 45/61, n.d., GCC.

[95] NC Sipolilo, Jimi X15163 Sip v Kaseke Zowa, CR 49/60, 1.2.60, GCC.

[96] NC Sipolilo, CR 58/59, 4.4.59, GCC.

[97] NC Sipolilo, CRs 23 and 24/62, 16.3.62, GCC. See also CRs 22 and 25/62, 16.3.62; 27-31/62, 21.3.62; 40-45/62, 27.3.62; 48-52/62, 6.4.62.

be supplied. However, the contractors appear to have considered full-time employment as so significantly different a form of labour that they did not include rations as a matter of course. Perhaps this was following the logic that a six- or seven-week contract did not disrupt seriously the food production cycle on the employee's own lands in the Reserve. This post-Second World War development in Sipolilo District must also be seen as part of the transition to "free" labour.

Maize farmers also used contracted labour. In one case, in 1961, it appears that the farmer was uncertain as to whether labour was most efficiently employed on piece-work or on weekly terms. One worker, Chudeni, outlined the conditions.

> Sometime this year I was employed by the defendant [Paurosi] on his contract with Mr. Hoskins for plucking and threshing mealies. First def. said he was to pay me 8d per bag of plucked mealies, then he said it had been altered by Mr. Hoskins and that I was to get £1.5.- per week. I worked for 7 weeks and at the completion of the contract the def paid me only £2.15.0. I am therefore claiming the balance of £6.

Paurosi responded,

> I promised each of them 8d a bag of threshed mealies. Mr Hoskins was paying me 10d a bag of threshed mealies so on each bag I was receiving 2d."[98]

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[98] NC Sipolilo, Chudeni J 12531 Sip v Paurosi X4610 Sipolilo, CR 132/61, 8.8.61, GCC.

By the 1950s, the people of Sipolilo district were becoming increasingly accustomed to the use of cash for many purposes - employment, tax, bridewealth and loans. Wage labour opportunities existed on the farms and the few mines in the district. Many seeking work also went into the neighbouring Lomagundi district. The Sipolilo stores provided a ready outlet for the cash income. Despite these conditions, barter persisted in the area at least as late as 1956.[99] This was due, in part, to the fact that many inhabitants of Sipolilo Reserve had sufficient land to remain largely independent of wage labour.[100] The contract work also gave rise to men earning money as contractors, sub-contracting labour to perform the work itself. In the neighbouring district to the east, Darwin, the Native Commissioner reported that

> the inflow of much money following on the tremendous increase in agricultural production is percipitating [*sic*] an unbalanced impact on the lives of the people.
>
> A nattily dressed man and his primitively dressed wife struggling to get an inner spring mattress into a hut, the construction and materials which have not changed in centuries; a recent model vehicle being bludgeoned along a track which less than a decade ago was a game trail; four modern native-owned tractors operating in one reserve where there are only two master farmers, neither of whom own a tractor; a schoolboy of about 14 happily kicking a football whilst his lobolaed wife is

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[99] Shadreck Chitsiga, 9 December, 1991.

[100] Tom Blomefield, Tengenenge Sculpture Community, Guruve District, 8 December, 1991.

> left at the kraal nursing a baby; these are examples, extreme perhaps, which lean near the macabre.[101]

A range of new wants and needs had clearly developed by this time, even in the more remote districts like Darwin and Sipolilo. However, wealth and social stratification had not followed the idealised meritocratic path envisioned by many in the Native Affairs Department as is demonstrated above by the fact that those who owned the tractors were not the "master farmers".

Economic activity in the District was not solely agricultural. Some Africans earned part of their living through other skills, though these were very few in 1931 when eight such men were counted.[102] In the 1930s African artisans operating in the district included bootmakers, builders, plasterers and thatchers. Despite fluctuations, by 1939 there were 30 artisans practising a greater variation of trades.[103] By 1951 African business included stores and more than thirty had opened since 1947. The Dikita Store, which began bartering maize for commodities for which previously cash was needed, even though it was very scarce,[104] was described as a "very wealthy organisation; besides having the monopoly on

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[101] NC Darwin, AR 1955, S 2827/2/2/3.

[102] Asst. NC Sipolilo, 1931, S 235/509.

[103] NC Lomagundi, AR 1939, S 235/517.

[104] Shadreck Chitsiga, Ruwinga, 9 December 1991.

transport in the district they also run stores and grain sites in the Miami area."[105] New business opportunities were taken up on the Reserve and in 1954 trader-producers were buying over 57 000 bags of maize produced there.[106] In 1955 there were 11 millers and 42 general dealers, but, the Native Commissioner remarked, "only ten stores are any good. The remainder carry little stock and are often closed."[107] The Land Development Officer judged only five to be doing "reasonably well" in 1956.[108] These stores were owned and operated by Africans; only two were owned by Europeans in 1956.[109] By 1957 there were 61 general dealers, fourteen of which also operated mills. The extent of new wants was also commented upon.

> The buyers, especially the women, are becoming more discerning. Better quality cloth and garments are being bought. Blue 'limbo' is definitely out. Gayer frocks are seen everywhere, and while I am not suggesting that the 'H' line has caught on, at least larger hats and silk stockings have been observed.[110]

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[105] Asst. NC Sipolilo, AR 1951, S 2827/2/2/1.

[106] NC Sipolilo, AR 1955, S 2827/2/2/3.

[107] NC Sipolilo, AR 1955, S 2827/2/2/3.

[108] "Kraal Appreciation Report: Sipolilo Reserve", November 30, 1956, Office of the Land Development Officer, Sipolilo, p. 12. S 138.

[109] NC Sipolilo, AR 1956, S 2827/2/2/5.

[110] NC Sipolilo, AR 1957, S 2827/2/2/5.

Credit and Boxes

Van Onselen has argued that the extension of credit, in different forms, was a strategy deployed by mine owners to extend the average employment period of African workers.[111] In Sipolilo Reserve, as in the mine stores of an earlier period, the so-called Box system as well as more orthodox forms of credit were extended to customers. The Box system was simple. A customer selected an item from the store; it was then placed in a box designated as the customer's, and that article was paid for in part or the payment was deferred altogether. When the contents of the box were fully paid for it would be released.[112] Although there is no evidence that the excesses associated with the mine stores' use of credit occurred in the Reserve, the system was basically the same.

It would be wrong to consider that the new Reserve stores introduced the concept of commercial credit to the people of Sipolilo; that was surely an experience of the mine compounds and farm stores. But the Reserve stores, with the Native Commissioner's and Chiefs' courts, were probably responsible for institutionalizing commercial-style debt in the Reserve. It is important to note that the stores made great use of commercial notions of debt, and in the coming chapter we will see how it altered local concepts of deferred payment and debt.

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[111] van Onselen, Chibaro, pp.161-66.

[112] Ibid, p.163.

The rapid expansion of the general dealerships and other businesses in Sipolilo in the mid-1950s was soon accompanied by an explosion of debt cases at the Native Commissioner's Court from 1954. In 1958 the NC noted,

> Native storekeepers receive and give credit freely; much too freely. Disputes about debts account for the majority of the 215 mercantile civil law cases heard at the Native Commissioner's office.[113]

However, Central Africa had begun to slip into economic recession in 1957, due in large part to the collapse in copper prices. Already by 1958 seven general dealers' stores had been forced to close. From 1957 through 1960 the people of Sipolilo Reserve became increasingly reliant upon credit. The recession generally, and the decreasing crop yields of 1959 and 1960 in particular, left the area with very little cash in circulation. The Native Commissioner reported in 1959 that "The small maize crop meant very much less money in circulation and for native storekeepers and traders 1959 was a very poor year."[114] The storekeepers' response to the harsh economic climate was to rely upon credit. The Native Commissioner blamed this practice for the number of debt cases appearing before his court. The severe shortage of both cash, and the main item of barter in the district,

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[113] NC Sipolilo, AR 1958, S 2827/2/2/6.

[114] NC Sipolilo, AR 1959,

maize, left the storekeepers and their customers with little choice.

White commercial farmers were also feeling the effects of the economic squeeze and passed on their difficulties to their employees through the same mechanism: extended credit for work done, rather than paying wages. They thus played a significant part in slowing down the circulation of cash in the local economy. The white farmers were the only people in the district with sufficient economic power to attract any capital from the Rhodesian economic centre. This was the very time at which commercial farmers in the district increased the amount of contract labour they employed for casual labour.

The salient feature of the economy of the district is that it remained overwhelmingly tied to the agricultural cycle. Thus, for most people, there were seasonal influxes of cash, and in between there were long seasons without cash. It was imperative for the storekeepers to minimise the impact of this cycle on their businesses. As mentioned, bartering persisted until 1956, largely confined to the exchange of maize for clothes. But some storekeepers began extending credit. Commercial debt cases soon found their way into the Native Commissioner's court. Whereas in 1951 only one such case appears in the records, by 1955 93 commercial debt cases were heard, representing 79.5% of the total.

For the six years, 1955-60, commercial debt cases remained the majority of cases being heard in the Native Commissioner's Court.[115] During this period Chief Sipolilo's court also began hearing commercial debt cases. The impact of this will be discussed in greater detail in the following chapter.

Land and Cattle Distribution

There had been rapid change in land settlement patterns in Sipolilo District between 1930 and 1960. The Land Apportionment Act (1930) had resulted in forced removals into the Reserve; in 1943 the Doma people were resettled in the Reserve and in the mid-1950s the Native Land Husbandry Act began to be implemented, resulting in 61% of the Reserve being placed under individual tenure by 1959.[116] Also in the mid-1950s Africans on the designated European Crown Land in Sipolilo district north of the Reserve were forcibly resettled in Urungwe district.[117] In the light of this turbulence in land settlement patterns, the material on land distribution collected in 1957 may act only as a benchmark, but it is

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[115] These figures are compiled from District Annual Reports; files S 2033, S 2404/4; and Civil Records held at Guruve Community Court.

[116] NC Sipolilo, AR 1959, S 2827/2/2/7.

[117] NC Sipolilo, AR 1957, S 2827/2/2/5.

an important one. We have already noted the resentment caused by the alienation of land in the district.[118]

The distribution of land indicates how wealth was stratified in the Reserve and also suggests why many people were compelled to seek wage labour. This is crucial to understanding the effects of the Native Land Husbandry Act (NLHA) of 1951 and the local response to it. The data for Sipolilo is sketchy, but better than for most districts. The information is confined to reports connected to the implementation of the NLHA, and the Working Party 'D' established by the Robinson Commission.[119]

As early as 1951 the Asst. NC Sipolilo noted that "[t]his sub-district is overpopulated and a considerable number of natives are still residing on European farms as there is no land for them in Sipolilo Reserve."[120] The following year the NC Lomagundi expressed his view that Zwimba Reserve was in a better position than Sipolilo to settle the remainder of "Bepura's people" from the Doma area, as Sipolilo was deemed to be both overpopulated and

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[118] See Palmer, Land and Racial Domination, pp.245-6, cited above, p.237.

[119] see Kraal Appreciation Report: Sipolilo Reserve, Office of the Land Development Officer, Sipolilo, S 138; Minutes of Assessment Committee, 12th March, 1957, S 2824/7; NC Sipolilo, AR 1958; Working Party 'D', Robinson Commission, District Survey - Sipolilo (1962), W/P D/3/12, Loc: 5.2.8R, Box No 827525.

[120] Asst. NC Sipolilo to NC Sinoia, 15/10/51, S 2806/1996.

overstocked.[121] This was only nine years after the forced resettlement of some 3000 of "Bepura's people".[122]

In 1957 an analysis of cultivation practices in Sipolilo Reserve (see Figure 1) revealed that of a total of 3027 male cultivators, 705 cultivated less than four acres; 998 between four and eight acres; and 1324 more than eight acres. Of the 1324 cultivating over eight acres, their "average holding...[was]...approximately 16 acres and quite a few are farming plots about 24 acres in size."[123] Not surprisingly, "[t]hese 1,324 oppose the suggestion that they should reduce their holdings to 8 acres"[124] in accordance with recommendations made by the Assessment Committee of the Native Land Husbandry Act (1951).[125] The average acreage cultivated in 1957 was 9.8 acres.[126] Thus we see a pattern in which 1324 (43.7%) small farmers cultivate an average of c.16 acres, 1703 (56.3%) cultivate less than 8 acres. To put this into perspective, it must be noted that 1876, or 38.3% of taxpayers of the Reserve were not classified as

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[121] NC Lomagundi, AR 1952, S 2403/2681.

[122] NC Lomagundi, ARs 1941 and 1947, S 1563.

[123] NC Sipolilo, AR 1958.

[124] Ibid.

[125] "Minutes of Meeting of Assessment Committee, appointed by the Minister in terms of Section 4 of the Native Land Husbandry Act, for Sipolilo District", March 12, 1957, p.1. S 2824/7.

[126] Ibid.

landholders at all in 1956.[127] In 1951 the Asst. NC Sipolilo reported that a "large number of Sipolilo taxpayers live in the reserve but have no farming land."[128] By 1962 the number of "persons demanding land now" was estimated to be about 2000.[129]

The economy of this land distribution is made evident by the fact that only 2480 of the 4914 (50.5%) of the taxpayers registered in Sipolilo Reserve were resident in the Reserve.[130] Furthermore, 18.4% of the male "landholders" were not resident on the reserve,[131] but most likely were supplementing income through wage labour outside the Reserve.

The crops grown included maize, groundnuts, rupoko, munga and beans, although maize was the pre-eminent crop.[132] From time to time tobacco was also grown and marketed.[133] In 1957 maize bought by traders in the

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[127] "Kraal Appreciation Report: Sipolilo Reserve", Land Development Officer, Sipolilo, 30th November, 1956, S 138.

[128] Asst. NC Sipolilo to NC Sinoia, 15/10/51, S 2806/1996.

[129] Working Party 'D', Robinson Commission, District Survey - Sipolilo, Loc 5.2.8R, Box No 82725.

[130] Kraal Appreciation Report, Land Development Office, Sipolilo, november 30, 1956. S 138.

[131] Ibid.

[132] "Minutes of the Meeting of Assessment Committee...for Sipolilo", 12th March 1957, S 2824/7; NC Sipolilo 1957.

[133] DC Sipolilo, AR 1965, Mashonaland North file, Location: 6.5.1R, Box no. 84260, Request no. 8320/81, Records Centre; "Sipolilo Tribal Trust Land, Second Crop Forecast,

reserve amounted to 38 096 bags, whereas traders bought only 653 bags of rupoko.[134] In 1956 rupoko transported to Raffingora was fetching £4.10s. per bag.[135] In 1957 maize was sold to stores in the reserve for 25s. per bag.[136] The robust cash economy that was developing increased trading in many spheres.

By 1957, tractors, rather than ploughs, were the indicator of new technology and capital investment in the peasant sector. In 1958 the NC reported "[t]here are now seven privately owned tractors in Sipolilo Reserve and three in Nyakapupu Native Purchase Area."[137] It was also in 1958 that the sale of farming rights achieved a record price.

> Mr Canaan Chindowe, who has been a master farmer in the Sipolilo District for 10 years, has sold his farming right for £200 recently to Mr Isaac Kawara. Mr Chindowe has bought a farm in the new Nyakapupu Native Purchase Area. This is the highest deal on record for farming rights in reserves.[138]

1974-75 Season", March 17, 1975; "Sipolilo T.T.L., Second Crop Forecast, 1977-78 Season", April 10, 1978. Held at the Agritex Offices, Guruve.

[134] NC Sipolilo, AR 1957

[135] Dzepasi X1596 and Mutero Z1590 v. Dick Nyamadzawo, CR 87/59, 23/7/59, GCC.

[136] Matambanadzo Dickson X4720 Sip v. Benura Agrippa, CR 20/60, 21/1/60, GCC.

[137] NC Sipolilo, AR 1958, S 2827/2/2/6.

[138] "Price of Reserve Stands is Rocketing", African Daily News, December 10, 1959.

The sale was for a ten-acre arable farming field. In 1960 and 1961 two sales of farming rights fetched the more modest prices of £65[139] and £70.[140]

The changing distribution of livestock ownership in Sipolilo Reserve has proved impossible to determine. The only source of information in respect of this distribution is a report[141] made in 1956 after the forced destocking sales of the late 1940s and early 1950s.[142] The extent to which ownership was nominally transferred in order to maintain large herds is indeterminable. However, the distribution of livestock that is demonstrated (see Figure 3) suggests that despite the limitation of large stock equivalents to 6 head per person with grazing permits, a significant number, 23.7%, had seven or more head.

Livestock ownership may also be used as an indicator of wealth distribution. From the figure appended below we can get a picture of how many head of cattle the average family owned. We may also see the extent to which the wealthiest farmers had far greater resources than the average. Although little may be concluded regarding the absolute wealth of the farmers in Sipolilo

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[139] Shamu X817 v. Madzotso, CR 180/61, 21/11/61, GCC.

[140] Chitauro X429 v. Usawi X882, CR 144/61, 18/8/61, GCC.

[141] "Kraal Appreciation Report: Sipolilo Reserve", Ref. No. LAN.20/2/56 S 138.

[142] See p.293 below.

Reserve, we are afforded some information concerning the relative wealth of the residents. The average owner held 5.2 head of large stock equivalents, while the largest number held by a single owner was twenty four.

A Political history

The political history of the Sipolilo chieftaincy is centred around the arrival of Europeans in the area, probably sometime in the 1890s.[143] A Delineation Report prepared in 1965 reads,

> During those early days, long before the advent of the white man, the term chief (that is ishe, mambo or changamire) was not used. Instead, in the country of Guruwe the term Nova was attached to each successive supreme ruler. Thus, Chingowo was nova and Swembere took the unova after him.[144]

This report also claims that "[i]t was customary for each Nova to choose his successor during his life-time".[145] This would set it apart from present Shona chieftaincies and very possibly it was peculiar in the pre-colonial era as well. Beach has shown that it is dangerous to

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[143] This episode has not been fully investigated by any one historian and there remains some confusion about the actual murders. But for some of the information see Beach, War and Politics, pp.32-3 and The '96 Rebellions, (Originally published as "The British South Africa Company Reports on the Native Disturbances in Rhodesia, 1896-97"), Bulawayo: 1975, p.61.

[144] "Notes on Some of the Mhondoros (Spirit Mediums) in the Sipolilo District of Rhodesia", 13/10/65, p.8, DA PER 5.

[145] Ibid. p. 9.

generalise about succession practices in either the pre-colonial or colonial era and that colonial power was often unwittingly drawn into the succession disputes or the establishment of break-away chieftaincies.

There are varying accounts of the establishment of the Sipolilo chieftaincy, but the main outline is clear. In, or about, 1890 Nyamondoro was *Nhova*, or perhaps the heir to the *unhova*, when a group of European prospectors arrived in the area searching for gold. Nyamondoro was approached by his sons, sons-in-law and a well-known elephant hunter, Sipolilo, who requested *Nhova*'s permission to murder the prospectors with the intention of dividing up the spoils. Nyamondoro stalled for time, saying he must consult the ancestors. In his absence the prospectors were murdered at the "Eureka" mine on the Dande River.[146]

Within a week soldiers from Ft. Salisbury arrived. Sipolilo was approached initially. He directed the troopers to continue their investigation with the *unhova*, Nyamondoro. Nyamondoro informed the troopers of the perpetrators, including his sons. At this point accounts differ, but a number of men were taken to Ft. Salisbury to stand trial. The prisoners may have included Nyamondoro. Whether he was taken captive to Ft.

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[146] Ibid.; Nkosaya Chitsiga, Ruwinga, 1 September, 1991, GCL, related elements of the written account. Also Shadreck Chitsiga, Ruwinga, 24 November, 1991, and Mahka Kugotsi, Shinje, 2 September, 1991, GCL.

Salisbury, or followed his sons of his own accord, the salient point is that he died there. Some accounts relate that he was executed, others that he died on a hunger strike in captivity and another that he conducted his hunger strike as a free man.[147]

The BSA Co. officials subsequently returned to the area and

> called on everyone to choose themselves a man who would be their chief. Chipuriro was the choice of everybody - it was a one horse race! People roared: "Chipuriro! Chipuriro! the great elephant hunter must be our chief in Guruve". Chipuriro was duly installed and given the simbi (badge of office).[148]

The new chief, referred to as *ishe* or *mambo* in Shona, did not simply displace the *unhova* but brought into being a second parallel office. It is unclear what happened to the office of *unhova* following the appointment of the first Chief Sipolilo; it may have been transformed or lain dormant but in 1963 it was claimed that the *unhova* had more power than the chief.[149] There is some suggestion that this was a fantastic invention of tradition for political purposes coming, as it did shortly after the greatest conflict Africans of the area had yet had with the colonial authorities in the form of protests against the Native Land Husbandry Act (1951).

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[147] Ibid., and papers in DA PER 5.

[148] Ibid.

[149] Report by Native Messenger Marufu, 15/1/63 in "Chief Chipuriro", DA PER 5.

Sipolilo District does not appear to have become involved in the fighting of the *Chimurenga* of 1896-97 except to give "rather reluctant sanctuary" to the medium of Kagubi in his last days of freedom.[150] It continued to be the wild borderlands of Southern Rhodesia as Mapondera, the guerrilla fighter, continued his resistance to the young colonial state, making the escarpment region west of the Umvukwes one of his bases until 1901.[151] But the Sipolilo chieftaincy appears to have remained neutral.

The chiefs of the twentieth century have been Sipolilo, Kugotsi, Charedzera, Mabaranga, Mbairatsunga, Ganda, Chimundera and Tapfuma.[152] Informants all expressed the tensions of the succession struggles that produced each chief. Succession struggles are inherently political events. As Bourdillon writes,

> Although theoretically the Shona system involves clear rules to be followed and enforced by the spirit mediums, in practice succession to the chiefship is very flexible. The complexity of the rules provides for an element of choice.[153]

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[150] T.O. Ranger, Revolt in Southern Rhodesia, 1896-97, London: 1967, p.307.

[151] Beach, Mapondera, 1840-1904, pp.30-34.

[152] Nkosaya Chitsiga, Ruwinga, 1 September, 1991; Mahka Kugotsi, Shinje, 2 September, 1991, and Shadreck Chitsiga, Ruwinga, 24 November, 1991. All in GCL. Though only an acting chief, Ganda was always listed with the substantive chiefs.

[153] Bourdillon, The Shona Peoples, p. 108.

The best-documented succession dispute of the Sipolilo chieftaincy is that which took place in 1963. Ganda, an acting chief, was compelled to make way for a substantive chief. He had been acting chief effectively for five years. The succession took place in an atmosphere of intensifying Zimbabwean nationalism. The succession dispute was preceded by the first aggressively nationalist politics in Southern Rhodesia: Sipolilo Reserve had been the most militant area in the rejection of the Native Land Husbandry Act of 1951. Twenty-eight of the 101 internal exiles arrested in 1959 came from Sipolilo Reserve.[154] Ganda was one of the central figures in the chiefly selection process as well as the emergent nationalist politics. As such he found himself under the strain - physical rather than ideological - of having to attend ZAPU meetings in Salisbury at crucial stages of the chiefly succession process taking place in Sipolilo. Furthermore, the man who became *Nhova* was also entwined with the nationalist struggle. His eldest son was, in 1963, already in exile for his involvement in the NDP, his second was soon to be ZAPU's representative in London, and his third son was later to join, and die in, the armed struggle.[155] The District Commissioner made

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[154] NC Sipolilo, AR 1959, S 2827/2/2/7.

[155] Interviews with Christopher Chitsiga, Ruwinga, 1/9/91 and Shadreck Chitsiga, Ruwinga, 24/11/91, Guruve Communal Lands.

certain he received police reports on the selection process itself.[156]

From these reports we get a picture of the process followed in 1963. Although it is doubtful[157] whether it represents a fixed procedure used throughout the twentieth century there are many notable elements. As in any such political situation the key actors influence the procedure as well as the outcome. In this case those actors were the representatives of the "royal" houses, the senior spirit mediums, Matare and Chingowo, and the District Commissioner. Of course not all of these were involved at any one time.

Three police reports survive describing the events of the selection of Tapfuma Naisi as Chief Sipolilo in 1963.[158] The police began by reporting that a night was chosen when the *mhondoro* Matare was to be possessed. Many people attended the possession, but only selected persons were invited into the Matare medium's *zumba* (house). Other mediums may have been present and involved in the process. Those invited into the *zumba* deliberated over the selection, each putting forward the

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[156] Several reports are contained in "Chief Chipuriro" DA PER 5.

[157] It is reported that "Mhondoro Matare said to those people who were in the Zumba.... Long ago Europeans are the ones who are electing Chiefs but this year I am the one who is going to do it." unattributed report, 12/1/63, "Chief Chipuriro", DA PER 5.

[158] All in "Chief Chipuriro", DA PER 5.

case for their house to accede to the chieftaincy, until Matare rejected them one by one. Some seven houses were involved, including the house of Gweshe represented by Ganda once he had returned from the ZAPU meeting in Salisbury. Even Ganda made a weak attempt to convince Matare he should continue as chief. It is clear that informal alliances emerged as unlikely houses backed those with a better chance. One report says the *mhondoro* Matare chose two houses but "seeing that people were not pleased of those two houses....He chose two houses again.... And he asked from the people in the Zumba to choose the house they liked" to receive the chieftaincy. Those present referred the matter back to Matare, duly submitting:

> You Grandfather you are the only person who can say out the one who has right to become Chief. If you choose one to be a Chief nobody can blame him. Because we all know you have the power to choose anybody you want.[159]

The *mhondoro* Matare finally selected a single house, that of Kachuta. At this point the senior male of the house asked the spirit's permission to decline the chieftaincy due to age and confer it upon his son Tapfuma which was granted. Just before the final confirmation of the choice, Ganda is said to have had words with the *mhondoro*, telling him not to choose "one who is going to agree to what District Commissioner would say."

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[159] Unattributed report, 12/1/63, "Chief Chipuriro" DA PER 5.

When Ganda made his argument for the chieftaincy, he was flatly rebuked. But he was told "if you want to ask you can ask about the (HUNOVA)", that that was the only office available to the Gweshe house. Here an extremely interesting process began. The office of *unhova*, which is peculiar to Sipolilo, appears to have been filled for the first time in many years, if not since the 1890s. The current holder of the office, Shadreck Chitsiga, who was made *unhova* in 1963, cannot recall a previous holder of the position.[160] This may have been a case of indigenous invention of tradition, which tinges the whole selection process due to the extremely rare overlap of people and mediums from one selection dispute to the next. But this resurrection of *unhova* certainly had political, indeed anti-colonial if not nationalist, elements to it. Ganda had argued with the *mhondoros* that Chitsiga, a Salvation Army teacher, should be made *nhova* "because he is the one who knows how to speak things that help the country."[161] Ganda was backed by others.

A plan then appears to have emerged that Chimanikire, the *dunzwi* or official in charge of the ritual investiture of the new chief, was to present both the *unhova* and the new chief, that is Chitsiga and Tapfuma, to the District Commissioner, apparently to

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[160] Shadreck Chitsiga, Ruwinga, 24 November and 9 December, 1991.

[161] Report by Native Messenger Marufu, 15/1/63, "Chief Chipuriro", DA PER 5.

place the DC in an awkward position, i.e. to recognise the autonomy of African elders to choose their leader(s) or force him to overrule them in accordance with Ministry of Internal Affairs policy. It was claimed that "Nhova has more power than Chief Sipolilo on ruling or garging [*sc.* - judging] cases."[162] However, when the day of confrontation with the District Commissioner arrived, Chimanikire and Tapfuma are said to have arrived at the DC's office early and seized the opportunity to make Tapfuma the sole recognised African leader.[163]

Tapfuma's position was clearly consolidated by the official recognition received. However, he does not appear to have become a lackey of the colonial government. Indeed, he seems to have developed as an extremely independent chief who resisted conflicting demands placed upon him. In 1970 he was made a member of the Council of Chiefs and was issued with a revolver[164] but later he was also to resist the imposition of the infamous "protected villages". However, such public and politically ostentatious acts as receiving the "President's Medal for Chiefs" in 1974 may well have tainted his public perception in Sipolilo. On December

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[162] Mukwenya speaking to NM Marufu, Report of NM Marufu, 15/1/63, in "Chief Chipuriro", DA PER 5.

[163] Mahka Kugotsi, Shinje, 2 September, 1991, and Shadreck Chitsiga, 24 November, 1991, GCL.

[164] Secretary of Internal Affairs to DC Sipolilo, March 25, 1970, Ref. FA/Sipolilo, PER 5 Sipolilo/70.

31, 1978 he was murdered. There is disagreement as to whether this was done by Rhodesian Forces agents, ZIPRA fighters, ZANLA fighters, or whether the murder was the result of a purely local hatred between the District Commissioner and Tapfuma. His son, Eckem, was appointed acting chief, and the Ministry of Internal Affairs emphasised strongly to the people of Sipolilo Reserve that this was in accordance with "custom".[165]

The Bepura chieftaincy appears to be, even more than that of Sipolilo, a product of the colonial administration. In 1946 the NC Lomagundi wrote,

> Bepura seems to have no tribal claim to the chieftainship. Just after the rebellion he was a Native Messenger here and for some unrecorded reason was given the chieftainship, he is not even a native of the tribe. Murisa is apparently the recognized tribal chief of the area by native custom.
>
> As Bepura is the gentleman we have put in the saddle I agree that all parties be called together and advised that they must support him. Bepura has not long to go; when he does go the position can be regularised according to native custom.[166]

Documents in this file suggest that he didn't "go" until 1951 and in October 1954 an acting chief was appointed. The substantive appointment followed a year later. The procedure for the selection is not spelt out: we are told

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[165] Secretary of Internal Affairs to Provincial Commissioner, Mashonaland Central, April 24, 1979, Ref. PER 5/Chipuriro/20.

[166] NC Sinoia to PNC, 22/11/46, Ref. no. 546/46 in "Chief Bepura", DA PER 5.

only that Mufunga succeeded and one man, Dzukamanja, dissented, claiming the chieftainship for himself. He received no support.[167] Eleven days later a "meeting to choose the Chief" was held in the presence of the Native Commissioner. Mufunga won the election then by 51 votes in favour, one against with six abstentions.[168]

The political relationship between the Chiefs Bepura and Sipolilo is clearly a colonial construct. Not only were the two brought into a much closer relationship by the forced removal of the Bepura people, but it was the state that defined Chief Sipolilo as the paramount in the district. This position meant, in practice, that Chief Sipolilo received a higher subsidy than Bepura and disputes heard in Bepura's court occasionally were reheard in Sipolilo's, while they never moved in the opposite direction. More often than not, however, "appeals" from Bepura's court would move directly to the NC's court, by-passing Sipolilo altogether. In fact, the case was that the Assistant Native Commissioner considered, in 1947, that the establishment of a Native Court for Bepura's area "a very distant prospect" and as a result he "requested all natives of this [Bepura's]

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[167] "Ceremony of the late Chief Bepura", n.d., "Chief Bepura", DA PER 5.

[168] no title, n.d., "Chief Bepura" DA PER 5.

tribe to bring their cases direct to the [Native Commissioner's] office."[169]

Missions, Religion, Education and Political Activity

The 1950s was a decade of lively activity in the sphere of civil society in Sipolilo District. Both independent and mission church activity was to be found there, although only one mission, St Philip's Anglican Mission, was located in Sipolilo Reserve. The two others, Hunyani and Msengedzi Missions were, and continue to be, located deep in the Valley. Both of these are stations of the Evangelical Alliance Mission of Chicago.[170]

There appear to have been numerous independent churches in Sipolilo Reserve, and followers of more outside the district. These included Watch Tower, the Rhodesia Apostolic Faith, Hamba Kuku, Mukayera, Yohane and Mai Chaza. All of these are reported to have held meetings regularly in the late 1950s. Sipolilo was the "headquarters" of the Rhodesia Apostolic Faith and by 1973 it could claim some 500 adherents in Sipolilo district alone.[171]

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[169] Asst. NC Sipolilo to NC Sinoia, 304/Chiefs/47, December 5, 1947. District Administrator's files, Guruve.

[170] NC Sipolilo, AR 1958, p. 17. S 2827/2/2/6.

[171] "Religious Missions and Sects: Sipolilo District", file on Spirit Mediums in Sipolilo District, May 1973, Guruve District Administrator's files.

Amongst the white community there was a definite perception that the independent churches were somehow political. The Native Commissioner wrote in 1959 that they had once been "described to me (by an Anglican missionary who has since retired) as 'incipient mau-mau' the Apostori have joined Congress and take an active part in its affairs."[172] The "Vapastori" further demonstrated their independence of the state by rejecting very specifically state courts. Lan tells us, "All matters of law are settled by their own leaders in their own religious courts."[173]

In the Reserve itself there were 16 schools operated by the Salvation Army (9), the Anglican church (6) and the Roman Catholic church (1). A further four schools were established in the Valley area. As in other Reserves,[174] education emerged as an important social and political issue.[175] By 1957 the average daily school attendance was 2,946, an increase of more than 500 over the previous year. It appears that Congress lobbied hard to put the expansion and control of schools on the agenda

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[172] NC Sipolilo, AR 1959.

[173] Lan, Guns and Rain, p.41.

[174] See J.F. Holleman, Chief, Council and Commissioner, Assen: 1969, especially Chapter 4 which outlines how Upper Primary Schools became the focus of political demands following a Government decision to spend £45,000 to meet half the costs of school building programme, the other half to be met by the Native Councils' funds.

[175] NC Sipolilo, AR 1959, p.17.

of the Native Council.[176] Contemptuously, the native commissioner, H.L. George, reported, "Congress leaders continue with a loud demand for upper primary schools based on the false premises that an educational qualification (Standard 6!) is a passport to success."[177]

The Native Land Husbandry Act and the local response

In 1951 the Southern Rhodesian legislature enacted a bill aimed at "revolutionising" African agriculture in the Reserves. Throughout the 1940s commercial agriculture in Southern Rhodesia had been in crisis and had failed to reach expected levels of production, despite state assistance in various forms including the Compulsory Native Labour Act (1942, repealed in 1945) which provided commercial farmers with access to *chibharo* labour gangs. The Native Land Husbandry Act (NLHA) attempted to achieve many aims. Primarily it aimed to create two, distinct and stabilised workforces. The first constituted the peasant producers in the Reserves, while the second constituted the industrial workforce in the towns. The industrial boom in Southern Rhodesia following the Second World War needed a workforce that was efficient, which meant it was required to be sufficiently settled to acquire skills, however limited.

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[176] "African National Congress: Sipolilo", INV.4/29/59.

[177] Ibid.

But the development of an urban industrial workforce is beyond the scope of this thesis.

In the rural sector, the aim to increase African peasant production was conceived as a technical exercise by the draughtsman of the Native Land Husbandry Act, Arthur Pendered.[178] It was argued that through conservation and "good husbandry", African producers were to increase their harvests by fifty percent over five years.[179] This would have alleviated the difficulties of food supply which Southern Rhodesia experienced throughout the 1940s.[180] The Food Production Drive, an apparently short-term measure to increase productivity implemented through the Native Affairs Department, operated in 1951 to overcome those difficulties while the enormous preparatory tasks associated with the NLHA were carried out over the following years prior to the Act's implementation. But clearly the most far-reaching proposition of the entire NLHA was the effective creation of freehold tenure for a limited number of Africans in the Reserves. Africans unable to secure "farming rights" as a result

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[178] See W.R. Duggan, "The Native Land Husbandry Act of 1951 and the Rural African Middle Class of Southern Rhodesia", African Affairs, vol. 79, no. 315 (1980), and M. Drinkwater, The State and Agrarian Change in Zimbabwe's Communal Areas, London: 1991. Also Roger Howman, Harare, 1 August, 1991.

[179] NC Sipolilo, AR 1955, S 2827/2/2/3.

[180] D. Johnson, "The Impact of the Second World War on Southern Rhodesia, with Special Reference to African Labour, 1939-48", PhD., London: 1989, p.157.

would be excluded from access to land in the reserves and thus compelled to remain within the domain of wage labour. Holleman has noted,

> The African...could hardly escape the impression that what the Act generously offered as something special to a qualified number, his own laws had always accepted as the obvious birthright of all.[181]

As The Sunday Mail put it, the NLHA "means, in short, that a capitalist economy is to embrace people who for centuries have known no other than the communal one."[182]

As early as 1953 organised resistance to the state regulation of agricultural production had begun in Sipolilo with the formation of the Rhodesian African Association. In Sipolilo the RAA was concerned with resisting the destocking programmes, drawing attention to the fact that the Provincial Assembly of Chiefs had fallen into disuse and ensuring that the people's views were adequately represented. There had been forced destocking sales in 1948 and 1951, and a further two were held in 1954 and 1955.[183] Although it appears to have been unsuccessful in achieving any of these aims, the

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[181] J.F. Holleman, Chief, Council and Commissioner, p.63.

[182] "It Marks the End of An Era", 22/5/55, The Sunday Mail,
S 2825/4.

[183] "Kraal Appreciation Report: Sipolilo Reserve", November 30, 1956, Office of the Land Development Officer, Sipolilo.
S 138.

Rhodesian African Association was the first "civic institution" of its kind in the district and is notable for that alone. The Native Commissioner ridiculed the organisation, commenting that it had become readily apparent that it was effectively fraudulent after collecting membership fees and delivering nothing.[184] Yet within three years the people of Sipolilo Reserve were willing to join another organisation, this time the Southern Rhodesian African National Congress (SRANC).

In Sipolilo Reserve the response to the NLHA was earlier, more intense and had wider repercussions than actions elsewhere in the country. The SRANC appears to have scored its greatest successes concerning the NLHA in Sipolilo; its infamy spread as knowledge of the "Sipolilo situation"[185] spread. More detentions took place in this district in the 1959 Emergency than any other, and all this political activity laid the foundation for the early guerrilla activity in the region in the later 1960s and early 1970s.

The 1950s and early 1960s are of special interest for the political history of the district, and indeed the

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[184] Confidential Report, "African National Congress: Sipolilo", NC Sipolilo to Secretary for Native Affairs and Provincial Commissioner, Mashonaland West, April 30, 1959. INV.4/29/59. An original copy of this document was kindly sent to me by its author, Mr. H.L. George.

[185] Under Secretary for Native Agriculture and Land Husbandry to Secretary for Native Agriculture, March 3, 1959. Records Centre, Box 6.5.66R/84266.

country as a whole. Therefore it is worth briefly looking at the leaders of the resistance to the Act in Sipolilo, and their social bases: who followed them and why. The repercussions of this resistance will also be looked at briefly.

It is first worth reminding ourselves of the profile of land distribution which was provided above. The government was intent on redistributing land in eight-acre parcels to those granted farming rights in the reserve. As we have seen, eight acres was barely an economic unit as considered by the peasant producers themselves. The majority of peasant producers cultivated more than 9.8 acres. Thus the limit to 8 acres was a real cut in available arable land to many, and "quite a few" who cultivated about 24 acres were being severely cut. The leaders of the resistance to the Act came, not surprisingly, from the group of producers who had previously controlled more than eight acres. Indeed, the NC Sipolilo's report of April 1959 on Congress activity in the District states that

> 16 of the 25 [local Congress leaders] now detained have between 10 to 28 acres each. From their point of view it was necessary to reject the Native Land Husbandry Act and they got the rank and file to do so also - but on the grounds that the Act catered inadequately for children and made insufficient provision for the future.[186]

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[186] Ibid., p.4.

However, one woman informant told me that she and her husband had cultivated about four acres but that they had opposed the NLHA because it deprived them of the right to choose the land they wanted to till. In essence they were resisting government impositions. Furthermore, there was a fear that in years of shortages, men would still be compelled to find wage labour beyond the Reserve and the untilled land resulting from a shortage of labour would be confiscated by the colonial authorities in an attempt to settle more people in the reserves.[187] Throughout the country the implementation of the Act had been notorious for disrupting village settlement patterns, to the extent of having caused the displacement of whole villages.[188]

In 1955 the Native Commissioner, H.L. George, expressed misgivings concerning the NLHA and foresaw a number of problems it might cause. First, he questioned the credibility of the "Five Year Plan that will Revolutionise African Agriculture" and the increase in production it projected. Secondly, he asserted that the extension and conservation work taking place in the reserve was already achieving these aims; any new scheme could only be upsetting.

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[187] Amai Muzurura, 11 December, 1991, near Ruwinga, GCL.

[188] Jocelyn Alexander, "The State, Agrarian and Rural Politics in Zimbabwe: Case studies of Insiza and Chimanimani Districts, 1940-1990", D.Phil., Oxford: 1993.

> The increase sale of maize from 30 000 in 1950 to the record 57 333 bags in 1954 can be attributed to extension work: better seed selection, more compost used, better weed control, better crop spacing. The development plan must include both extension and conservation work and I believe that since the re-appointment of the Land Development Officer in 1953 that balance was properly maintained.[189]

Finally, George recognised the possible political consequences.

> The recentralisation of Sipolilo Reserve will involve a very considerable amount of work....
>
> Farmers' average holding in the reserve is 12 1/2 acres - a sale of up to 50 bags is not uncommon. These landholders are concerned about the intended reduction in size of their lands. I am told that by reducing their land to six acres (or whatever the assessment committee decides) I will be depriving them of land allotted to them by the chief or rightfully inherited, into which they have put much labour and which they had intended to divide and assign to their children.[190]

But George's successor as the NC Sipolilo in 1959 displayed the conventional view of the Native Affairs Department that more land would mean more satisfaction.

> It is pertinent to point out that a large proportion of landholders now have an increased holding having previously held half or less than their present acreage; the extent of their holdings previously depended on the good will of the kraal head. I have questioned 40 males

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[189] NC Sipolilo, AR 1955, S 2827/2/2/3.

[190] Ibid.

> at random, almost all of whom now have more land than previously.[191]

This understanding of the land distribution in Sipolilo did not take into account the extensive studies carried out by the Land Assessment Committee.

Those who led the resistance to the NLHA at the local level had included Ganda, effectively the acting chief in this period, who is credited by many still living in the communal lands as the man who "brought politics to this district",[192] and Jairos Katanda, a large peasant producer. Ganda later became a member of ZAPU. Another leader was Christopher Chitsiga, SRANC publicity secretary in the district and the eldest son of Major Shadreck Chitsiga, later to be appointed to the resurrected position of *nhova*. The newly arrived Native Commissioner, Sherlock, noted, "It is significant that some Congress leaders had large lands e.g. John Chikoya (18.4 acres), Jakalasi (22.8 acres), Muchemwa (20 acres) and Tinarwo (27.4 acres)."[193] These men were prominent in the local community prior to the attempted implementation of the NLHA, and following its repeal they had gained in local power, suggesting that the campaign as a whole was legitimated within the local community.

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[191] NC Sipolilo, AR 1959, S 2728/2/2/7.

[192] Nkosoya Chitsiga, 1/9/91, Ruwinga, and Amai Muzurura, 11/12/91, near Ruwinga, GCL.

[193] NC Sipolilo, AR 1959, S 2827/2/7.

Native Councils and Congress activity

One immediate consequence of the anti-NLHA sentiment in the Reserve was the invitation of the SRANC into the district and the targeting of the Native Council, not as a symbol of colonial government which had to be destroyed, but as an effective institution which could be used to resist government pressures. A Native Council had been established in Sipolilo Reserve in 1946 and it met regularly over the following thirteen years, unlike its counterparts in many other parts of the country. In 1958 it was reported to have met nine times. "Congress" apparently instructed the Council to apply for a school that year.[194] In the same year the SRANC had at least one member on the Council and was preparing to put a full slate forward for the Council elections scheduled for 1959. Those elections returned all the Congress candidates, and they were able to secure the position of Vice-Chair (the chairmanship being held *ex-officio* by the Native Commissioner) but the Council met only once as the Emergency declared in January 1959 resulted in no further meetings being held that year.

The SRANC established a branch in Sipolilo in October 1957 after John Chikoya, previously an active branch member of the defunct Rhodesian African

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[194] "African National Congress: Sipolilo", INV.4/29/59. Also a report by the NC Sipolilo entitled "Congress instructs Council apply school", SBV.2/4/58, Sept. 8, 1958. I have not seen this report.

Association, approached George Nyandoro, the SRANC Vice-President, and invited him to a meeting in Sipolilo.[195] Those elected to the executive of the Sipolilo branch of the SRANC were "virtually the same people" who had been active in the local Rhodesian African Association. Their objectives remained roughly similar, but some interesting new complaints were voiced. Congress appears to have been more critical of the Chiefs' Assembly than previously, but strikingly, especially for this thesis, it was reported that complaints included "Too much delay in being attended to at the Native Commissioner's office especially in dealing with civil cases."[196] This was noted in a report listing only six of the major complaints voiced by Congress.

George appears to have responded very conclusively to the establishment of the Congress branch:

> The situation was such that by the end of 1957 I was able to recommend either Congress and kindred associations be banned or recognised, then they must be strictly controlled. No action was taken.[197]

By the end of 1958 the Native Commissioner estimated that its local membership had reached 1200 and the donations made in that period amounted to £2000. Over the same

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[195] NC Sipolilo, AR 1957, S 2827/2/2/5 and the Confidential Report entitled "African National Congress: Sipolilo", INV.4/29/59, in my personal possession.

[196] "African National Congress: Sipolilo", INV.4/29/59.

[197] "African National Congress: Sipolilo", INV.4/29/59.

period Congress held twenty "major meetings" in Sipolilo, six being attended by national executive members based in Salisbury. In November 1958 the President, Vice-President and Secretary-General of Congress (Joshua Nkomo, George Nyandoro and James Chikerema) visited Sipolilo together. These men either stayed in Sipolilo a number of days or made a further visit two days later. Whatever the case, the formerly "remote" Sipolilo was gaining national attention.[198]

The legitimacy enjoyed by the campaign in Sipolilo appears also to have been transferred to the organisations allied to it, the SRANC, the NDP and ZAPU. Although it appears that the resistance to the Act originated locally, and was an organic resistance to local circumstances, the nationalist groupings were soon invited into the district to give it more weight. Congress appears to have lent organization to the widespread campaign against the NLHA in Sipolilo. The Native Commissioner commented in his report on Congress activity that following the detention of "26 active local Congress leaders" there was no decrease in sympathy for Congress, and to permit any of the detainees "to return to the reserve would be highly dangerous; they would most certainly cause a clandestine revival of as great, in not greater, influence than before the emergency."[199]

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[198] NC Sipolilo, AR 1958, pp.29-30. S 2827/2/2/6.

[199] "African National Congress: Sipolilo", INV.4/29/59.

Conclusion

The history of the African people of Sipolilo district has been one of essentially remaining peripheral to the Southern Rhodesian state prior to the great influx of European settlers following the Second World War. This influx brought with it the need for the Government to open up new land for European settlement, and government surveyors were working in Sipolilo shortly after the cessation of hostilities in Europe. Capital brought into the district by these settlers, African entrepreneurs (mainly storekeepers but also bus owners), and the increasing number of people involved in wage labour prompted the economic development of the area.

The strong land base enjoyed by those in the Reserve resulted in increased peasant prosperity in the decade 1947 - 1957. The introduction of the Native Land Husbandry Act threatened, or at least was perceived to threaten, that new-found prosperity. As a result the resentment towards it was great and the Act was met with growing resistance as one organisation after another was established in the Reserve to fight the government impositions.

This period marked the consolidation of the cash economy in the district as a result of two parallel processes. First, the establishment of the permanent stores in Sipolilo following the Second World War provided the basis for a local cash outlets for Africans.

The colonisation of the Horseshoe block farms resulted in capital investment in the area and a rapid increase in local employment opportunities initially to open those farms, and later to keep them running. However, the onset of the recession in 1957 was felt sharply. Peasant producers cut back on their production because of marketing difficulties. At the same time they felt under attack as the Government sought to implement the Native Land Husbandry Act. The previous decade had consolidated the local cash economy but in the recession cash was very scarce. The prospects of recovery appeared to be cut off by the NLHA. It is little wonder that by late 1958 the nascent nationalist struggle was vibrant in Sipolilo district.

As we shall see in the following chapter, the social and political conflict of this period was the general backdrop to a dramatic increase in the use of the local courts. The focus of judicial disputing also shifted in this period and both Chiefs and Native Commissioners were compelled to be nimble in order to satisfy the demands of the litigants.

Chapter 5

"Money breaks blood ties":[1] From Lineage Debt to Commercial Debt

In action, each local bridewealth system is precisely adjusted to specific political, social and economic conditions.[2]

Introduction

This chapter will examine how a new legal concept, commercial debt, was introduced, how that concept may be transferred from one field of law, commercial law, to another, family law, and consider the process by which that legal concept became a norm in Sipolilo society over the period 1945 to 1965. In order to follow this process it is important to have an understanding of the bridewealth system and the implications this had for the concept of debt in the area under study. The role of the storeowners of Sipolilo and their use of the lower courts in the 1950s and 1960s will be examined. The use of a legal principle originating in one field of law but applied in a new one is explored and finally some consideration is given to the relationship between scarcity and disputing.

This district study will provide an important insight into the value of controlling dispute proceedings and provide finer texture to my larger thesis. I will argue that the changing economy and its ramifications as

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[1] Chenjerai Hove, Shadows, Harare: 1991, p. 26.

[2] A. Kuper, Wives for cattle, London: 1982, p.170.

interpreted by the lower courts controlled by Native Commissioners and chiefs affected *roora*, or bridewealth, but also the concept of debt current in African society in Sipolilo. It was the courts that mediated the transition from lineage debt to commercial debt through the most difficult period. The legitimacy and organic connection that the chiefs' courts provided was of paramount importance in the development of the new norms. This whole process was overtly ideological and involved both the colonial administrators and the African chiefs.

All of this, of course, took place within a specific social, political and economic framework. To summarize, in the 1950s the Sipolilo district was being opened up to the cash economy largely through the colonization and settlement of the area by European and white South African immigrants. The introduction of the Native Land Husbandry Act (NLHA), 1951, was dispossessing many Africans in Southern Rhodesia of their land and attempting to force all Africans into single-sector employment - largely either peasant production or industrial wage labour. It was an attack on the migration between the two sectors and an attempt to stabilise both workforces. In the late 1950s, particularly in 1958, Southern Rhodesia as a whole suffered a recession, and the related "credit squeeze"[3]

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[3] NC Mazoe, AR 1958, S 2827/2/2/6; and NC Buhera, AR 1959 S2827/2/2/7.

affected many in Sipolilo. Finally, throughout the 1950s and into the 1960s the Native Affairs Department was increasing its support for African "chiefs".

Chanock has commented,

> While historians may perceive the 'destruction' of peasantries and the process of proletarianisation, it is far from easy for people affected to understand the nature of the broad processes which are changing their lives, and far easier for these changes to be understood in terms of their nearest and most obvious manifestations. Both subjectively and objectively people found themselves engaged in conflict not with economic forces, not just with white colonial government, *but with each other*.[4]

This is a phenomenon also touched upon by Mann and Roberts in their recent volume.[5] It is through the window of civil disputes and records that we may perceive, in Sipolilo district, the social tensions involved in the processes noted by Chanock. It is worth returning to his work here for further comparative insights. Writing of indirect rule as experienced in Northern Rhodesia and Nyasaland, he comments,

> The disputes with which colonial courts and village courts found themselves dealing were in increasing numbers new conflicts caused by new demands being made of old relationships, or caused by the formation of new relationships which people tried

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[4] Martin Chanock, Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia, London: 1985, pp.12-13. Emphasis in the original.

[5] Kristin Mann and Richard Roberts (eds.), Law in Colonial Africa, London: 1991, pp. 3-4.

> to regulate with concepts and claims appropriate to a passing social formation.[6]

The new tensions could no longer be resolved by the old methods.

Abel has pointed out that the lower courts in Kenya developed a "rule-orientation", but not of their own initiative.[7] I would argue that the rule-oriented paradigm within which the Native Commissioners' courts operated served as a model for the chiefs' courts which sought to avoid appeals being made to their decisions. Thus the chief followed the example of the NC's court and remained within the vaguely defined limits which were suggested through the conduct of the NC's court adopting the rule-oriented paradigm. This is observable particularly in the commercial debt cases which were very new to the chiefs and whose outcome at the NC's court had been very clear.

The recently developed *modus operandi* in the chiefs' courts of the latter half of the 1950s was in response to the new demands placed upon them. Chanock has termed this rule-oriented process "legalism". It is the adoption of a procedure for the application of rules. It has been adopted "because it is instrumentally effective", and Chanock describes it as "more of a

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[6] Chanock, Law, Custom and Social Order, p.22.

[7] Richard Abel, Customary Law of Wrongs in Kenya: An Essay in Research Methodology, New Haven: n.d., cited in Chanock, Law, Custom and Social Order, p.66.

mechanism than an ideology."[8] The social acceptance of a newly emerging norm, in this case the necessity to pay commercial debts with relative speed, required a process which made a break from the past. Legal coercion was used to institute the new norm, and that new norm had ramifications throughout the legal world. Once legal coercion was able to produce a consensual acceptance of that norm, that norm was fit to be transferred to other fields of law. For example, I intend to show in this chapter how commercial debt came to predominate over lineage debt and how, once this concept had been incorporated into the local concept of debt, the underlying principles were transferred into the sphere of family and matrimonial law.

The period central to the discussion in this chapter was, without doubt, a time of rapid change characterised in the judicial field by a surge in civil litigation between Africans, and in particular in commercial debt cases. It appears quite clearly that during this period - as Fallers remarked in his study of Busoga - the "legal subculture differed sharply from the popular culture".[9] This is observable in the resistance to the emergent norms. Commercial debt was a new "trouble spot", as is observable from the sudden and dramatic increase of such

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[8] Martin Chanock, "Writing South African Legal History: A Prospectus", JAH, 30 (1989), p.268.

[9] Lloyd A. Fallers, Law Without Precedent: Legal Ideas in Action in the Courts of Colonial Busoga, London: 1969, p. 16.

cases. The graph plotting commercial debt cases and non-commercial cases (Figure 4) makes this clear. Interestingly, this "trouble spot" was also one that quickly disappeared, suggesting that commercial debt gained social acceptance and became a norm to be respected within African society. Newman has argued in a theoretical and comparative study of preindustrial societies that

> Where stereotypical kinds of disputes prevail...there are underlying strains in the social relations of production, patterned inequalities in access to crucial resources, which are surfacing as disputes and which are addressed by prescriptive legal rules. It is in this sense that law should be viewed as regulating the social relations of production....[L]egal behaviour is oriented toward and straining to accomplish the containment of structurally generated conflict. Thus, if the tensions generated within particular modes of production can be isolated, recurrent disputes and substantive rules should be interpretable as manifestations of these tensions.[10]

Equally, the emergence of new types of disputes and new rules to contain them may be interpreted as a manifestation of new tensions caused by weaknesses in the old order of class forces to respond to new factors and changing class forces.

The regulation of social relations by the powerful interest groups in Sipolilo society, both the state as embodied by the Native Commissioner and the African

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[10] Katherine S. Newman, Law and Economic Organization: a comparative study of preindustrial societies, Cambridge: 1983, p.137.

elders, was conducted through the means of distributing "crucial resources", i.e. the courts.[11] I would go further and argue that in conditions such as Newman posits in which certain types of cases occur with great frequency, not only is the existence of "underlying strains in the social relations of production" brought to light, but also a new technique of gaining access to those resources has been made available. In our case the presence of the colonial state allowed individuals access to a resource, the Native Commissioner's court and its form of justice, which offered many a means of obviating the barriers found in Chiefs' courts and the justice they meted out. Indeed, as we have seen earlier, the colonial government attempted to abolish all African-run courts and impose the colonialists' interpretation of "native law and custom" as the only legitimate form of African law.[12]

The territorial spread of law concomitant with the political and economic processes of colonialism was met with differing forms of resistance, according to district and period.[13] Chanock writes,

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[11] See Andrew S. Ladley, "Courts and Authority: A Shona Village Court", Ph.D. thesis, London: 1985, in which he argues that the courts are a key instrument for the distribution of crucial resources.

[12] See Chapters One and Two.

[13] Diana Jeater's book, Marriage, Perversion and Power: the construction of a moral discourse in Southern Rhodesia, 1890-1930, Oxford: 1993, demonstrates some processes

> [The] dominant form [of commodity relations and law], spread by capitalism and imperialism has reshaped and re-formed modes of social control at all levels. This is not to say local levels eventually simply reflect the dominant mode, for there are resistances and adaptations, but all have been changed by its power. It is from this perspective that there is an advantage in identifying the differences between the newly dominant form and those of the societies which are now its subject.[14]

Thus the emergent form of commercial creditor-debtor relations becomes predominant in an area, but not without resistance. The interaction between the emergent and declining forms reshapes each, the specific outcome dependent on their relative strengths.

Lonsdale has remarked that in a time of acute social disorder when old authorities are weakening and new statuses are still insecure "'men cannot so easily detach themselves from old identities and associations in so uncertain a world...they were ...tugged at every step by all the cultural symbols with which their elders had taken such pains to endow them.'"[15] In Sipolilo society in the post-Second World War period, as the cash economy was consolidated there, it was not a simple adjustment

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remarkably similar to those being presented here, but in an urban and periurban environment, close to major markets, some thirty or more years earlier.

[14] Chanock, Law, Custom and Social Order, pp.222-223.

[15] Ibid., p.18, citing John Lonsdale, "States and Social Processes in Africa: A Historiographical Survey", African Studies Review, 24, 1981.

for the people to adopt a fully capitalist economy, and the social relations that accompany it, and dispose of anomalous cultural practices. Indeed, the "tugging" created social strife. Both the Chiefs' and the Native Commissioner's courts played an important role in managing the transition from lineage debt to commercial debt in the most difficult period in Sipolilo.

In the mid-1940s Sipolilo District was still on the periphery of the cash economy, but by the early 1960s the portion of the district which lies south of the Zambezi Escarpment was firmly integrated within the Southern Rhodesian economy. This rapid economic change was compelled by many factors, and it clearly had ramifications throughout society. As we shall see the lower courts controlled by the Native Commissioners and the Chiefs had been instrumental in consolidating the cash economy in the district. This went beyond simply the use of currency, including support for credit extension and the local development of contractual agreements and relations.

Lineage Debt

In order to begin the analysis of the transformation of debt we must begin with the dominant form of pre-capitalist debt, lineage debt. Central to lineage debt was marriage, so I will begin by setting out a typology of the *roora* system operating before the Second World War

and consider the post-War economic changes within this frame of reference. *Roora* involves the collateral transfer of resources, for example, eight head of cattle, six head of goats and a cash element, from the family, or lineage, of the son-in-law to the father-in-law in return for a wife. I would argue that it is important to conceive of it as a collateral transfer or exchange, rather than a payment, which is how most anthropologists have tended to characterise it.[16] This is due to the fact that the return of the cattle, goats and cash were at the centre of disputing over divorce throughout the period under consideration. Kuper has stated of southern African bridewealth systems that

> the payment of bridewealth cattle gives the husband legal rights to the children his wife bears. As Jeffreys summed up the jural situation, '*Lobolo* is child-price' (1951). More precisely, the transfer of bridewealth cattle is necessary to the birth of a legitimate person.[17]

At the core of a successful marriage is the birth of healthy children. Thus the transfer of livestock may be conceived of as collateral against a successful marriage. The failure of marriage, depending on various factors, of

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[16] Michael Bourdillon, The Shona Peoples, Gweru: 1987, J.F. Holleman, Shona Customary Law, London: 1952, Adam Kuper, Wives for cattle, London: 1982, all write about "payments". Although this may appear to be a very minor point, I believe it does help to dispel the concept of "purchasing" wives and furthermore takes into account the role that bridewealth plays in divorce disputes.

[17] Kuper, Wives, p.22.

which the most important was the number of living children (who remained in the husband's family), resulted in the return of the *pfuma*[18], or collateral livestock. For example, a divorce case brought before the Asst. NC's court at Sipolilo in 1947 provided the following testimony. The plaintiff, Tarupiwa, stated he had "paid £9.10/- lobola" and his wife had given birth to a boy in 1945. Subsequently the marriage broke down and Tarupiwa was claiming "custody of the child and return of my lobola less £3 dowery [*sic*] for the child and £2 raising fee."[19] Kuper has found that this is common to all Southern Bantu bridewealth systems.

> The fundamental bridewealth rule was that marital rights in a woman were transferred against the payment of cattle. The Southern Bantu emphasized particularly rights to a woman's children. Should a wife be childless, or should she die or desert her husband before bearing children, then either the bridewealth cattle had to be returned or her family had to replace her with another wife.
>
> The transfer of rights in children was permanent. Children could not be claimed by the wife's relatives in the event of divorce or in any other circumstances.[20]

However, there were some court cases in Sipolilo that contested the permanency of rights to children, demonstrating that the court was a milieu in which

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[18] The Standard Shona Dictionary defines this as "2. Cattle consideration handed over as main part of roora.", p.525.

[19] Tarupiwa v. Arutura, CR 9/47, 30.6.47, S 2033.

[20] Kuper, Wives, p.26.

negotiation over social norms took place. Although these courtroom negotiations were between Africans, the norms were also partly defined within the parameters of, and therefore by, the superior legal structures of the colonial state.

Some court cases concerned disputes over whether it was the correct cow or bull that was being returned in a given divorce. In one case, in 1954, the defendant offered money in lieu of the cattle but the plaintiff insisted "'I want my cattle.'"[21] That 1954 was a destocking year in Sipolilo Reserve may explain in part why, in this case, the plaintiff, and implicitly the defendant, considered cattle more valuable than cash. It may also explain why the plaintiff insisted his cattle were returned: if those defendant's cattle were more likely to be forcibly culled, and the prices received would be below market value, there was little point in the plaintiff accepting them.

Kuper's analysis may be interpreted in support of this proposal to conceive of bridewealth "payments", in the sense of collateral transfers which only gained permanence upon the success of the marriage. Bourdillon argues in a similar way with special reference to the Shona, "*Roora* is associated with rights over children

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[21] Muzira X427 v Matiyapa (asst. by Dzinyanda 979), CR 25/54, Sipolilo, 1.10.54, S 2033.

born to the woman"[22] and remarks astutely, "there is no clear point at which the couple can say they are now married whereas they were not married before."[23] Furthermore, the transfer of livestock occurred over many years, sometimes extending beyond the lifetime of the husband, in which case his son was held responsible for its completion.[24] I would argue that this had a functional purpose and was not simply the result of families not having the wherewithal to complete the transfers sooner. It created interdependent relationships and strengthened social ties. The changes wrought in bridewealth arrangements reflected the impact of developing commodity relations in Sipolilo district.

Marriage amongst the Shona "is essentially a contract between two families."[25] But as we have seen, it was often the case that this was between unequal families. In a kinship-oriented society this has important ramifications. A marriage increases the social ties both horizontally, i.e. through the same generation, and vertically, i.e. across different generations. It creates a whole new set of affinal relations for the

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[22] Bourdillon, The Shona Peoples, p.41.

[23] Ibid., p.40.

[24] Ibid., p.42, and see also the civil records for Sipolilo District in S 2033 where these issues arise several times in cases.

[25] Ibid., p.36.

families involved. The new relation is expressed through the terms used. As Bourdillon explains,

> Thus a *tezvara* (the father-in-law of the groom or any male of the bride's family) is *tezvara* to the whole of the groom's family, all of whom should give him the appropriate service and respect. The whole family adopts a new relationship terminology, which is dropped by all if the marriage is dissolved.... For some purposes, the head of the family of the groom is regarded as the principal *mukuwasha* (normally translated as son-in-law) rather than the husband of the bride.[26]

Kuper argues that this is not the only set of relationships affected by the marriage. He asserts that the husband becomes indebted to the relative or patron from whom he acquires the initial livestock or cash. This person, for obvious reasons, tends to be older than him, with a herd of a sufficient size to spare a few head. The father was usually responsible for providing the bridewealth for at least his eldest son, but even then sometimes the father had to draw on the resources of elder brothers or patrons. However, it was not always so simple. As a member of a powerful house in Sipolilo Reserve stated, "I did not receive any cattle from my father to marry my wife. I paid my own lobola, except

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[26] Ibid., p.37.

for three head which he [my father] borrowed from the mondoro [the ancestral spirit or spirit medium]."[27]

In a typical, rural, pre-Second World War *lobola* marriage, the father could expect, in turn, to receive the cattle that his son received for his first daughter.[28] This had two effects. First, it extended the patron-client network; the father gained another client as his granddaughter's husband effectively transferred the cattle, indirectly, to the grandfather. Secondly, it highlights how long debts associated with *roora* transfers remained outstanding. Both have binding power upon the individuals and lineages involved.

Another means of obtaining the required livestock was through the use of those cattle acquired through the marriage of a sister. This creates a special link between those two siblings. The importance of this is that it illustrates how the raising of the *roora* created debts between the wife-receiving and the wife-providing families as well as within the wife-receiving families, that is between the father-son or sister-brother. Kuper emphasises this:

> The basic rule of reciprocity operated whoever raised the bridewealth, kinsman or patron, man or woman.
>
> The transactions involved in raising bridewealth were strictly comparable to

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[27] Mufidziki X6699 Sip v Kugotsi Chirata, CR 122/60, 7.6.60, GCC.

[28] Kuper, Wives, p.26.

> the great public transaction in which bridewealth was directly exchanged for a wife. All were governed by the same rule of reciprocity. The payment of bridewealth gave a claim to the wife. Each bridewealth payment consequently formed part of a chain of transactions, not only between the immediate 'wife-givers' and 'wife-takers' (however they might be defined) but between a series of debtors and creditors, related in a great many possible ways.[29]

The time-factor involved in the quittance of these debts is of paramount importance here. We may perceive a type of debt that creates bonds, making affines out of unrelated families, and reinforces those between members of the same family. Shona people see it as such. While giving testimony to the Native Production and Trade Commission in 1944, one man stated, "Lobola is a kind of binding relationship....it binds the relationship between the father-in-law and the son-in-law together".[30] The debts create tension and interdependence both between the husband's and wife's families as each waits for children and cattle to arrive, and between the husband and his *pfuma* provider. The persistence of the debts maintains the interdependence. Bourdillon's analysis of the extended debts is as follows. The husband is reluctant to make the complete transfer before the marriage is proven a success. The wife's family's interest lies in

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[29] Ibid., p.27.

[30] Nhlanga to the Native Production and Trade Commission, 1944, p.583, ZBJ 1/1/1, vol. III.

that they may demand favours from the husband as long as the debt is hanging over him. As Bourdillon and one of my informants both note, "*Mukuwasha mukuyu haupere kudyiwa*" ("A son-in-law is like a fruit tree: one never finishes eating from it.").[31] This is not to deny that the system creates and reinforces hierarchical relationships, the wife-providers lower than the wife-receivers[32] and the *pfuma* providers, husband's father and/or uncles higher. Kuper summarises it as follows,

> The system of marriage and bridewealth rested on a simple and ineluctable principle of reciprocity....This rule applied not only as between a man and his wife's family, but at every step between those who contributed to bridewealth payments, and those who exchanged bridewealth directly for wives.[33]

To supplement this model of *roora* and Shona marriage we may turn to the analysis advanced by Weinrich concerning the impact of capitalism upon *roora* transactions.[34] She argues that the introduction of cash "acquainted people with new forms of property" and concludes that the resulting "transformation of

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[31] Bourdillon, The Shona, pp.42-43. The translation is also Bourdillon's. The Shona is from Maj. Shadreck Chitsiga, Ruwinga, GCL, 9 December, 1991.

[32] Ibid., p.37.

[33] Kuper, Wives, p.39.

[34] A.K.H. Weinrich, Women and racial discrimination in Rhodesia, Paris: 1979, see especially Chapter 4 "The Changing Function of Bridewealth".

bridewealth into a commercial transaction [was] a natural consequence" of this change.[35] Weinrich ignores the fine texture of the process which led to this change when she makes her assertion that the "transformation" was "natural". In fact, it was a highly complex transformation which in different districts involved many different factors, and it would be dangerous even to suggest, as Weinrich does, that the transformation was inevitable.

The major characteristic of cattle prior to the penetration of capitalism was their use-value; of cash, its accumulative power. Weinrich argues that

> cattle were pre-eminently lineage property and intended for the perpetuation of the lineage; as the lineage lost its relevance, cattle, too ceased to be an important factor in a marriage transaction.[36]

However, the cash economy had weakened the lineage-based economy directly, a factor Weinrich fails to emphasize. The cash-earning powers of young men provided for them opportunities of relative freedom from dependence upon their lineage 'big men' in order to accumulate sufficient wealth to make the required *roora* transactions. However, Schmidt notes cases of 'big men' controlling the earnings of migrant workers. She writes:

> This they did through the manipulation of the bridewealth system; increasingly large amounts of

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[35] Ibid., p.94.

[36] Ibid.

> cash, as well as cattle, were demanded as *lobola*. Thus, bridewealth became less of a symbol representing a bond between kin groups and more of a commercial transaction, in which women were the bartered goods.[37]

We may conclude from this that the struggle over a new resource, cash, undermined the pre-existing structure of kinship relations. The timing of this struggle depended upon the specific conditions of a given district, primarily the emergence of the cash economy. The cash economy was extended to Sipolilo district most forcefully in the period immediately following the Second World War as was demonstrated in the previous chapter.

From the 1920s through the 1940s cattle transactions were at their height in Southern Rhodesia. But in the 1950s, a period of industrial expansion and also of large-scale destocking, cash transactions were on the increase.[38] In Sipolilo there had been, previously, little local need for cash and few local outlets. As young men gained the ability to find their own bridewealth, the elder kinsmen's control of bridewealth allocation diminished. The ability, or freedom, on the part of young men "has as its consequence marriages that no longer link together different lineages".[39]

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[37] Elizabeth Schmidt, Peasants, Traders and Wives: Shona Women in the History of Zimbabwe, 1870-1939, London: 1992, p.86.

[38] Weinrich, Women and racial discrimination, p. 96; also see below in the case study.

[39] Ibid., p.108.

Furthermore, Weinrich found that bridewealth cash transactions, perhaps legitimately referred to as payments, were used for a variety of new purposes ranging from school fees to establishing businesses and paying medical bills rather than towards expanding the lineage through extending lineage credit. This is a significant variation upon the models outlined above. As Weinrich states clearly,

> the uses to which bridewealth payments are put show the extent to which this custom has been commercialized. Bridewealth provides old men with a unique opportunity of acquiring wealth which can be used for whatever purpose they wish. This is totally different from the role of bridewealth in the past.[40]

The fact that the lineages were undermined is very important. Not only could an individual find the *roora* but "it is no longer the extended family as a whole which receives marriage payments".[41] This change had an adverse impact upon women's positions as they became

> almost exclusively dependent on their husbands. In the past, if a husband seriously maltreated his wife, she could appeal not only to her own family but also to her husband's family [which stood to lose all or part of the *roora*]; today these have little influence in restraining their son even if obviously abuses his authority at home. This means that wives are becoming more vulnerable as their position loses some of its traditional safeguards."[42]

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[40] Ibid., p.112.

[41] Ibid.

[42] Ibid., p.96.

On the wider, national, scale Weinrich has argued that money had broken blood ties and a lineage based economy was supplanted by a commercial one. She has discussed some of the large-scale factors in this transition, such as industrialization and government destocking programmes, but we are given none of the fine texture of how this transition, centred around the 1950s, manifested itself in the local community. Jeater, however, has provided a splendid, fine-textured, analysis of the impact of capitalism on African marriage and social relations in an urban area in the first thirty years of this century.[43] In conjunction with the study below, it demonstrates the importance of the material context for bridewealth arrangements. Now we turn to a case study to make a more detailed examination.

Disputing and Norms in Sipolilo District

Sipolilo District, throughout the first half of the twentieth century, was a region of scarcity. Below the escarpment, and indeed in many areas above it, tsetse fly created an adverse environment for cattle, compelling bridewealth transactions to assume another form. One of the main forms was the labour option, known as *kugarira*[44]

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[43] Jeater, Marriage, Perversion and Power.

[44] M. Hannan, Standard Shona Dictionary, p.185. It is also interesting to note the primary meanings of this verb which include, to lie in wait for; watch over or for, and; sit on.

or brideservice.[45] In such instances the father-in-law demanded that the son-in-law reside with, or near, and work for the wife's family for an undetermined period. A case heard in 1945 indicates that the son-in-law had to wait a considerable time for his emancipation. Nyahonodo married Mbarika in 1923. He had paid £3 to his father-in-law and was also "bondsman" and remained so in 1945. His wife had borne three children, two of whom survived. He now claimed a divorce and the custody of both children, stating he was willing to offer a further £2.10/- for them.[46]

Variations and additions on the use of cattle for *pfuma* appear to date from at least the colonial period. For example, a man named Mapondera received from one son-in-law "7 head of cattle, 3 guns + £5" during E.G. Howman's period of office as Native Commissioner at Lomagundi, that is 1919-1926.[47] The cash element persisted, and indeed later overtook the cattle element, although the value may have continued to be expressed in terms of head of cattle. Indeed, in the 1950s it became standard on the marriage registration forms to record the

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[45] Jeater has shown that the rinderpest epidemic of the late nineteenth century had a similar impact on the form of marriage transactions. See Marriage, Perversion and Power, p.98.

[46] Nyahonodo v. Mbarika, CR 10/45, Sipolilo, 16.5.45, S 2033.

[47] Nyande v Ndimu (unassisted), CR 106/33, Lomagundi, 10.1.34, S 306.

pfuma as the number of livestock and amount of cash, "or the equivalent". Although it would require extensive statistical research to make any definitive statement, it does appear that the cash element fluctuated quite widely especially in the pre-Second World War period. In one case, dating from 1933, it was testified that £17 was demanded in addition to nine head of cattle. After a few years the husband opted for divorce as he was unable to make the transfers as quickly as the father-in-law wished.[48] This case is not unique. In an early example of the courts being used to enforce *pfuma* transfers in a manner similar to commercial debt payments, Gupa, in 1933, brought his sister's husband, Kanyuchi, to court, demanding from him further transfers of cash and cattle or else the dissolution of his sister's marriage. Kanyuchi states simply, "I have no relatives on whom I can call to pay this lobola for me. I can only earn 10/- a month."[49] Having initially paid the substantial amount of £8, it appears that Kanyuchi believed he had a period in which to effect further transfers. However, Gupa had visited him five times over seven months demanding further transfers, finally taking him to the Native Commissioner's court after only seven months of marriage! This was unique. The NC ordered

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[48] Rusere v Chirata, CR 15/36, Sipolilo, 23.10.36, S 2033.

[49] Gupa 8040 Sinoia v Kanyuchi 11808 Sinoia, CR 70/33, Lomagundi, 15.8.33, S 306.

Kanyuchi to pay. The ways in which Kanyuchi and Gupa understood the debt appear to have been at variance, and the same may be said of the case involving Rusere and Chirata.[50] This is crucial and must be kept in mind as we now begin to trace the transition from lineage debt to commercial debt. It should be noted that both these cases occurred in 1933 in the middle of a period of scarcity and depression.[51] The role of scarcity in disputing will be considered later in this chapter.[52]

A Litigation Explosion and the Management of Debt

In the mid-1950s there was a dramatic increase in the amount of civil litigation in Native Commissioners' and African Chiefs' courts in Southern Rhodesia. This explosion of litigation may be perceived both nationally and in the Sipolilo District, although each has a distinctive profile. The rapid increase can be clearly dated as beginning in 1952-53. There is no indication that this is simply the result of differences in the means of counting or admitting cases to the court such as occurred in the 1960s. Instead the increase in cases must be analyzed as a distinct phenomenon with national implications. To do so I have analyzed the cases prior

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[50] Rusere v Chirata, CR 15/36, Sipolilo, 23.10.36, S 2033.

[51] See John Iliffe, Famine in Zimbabwe, 1890-1960, Gweru: 1990, p.82.

[52] See pp.345-346 below.

to this rapid increase, and those during the surge period, 1954-63. The Sipolilo court records were taken as the case study, using the crude statistical returns included in various reports for the country as a whole as a means of verification of these trends. The disputing will then be set within a larger context and specific factors will be considered. Finally, the social, economic and political implications of these will be discussed.

An analysis of cases heard by the Assistant Native Commissioner and later the Native Commissioner of Sipolilo District for the period 1932 to 1970 shows that a distinct periodization may be made of the types of cases which came before the courts. This periodization also fits remarkably neatly with the quantitative profile produced. Three periods may be observed: the initial period dates from 1932 to 1953, the second 1954-63, and the final period 1964-70. The statistics and information available for the chiefs' courts suggest a similar periodization, but delayed. That is, the initial period extends to 1958, the second extends from 1958 to about 1973. Thereafter, the impact of the war on the district makes information erratic, unreliable and very difficult to analyze.

In the initial period, 1932 to 1953, the cases in the Native Commissioner's court were overwhelmingly concerned with matrimonial issues. These included divorce,

custody, *roora* transfers, adultery and seduction. In this period spanning twenty-one years, these accounted for 316 cases, while other cases amounted to only 17.

A sudden surge in disputing, and in particular in commercial debt cases, characterises the second period. In the decade 1954-63 the NC Sipolilo recorded 2056 civil cases, more than six times that of the previous two decades combined. There were 1106 commercial debt cases, 830 matrimonial cases and 120 other cases. Expressed in percentage terms, commercial debt cases accounted for 53.8% of the total. Thus it is clear that commercial debt cases, previously unknown in the court, came to dominate its proceedings. Before proposing an explanation for this, let us complete the periodization.

The third and final period in this analysis, 1964-1970, was characterised by a rapid decline both in the number of commercial cases and in the total cases heard in the NC Sipolilo's court. From a peak in 1960 of 348 cases, surpassed only in 1956, litigation fell away to only 24 cases in 1963. This is largely due to the district commissioners adopting a policy of upholding the authority of the chiefs' courts through a variety of means, including the refusal to hear re-trials without due cause. It also appears that the chiefs were actively seeking greater judicial powers. In a submission to the Working Party 'C' of the Robinson Commission the chiefs argued that if commercial cases were put beyond their

jurisdiction, "it would derogate from their authority".[53] Not surprisingly the surge that occurred in the chiefs' courts from 1959 in Sipolilo district did not fall off again until the 1970s when very different factors affected them.

The surge of cases in the mid-1950s is our main concern here. In the previous chapter we looked at the social, economic and political setting in which this took place. The circulation of cash in the district had recently increased: not only were there increased opportunities for wage labour, but with the establishment of stores in 1947 there were more outlets for that cash. The cash element in *roora* agreements was increasing and a radical land reform programme had been initiated by the central government, under the Native Land Husbandry Act. Social relationships appear to have been going through a period of rapid reconsideration, if not change.

Few of the new stores were viable, full-time businesses. As late as 1958, of the 54 stores in the reserve, only ten were "well patronized."[54] Of those that were more successful, all of them appear to have adopted a similar strategy of making use of the Native Commissioner's court to recover debt. However, not all of those that used the courts were successful businesses. The extension of credit had been of fundamental

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[53] No accession number.

[54] NC Sipolilo, AR 1958, S 2827/2/6.

importance in an economy based on the agricultural cycle. Such credit was necessary for the stores to overcome the irregular incomes of their clients. By the mid-1950s pre-harvest scarcity had become a regular occurrence due to the quick sale of produce as early in the season as possible. The small farmers likewise depended upon it to cope with their own irregular incomes and as a means to keep workers dependent upon them in a period when shortages of labour in the agricultural sector were acute. Thus commercial credit and debt became a difficult and unwieldy element in the life of Sipolilo District.

Typically, in a single year an individual storekeeper brought anywhere between five and forty civil summonses demanding payment for "goods delivered". Each summons demanded payment on goods valued at between 7s.6d. and £20.[55] Indicative of the Native Commissioner's attitude towards such actions, the civil records rarely contain any testimony and for the most part there are not even any dockets, judgments simply written over the summons.

Storekeepers were perceived not only as the people with goods in the district, but also as a source of cash. One case from 1960 for which there is testimony merits extended quotation. The plaintiff was a man named Bonda.

> I am storekeeper of Mbare River, Sipolilo. I claim the following money for goods supplied 1957. I

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[55] See S 2033 and the civil records that remain in Guruve Community Court.

> lent Magaya £4 in 1957 for tax. He returned 2 sacks of maize (£2-6-0) leaving balance of £1-14-0. I also supplied goods that year to his wife Kelesiya. 1 Shirt 6/-, 1 Dress 6/- 3/6 for new sack, and 2/- for beef.
>
> [cross-examined] Magaya died in 1957 and he bought the dress.

Keresiya responded,

> I am widow of Magaya. I am looked after by Magaya's family. I know about the £4 lent to Magaya and the 2 sacks grain returned. I admit the shirt 5/- not 6/-, and beef 2/-, but don't know about the dress. Pltff has brought no books to prove the other articles he alleges bought.[56]

The court found in favour of the plaintiff in all the claims above and included another of 1s. 6d. for stamps, making a total of £2 6s. that Keresiya must find.

The stores that made most use of the courts to recover debts were Nyakapupu Store in the Native Purchase Area adjacent to Sipolilo Reserve owned by V.K. Machipisa, and Muzika Store owned by Taiwanika and located in the north of the Reserve. At least eight stores made use of the courts in this way and perhaps more than twice that number. However the court records do not always indicate which actions were on behalf of stores, or whether "goods delivered" refers to retail purchases or the delivery of craft goods.

Some individuals maintained an array of commercial interests and were both artisans and dealers. One such

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[56] Bonda X1843 Sipolilo v. Kelesiya (unassisted), CR 18/60, 18.1.60, Guruve Community Court.

man was Mapfumo Baingira of Matswitswi Business Centre in Sipolilo Reserve. Baingira was, at various times, a carpenter, shop owner and small commercial farmer. In the period 1959-61 he brought 28 commercial debt cases to court, at a value of nearly £163.[57] The fixed time-element appears to have been present in creditor-debtor relations by 1960 and one case brought by Baingira indicates this. This summons, delivered in December 1960, concerned goods obtained on credit the previous December.[58]

As we have seen, stores were perceived as suppliers of cash that could be called upon, much like pawnshops. At least one store went so far as to operate as a rudimentary banking institution. Its business activities come to light as the result of four actions brought against its former manager, Makwawa. The store's name was Machipisa, also located in Nyakapupu Native Purchase Area, and it may have been the same one mentioned above as being owned by V.K. Machipisa. The plaintiff, Chipisa, explained how the store-cum-bank treated customers, "When I wanted money, I went to the store I asked Defendant for money. He gave me money from the

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[57] See CRs 254-270/59; 23.12.59, 271/59, 19.1.60; 27-54/60, 25.1.60; 123/60, 10.6.60; 6/61 17.1.61; 7/61, 18.1.61 and 200/61 8.12.61. All at Guruve Community Court.

[58] Mapfuma Baingira v. Nicholas Chipangura, CR 7/61. 18.1.61, GCC.

store safe." Makwawa explained that the money deposited with him

> was used in the store to by [*sic*] goods + other necessities. My father [V.K. Machipisa] knew of this and agreed to it. But now he denies it, which surprises me.
>
> It is the store which should return this money.

Maka, the new store manager, was another of Machipisa's sons. He testified, "I know nothing of this savings bank at the store." Machipisa also denied knowledge of "this savings bank" as he also referred to it.

> He [Makwawa] did not tell me about it. He did not ask my permission. If he had asked I would have refused because I have a store, I do not want a company. I do not want other money used in the store.

Makwawa claimed he had raised over £2000, in addition to the ordinary profits, that could be used for investment in the store through this strategy. However, there is no indication over what time-span that took place.[59]

Individual loans were also being recovered through the courts in this period. The case put forward in January 1961 by one plaintiff states the issue simply:

> The Def. borrowed £9-10-0 from me in 1955. He was buying a motor-car. He has not returned any of this to me.
>
> I have asked him many times but he always replies 'I have not yet found the money'.
>
> I am tired of waiting.[60]

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[59] CRs 143-146/59, 9.11.59, GCC.

[60] Nyamadzawo X156 v. Makoronga Kunguma, CR 3/61, 10.1.61, GCC.

In December 1961 Sangare Webster issued a summons to Naison Musandakwira for £73, "Being money lent to you 9 years ago which you have not repaid". In December 1962 a Warrant of Execution was issued to recover the outstanding £42.[61] It is clear, from these and other cases, that the legal route for debt recovery was being used increasingly, both for different types of debt and for older debts. The storeowners had led the way; now others were making use of the path that had been opened.

However, the storeowners didn't have it all their own way. Other traders were just as willing to use the courts to enforce payment when the stores themselves were the defaulters. Weston Mucheriwo was the defendant in two consecutive cases concerning debt he owed. The first was a claim for £24 5s. made by William Marizani Zwitete for repairs done to a store in Karoi, and the second for a £9 loan made by Pukeni to Mucheriwo.[62] In the neighbouring district of Urungwe, 1958 was also a difficult year, but "despite the drop in turnover," commented the local Native Commissioner, "none of the general dealers went out of business although three are always on the receiving end of civil summons."[63]

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[61] Sangare Webster X86 v. Naison Musandakwira, CR 204/61, 14.12.61, Guruve Community court. The Warrant of Execution was dated 13.12.61.

[62] CRs 34-35/61, 6.3.61, GCC.

[63] NC Urungwe, AR 1958, S 2827/2/2/6.

The legitimacy of commercial debts began to gain acceptance in the chiefs' courts in this crucial period 1955-62. The example of the Native Commissioner's court played a significant pedagogical role in this. Whereas previously Chief Sipolilo had considered his court incompetent to hear commercial debt cases, it was in this period that the court began accepting them. It is indicative of the chief's perception of the power devolved to him by the example of the Native Commissioner's court that his court soon began treating an individual's debt to a store more harshly than debts between individuals.[64] Through a process taking seven years in which the Native Commissioner's court was used to collect this new form of debt, and the storekeepers were given overwhelming support through decisions and the issuing of warrants of execution, resistance to this new concept of debt was overcome. The chiefs in turn sought to extend their jurisdiction to cover issues of commercial law. The chiefs were in a position in which if they had attempted to deal with cases of commercial debt very differently from the Native Commissioner, they would have simply been met by the storekeepers exploiting the avenue that would most benefit them. It would have jeopardized their already threatened political power. In order to maintain their political authority, the chiefs needed to keep the support of the increasingly powerful

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[64] Sturben Gweshe, Ruwinga, 1 September, 1991, GCL.

new "class" in the Reserve. Thus the chiefs were attempting to extend their jurisdiction and maintain their alliances.

Initially, clients reacted with hostility to the storekeepers' insistence on rapid repayment of credit.[65] Clients attempted to treat the new commercial indebtedness within the idiom of more traditional notions of indebtedness. In that idiom, debt persisted over a long period but all parties profited thereby. Outstanding debts were to be recalled in periods of need and scarcity. Furthermore, they played an important role in defining pre-capitalist social relations.

The advent of the chiefs' *dare* (court; pl. matare) hearing such cases and consistently finding in favour of the storekeepers is fundamental to the transition. As long as the new stores were supported only by the Native Commissioner, these remained things of the "*muRungu*" world, and in a sense alien.[66] The involvement of the chiefs' *dare* provided the internal, organic connection that legitimated this new concept of debt, and indeed provided the capitalist economy with the support for

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[65] Sekuru Makha Kugotsi, Shinje, 2.9.91, GCL.

[66] I would like to thank Dr. Peter Fry for pointing out to me this dichotomy in the Shona world of "things African" and "things foreign". Hannan, Standard Shona Dictionary, defines muRungu as "1. Person of Caucasian descent. 2. Wealthy person. 3. Employer (African or non-African)." p. 403.

deeper social penetration than ever before in this previously (economically) peripheral district.

The role chiefs played in supporting capitalist penetration, as shown in this study of Sipolilo District, had distinct implications for their position in the state. The *muRungu* association between the storekeepers and the Native Commissioner was already established when the chiefs' *matare* began taking commercial cases. The idiom of commercial debt may be described as being *muRungu* in character. Consequently, as the chiefs took on these cases they were drawn ever more into the *muRungu* world. Their independence was compromised and their African identity blurred. This was important groundwork for the co-option that was to follow in the 1960s when the chiefs' positions were radically transformed, as Holleman puts it, "from that of a 'non-political', fragmented and subservient part of an administrative structure, to that of a nationally organized body of very considerable *political* force."[67]

In Sipolilo District, the period 1958 to 1962 was characterised by contradictory behaviour on the part of the chief and acting chief. By this time the man with power in the Reserve was Ganda. He presided over the *dare* of Chief Sipolilo and was acting chief from 1960 until the selection and accession of Tapfuma Naisi in

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[67] J.F. Holleman, Chief, Council and Commissioner, London: 1969, p.356.

1963. He was instrumental in "bringing nationalist politics to the district".[68] Not only did he lead resistance to the Land Husbandry Act, but he was also a member of the Zimbabwean African People's Union (ZAPU), noted by someone in the District Commissioner's office as a "Red hot Nat."[69] His position in ZAPU was prominent enough to take him to Salisbury for a meeting when his presence was required at an important meeting to select his successor, the substantive chief, on January 13, 1963.[70] Through the control he exercised over the *dare* he was also instrumental in the consolidation of the cash economy in Sipolilo Reserve and the parallel development of capitalist social relations there.

The extent to which the new creditor-debtor relations affected African society is apparent in that more traditional forms of debt came to be treated within the new idiom. Thus we return to that central social institution, *roora*. Contemporaneous with the surge in disputes in Sipolilo district we find a new element making its way onto the marriage certificates. It gives them a more contractual nature. As I will argue, the

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[68] Sekuru Mahka Kugotsi, Shinje, 2.9.91, GCL.

[69] This is a marginal note on p.11 of "Notes on Some of the Mhondoros (Spirit Mediums) in the Sipolilo District of Rhodesia", a report prepared as part of the Delineation exercise, dated 1965, PER 5, Guruve District Offices.

[70] Report by Native Messenger Marufu, 15.1.63, in "CHIEF CHIPURIRO PER 5", District Administrator's files, Guruve District Offices. Also see p.284 above.

period of payment was shortened substantially and the new time limits were enforced by appeals to the courts.

In the early 1950s marriage registration forms typically recorded how much of the *roora* had been exchanged, expressed in cash, heads of cattle and goats, and how much remained outstanding. From 1955, with increasing frequency, these registration forms began including under the section "Terms:", deadlines by which all the *pfuma* must be transferred. These deadlines were typically set at two years from the time the marriage was "contracted" (rather than from the date of registration).[71] These deadlines were included for legal purposes and evidence that the time limit was enforced, at least in some cases, is found in the civil records of the Native Commissioner's court.[72] Such cases appear to have peaked in 1960 in Sipolilo District.

In 1962 Manyika used the courts to enforce the transfer of outstanding *pfuma*. He claimed "4 head or £20 being lobola outstanding in respect of marriage with my daughter". The defendant, Kapomba Makorichi, admitted both the debt and liability, promising it would be paid.[73]

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[71] This was gleaned from piles of marriage certificates for the 1950s onwards that remain loose in Guruve Community Court.

[72] See Figure 4. Data for this graph taken from S 2033 and CRs held at Guruve Community Court.

[73] Manyika v Kapomba Makorichi, CR 117/62, 15.8.62, Guruve Community Court.

This was not unique. In an extreme case, the terms of contract made the transfer of *pfuma* due within three and a half months of marriage registration, and not more than five months after the marriage was contracted.[74] At this point, perhaps more than previously, the *roora* transfers may be considered payments. It also indicates the increasing acceptance of legally enforceable deadlines for *pfuma* transfers. The years of intense contestation over this were coming to an end. No longer could it be argued that "new demands [were being] made of old relationships",[75] but in fact new relationships were being consolidated. The "prescriptive legal rules" had been imposed and contained the structural tensions that had arisen. Consonance was returning in the fields of legal and popular culture.

Without doubt registration became a means to strengthen one's case for a rapid, complete transfer of *pfuma* which, with the force of law as applied by the courts, made the retrieval of such debts a near certainty. The timing of many registrations makes this clear. One marriage contracted in 1965 was registered on January 17, 1966 with the condition that the *pfuma* transfer of "8 Cattle, 8 Goats" be completed "in February

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[74] Stanley Gora RC No. X15878 v Jane a/b Muzinde, CR 1/69, 3.3.69, GCC. The marriage certificate contained therein states the marriage was contracted in 1966, registered on 9.3.66 and that the *pfuma* was due "in May 1966".

[75] Chanock, Law, Custom and Social Order, p.22.

1966".[76] Another case displays this still more clearly. The marriage was contracted in 1950 and registered only in August 1957 with the terms that transfers be completed "By August 1958". Fifteen pounds cash and £20 in lieu of 4 head of cattle had already been transferred, the wife-providing family awaited the remaining "4 Head and 5 Goats".[77] Many marriages that show up in the civil records as divorce or *roora* disputes were not registered until three to five years after the marriage was contracted.[78] Clearly registration was used, in this case, to hasten or ensure the final transfer. A case brought to the Sipolilo Native Commissioner's court claimed "£30 outstanding lobola, plus 4 goats *mbudzi dzomai*, on marriage of my daughter". Although the case was eventually postponed *sine die*, the use of the court as a coercive mechanism is evident.[79] In Chinamora Reserve, twenty kilometres north of Salisbury, Chief Chinamora was, in 1963, hearing cases to enforce such transfers. In one such case the plaintiff was claiming the "Balance of lobola which has taken too long. £18, 9 herd [*sic*], an overcoat + hat and £8 for the mom[be ?]."

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[76] Hildah a/b Sirewu v Phineas Muhloga Murambiwa X24915 Victoria, CR 15/71, 9.9.71, GCC.

[77] Harusi (asst. by) Masonda v. Zwenyika X8824, CR 2/68, 5.2.68, GCC.

[78] CRs 14 and 15/63, 6.6.63, and 2/68, 5.2.68, all relating to marriages in the 1950s. Guruve Community Court.

[79] Ndawa v. Mutochi, CR 128/62, 27.9.62, GCC.

Unable or unwilling to complete the transfer, the *dare* instructed: "Motsi is to take his daughter and to be given his balance after 3 months. The daughter Lucia has pregnance [*sic*] of 4 months."[80]

It is frustrating that the dockets for the Sipolilo Native Commissioner's Court for the years 1956-58 have not been traced. However, an analysis of the cases in the preceding and subsequent years does suggest that disputes over the transfer of *roora* were at their peak in the key transitional period I am proposing here. A curve similar to, but much less dramatic than, the surge in commercial debt cases may be seen in the profile of the use of the Native Commissioner's court to enforce the speedy transfer of *pfuma*, although the peak is clearly later.[81] Commercial cases peaked in Sipolilo District in 1958 and, according to the available evidence, nation-wide the following year. The sudden disappearance of these (and virtually all other cases) in 1963 is attributable to a change in policy concerning the admission of cases to the District Commissioners' courts, rather than a change in disputing patterns. From 1963 onwards the vast majority of cases were referred back to the

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[80] CR 45/63, 27.7.63, Chief Chinamora's Case Record Book, S2932/2.

[81] All data for Figure 4 are from a combination of files and sources, namely Chief Native Commissioner Annual Reports, District Annual Reports, files S 2033, S 2404/4, and the Civil Records at Guruve Communal Court.

chiefs' *matare*, by accepting only re-trials and referring litigants to the local chief. However, if we leap forward to 1976 and 1977 and use as evidence the only surviving chief's case record book for Sipolilo District, that of Chief Bepura, we do find that commercial cases comprised 8.3% and 6.1% of the cases in the respective years.[82] Thus the chiefs' *matare* took on these cases, but commercial debt was no longer an issue for dispute (or "trouble spot") in either the Native Commissioner's court or the chief's *dare*. It may be - but this is only speculation - that the more traditional forms of debt were being recalled in order to pay commercial debts due. There is evidence, however, suggesting a link between scarcity and disputing. This in turn suggests that commercial debt cases as well as those enforcing the completion of *roora* agreements and even an increase in divorce rates may be attributable to a need to redistribute scarce resources. The graph (Figure 4) depicts the dramatic rise in commercial debt cases in Sipolilo District from the mid-1950s to the early 1960s. These cases reached their peak in 1958. This is an extremely important date as Southern Rhodesia was in the middle of a recession and Sipolilo Reserve's agricultural output had been very poor.[83] In an interesting, and

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[82] Chief Bepura's Case Record Book, 1976-77, GCC. Translation by Actor Tapfumaneyi.

[83] NC Sipolilo, AR 1958, S 2827/2/2/6.

perhaps cynical comment, one Native Commissioner in 1958 stated

> The demand for divorce by women is, of course, encouraged by the present law regarding the non-return of lobola in excess of £20. As most lobola paid exceeds £20 and the fault is generally the wifes [*sic*], an equitable award is often illegal and the woman and her father profit unjustly.[84]

Although the commercial debt cases begin to fall off after this date, the non-commercial debt cases, largely divorce, increase very quickly over the next two years. This may, in some part, be accounted for as a means of transferring resources from one sector, i.e. matrimonial, to finance another, namely commercial debts incurred earlier.

Scarcity and Disputing

The link between disputing and scarcity has long been suspected. In 1912 the Asst.NC Chibi reported,

> One noticeable effect of the famine was the number of civil cases it brought with it. In their desperate need to find something to trade for food, they raked up every conceivable case from the past in vain hope of being awarded something. They themselves admit candidly that they are so old that they ought not to be brought, but always end up with the unanswerable question 'what can we do'.[85]

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[84] NC Mtoko, AR 1958, S 2827/2/2/6. Mtoko had an extremely uneven year with regards to agricultural produce. The Native Marriages Act (1950) attempted to limit *roora* to a £20 ceiling.

[85] Mr Forrestall, Asst. NC Chibi, AR 1912, N 9/1/15.

Not every famine year brought such comment, but three of the seven major famine years since 1912 covered by Iliffe[86] did result in some mention linking the two and civil records suggested a link as well.[87]

Iliffe has argued that in the 1950s the patterns of, and responses to, scarcity changed. The famine of 1960

> revealed that the settler capitalist economy could no longer handle famine without assistance, because it could no longer absorb the available labour and thereby enable the hungry to purchase food.[88]

One response to the new conditions appears to have been an intensification of litigation. Not only did storekeepers demand that debts be repaid with cash (bartering having nearly disappeared, there being a shortage of grain and destocking and the NLHA limiting cattle herds), but others were demanding their due *pfuma* through the new commercial idiom of divorce. These cattle could then be sold and foodstuffs bought with the cash. Not all had the ability to recall such debts and, as Iliffe points out, for a variety of reasons there emerged a more clearly marked "category of marginal people who were the chief sufferers during scarcity".[89]

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[86] John Iliffe, Famine in Zimbabwe, 1890-1960, Gweru: 1990.

[87] NC Charter, AR 1916, N 9/1/19; Mr. Franklin, NC Chibi, AR 1933, S 235/511; see also Sipolilo CR 91/60, 4.4.60 Guruve Community Court, for evidence.

[88] Iliffe, Famine in Zimbabwe, p.11.

[89] Ibid., p.103.

The monetization of disputes concerning non-commercial issues in times of scarcity is particularly highlighted by a case of *makunakuna*, or incest, in Sipolilo District in 1960. In the case of *makunakuna* the *svikiro*, or spirit medium, is to be given a head of cattle in order to propitiate the *mhondoros*, or ancestors. This particular case, on appeal from Chief Sipolilo's *dare*, the plaintiff (appellant) is instructed to pay the *mhondoro* [sic] £5.[90] The impact of destocking and therefore the general availability of cattle in the region is clear.

Conclusion

Through the use of the lower courts, initially that of the Native Commissioner, followed by the chiefs', the predominant form of debt in Sipolilo changed from that of lineage debt, characterised by an extended period for the final transaction to take place, to that of commercial debt, characterised by a demand for relatively speedy repayment. Lineage debt was perceived as having a binding function in society and was set deeply within the kinship system in which it operated. Commercial debt did not have the same role, and indeed may have gone some way to eroding kinship ties. The increasingly capitalist social relations made it possible to "avoid the build-up

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[90] Chanzi X11398 Sip v. Matambo X7301 Sip, CR 96/60, 11.4.60, GCC.

of a series of potentially burdensome reciprocal obligations".[91] The development of commercial debt and contractual relations went hand-in-hand and these new forms of relations radically transformed the central social institution of the Shona, *roora*. The courts played a crucial role in transferring the new concept of commercial debt from the field of commercial law to that of family law and thus was the critical mechanism for its imposition.

The courts were, by no means, the only factors shaping social ethics. The chiefs were clearly interested in the expansion of their jurisdiction to include cases of commercial law and thereby put their courts in a position to service the increasingly powerful storekeepers in the Reserve. Those bypassed by this important group would have threatened the chiefs' political authority. The storekeepers were the 'big men' of Sipolilo Reserve and their power was clearly extensive. In one case a storekeeper claimed land-allocating powers and favoured those who shopped at his store.[92] This most coveted power represents the power of the 'deepest' lineage heads - the chiefs. With such blatant threats to their authority the chiefs were clearly interested in keeping the storeowners on their side.

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[91] N. Long, Social change and the Individual, Manchester: 1968, p.222.

[92] "People Troubled by Givoze" to District Commissioner, Sipolilo, July 24, 1964, Chief Chipuriro, PER 5.

Specific economic factors influenced the surge in commercial debt cases at this particular historical moment. These included the insecurity created by the destocking program and the implementation of the Native Land Husbandry Act. The 1958-60 economic recession further exacerbated the situation upon which were placed increasing tax burdens and ever more expensive technology in the farming sector. These all combined to make *roora* transfers increasingly a means of raising cash when "other sources of income dried up."[93] In Sipolilo, the courts were used to ensure the transfers were paid in full. This is very different from the situation Jeater has postulated for Gwelo district in the 1920s.[94]

This chapter has shown the role that the law and courts played in a deep social transformation and the way in which chiefs' attempted to gather support. The following chapter will look at how the involvement of the chiefs' courts in this process affected the chiefs' position politically at the national level.

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[93] Jeater, Marriage, Perversion and Power, p.219.

[94] Ibid.

Chapter 6

Chiefs, the Rhodesian Order and the emergence of the nationalist challenge: the new context for African courts

Introduction

The last chapter focused, at the local level, upon the role of disputing in the local courts, looking at the impact this had upon various social, economic and political institutions. In this chapter the perspective is broadened to consider the implications of the increasing integration, both formal and ideological, of the Chiefs' courts into the colonial regime with emphasis upon the political aspect. In the late 1950s and 1960s such integration included a substantial bolstering of Chiefs at the local level by the state, the construction of a "national" voice for the Chiefs, support for the state given by the Chiefs and an alliance of Chiefs and the Rhodesian state against growing nationalist demands. On the part of both the Chiefs and the state the process was a multifaceted endeavour that was a combination of planning and patchwork in response to internal and external pressures.

Internally, the nationalists were challenging the continuation of white minority rule. This alarmed the government. In the period 1958 to 1962 the personnel employed by the British South Africa Police, the Native Affairs Department and the Ministry of Justice nearly

doubled, while there was an increase in police stations from 102 to 134.[1]

The challenge of the African nationalists was also perceived by many to be a challenge to the privileged position held by "traditional" leaders under the colonial regime. Accordingly the Native Affairs Amendment Act (1959) prohibited Africans from doing anything that might undermine the authority of chiefs or headmen. External pressures were manifested in the moves towards majority rule in Northern Rhodesia and Nyasaland, the consequent break-up of the Central African Federation, and Southern Rhodesia's demands for independence from the United Kingdom. The United Kingdom was seeking assurances that independence was along the lines of a constitution adopted by Southern Rhodesia's population as a whole, not simply the white electorate.

The changing official view of chiefs in this period is of crucial importance. Despite legislative reactions to African nationalist pressures in the late 1950s, Holleman later reflected that real change began in the early 1960s.[2] These changes included the adoption of "community development" as government policy,[3] the

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[1] J. Alexander, "The State, Agrarian and Rural Politics in Zimbabwe: case studies of Insiza and Chimanimani Districts, 1940-1990", D.Phil. thesis, Oxford: 1993, especially Chapter 3.

[2] J.F. Holleman, Chiefs, Council and Commissioner, Assen: 1969, pp.341-2.

implementation of informal policy regarding Chiefs' courts and the development of the "Chiefs' voice" through the establishment of the National Council of Chiefs. The high-profile "Dombashawa *Indaba*" of 1964 was, in large part, staged to impress the white electorate. The press was fed copious releases, and duly obliged. On the first day of the *Indaba*, five articles concerning it appeared on the front page of the Rhodesian Herald. One was headed "Chiefs 'strongly disagree' with the U.K.'s new attitude". At all levels of government, chiefs were sought to provide an African contribution to the decision-making processes. However, this was mere tinkering when compared with the democratic option demanded by the African nationalists.

New Protagonists, old Alliances

So far, I have argued that in the 1920s the Native Affairs Department gave the "traditional" leaders new prominence in the administration of Africans in order to resist a challenge posed by the Southern Rhodesian Missionary Conference and its African counterpart. This admittedly weak coalition gained some formality in the 1920s and 1930s with the passage of the Native Law and Courts Act (1937). The contemporaneous passage of the Native Councils Act (1937) was at odds with aims of the

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[3] See A.K.H. Weinrich, Chiefs and Councils in Rhodesia, London:1971.

traditionalists in the Native Affairs Department, bringing as it did opportunities for democratically elected members. Nonetheless, the NLCA was an important step towards the inclusion of the "traditional" leaders in the Rhodesian administrative structure (as were the Councils which made Chiefs *ex-officio* members) and allowed for more effective supervision by the Native Affairs Department of those positions than had hitherto been the case.[4]

The 1950s and 1960s paralleled the earlier period in many respects, but on a very different scale. The 1950s and 1960s were decades of growing conflict and deepening entrenchment of positions. The Native Land Husbandry Act, circumscribed chiefly powers (both formal and informal) to regulate access to land; the Native Affairs Department gave increasing support to Chiefs' courts; the nationalist movement gained in strength; and the Rhodesian order hardened in its opposition to African aspirations. As all these pressures converged, the pressures on Chiefs became more intense than at any other point in the colonial period. The Chiefs were trying to establish space for themselves at the same time that the Government was seeking their explicit support and the nationalists were seeking to involve Chiefs in the

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[4] Local comment regarding the importance of supervision was provided by the Native Commissioner, Sipolilo in 1958. See p. 300 above.

movement.[5] The Chiefs, as yet to coalesce as a body in any politically meaningful way, were under threat of appropriation by both the protagonists in the emerging conflict. However, in the early 1960s a point was passed after which Chiefs were generally perceived to have been co-opted by the government, and no longer available to the nationalists, except for a few individuals. In 1959 the Southern Rhodesian African National Congress was banned. Nationalists reacted to the banning "by accusing government of 'stealing' the Chiefs from the people."[6] But as the struggle developed between nationalists and the Government, the Chiefs asserted a degree of independence. As we shall see, this was in the form of an independent agenda, rather than a "third way" for Southern Rhodesia. It was, in fact, a parochial agenda. As such it fitted well enough within the Southern Rhodesian constitution or the Native Affairs Department's policy of upholding "tradition". However, the Government could only perceive it as an excessive demand for African participation in government. Roger Howman later commented that the African Law and Tribal Courts Act (1969) was a case of far too little, far too late. It

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[5] "Memorandum for Discussion on the future of Chiefs", Native Affairs Advisory Board, March 9, 1961, 44.11.8F/90496 CD/LG 1964, Records Centre; also Jeremy Brickhill, "The Turn to Armed Struggle", seminar paper presented at St. Antony's College, Oxford, March 10, 1992.

[6] A.H.K. Weinrich, Chiefs and Councils in Rhodesia, London: 1971, p.17.

had taken more than fifteen years for this transfer of judicial powers to be passed into law. Upon his retirement in 1969, Howman criticised the overemphasis on Chiefs as African representatives in the Rhodesian Senate, asking, "'Why overdo it by having only Chiefs to speak for Africans in a Senate whose credentials have a political party bias?'".[7] By the late 1960s, Howman had come to believe that the nationalists needed to be involved in the democratic political process in some way.

During the 1950s, the state made a concerted effort to "rationalise" the economy and imbue the entire country with capitalist values. Storekeepers were supported through the courts, while capitalist forms of landholding and the development of a permanent industrial labour force were encouraged through the provisions of the Native Land Husbandry Act (NLHA).[8] Up to 1958, it was also a period of economic prosperity.

Although during the 1950s the Government had been concentrating its efforts regarding African society upon the technical schemes, especially the Native Land Husbandry Act, there was an awareness of resistance, and emerging nationalist resistance to the schemes and government in general. Already there were moves within the Native Affairs Department and Government to make

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[7] "Smith plan for chiefs attacked", Times of Zambia, 9/7/69.

[8] See Chapter 4 for a brief discussion on the Native Land Husbandry Act (1951), pp.291-293.

institutional changes that would diminish the likelihood of resistance. Roger Howman, then the native Affairs Department senior researcher, had produced a comparative study entitled "African Local Government in British East and Central Africa, 1951-53". This study later gave rise to the African Councils Act (1957) which was intended to permit the ventilation of such African grievances as were considered by the government to be legitimate.

In the same period the Native Affairs Department devoted a great deal of time to studying the African courts, considering the extension of jurisdiction to petty criminal cases and comparing policy in Southern Rhodesia with that of all the British colonies in East, Central and Southern Africa.[9] The emerging theme was that the courts that had been formally incorporated into the Southern Rhodesian state through the Native Law and Courts Act (1937) now had to be integrated ideologically. Henceforward, Chiefs would be more involved in the governmental administrative terrain both through the Councils and through activities which would later be lumped together as "Community Development". More importantly, the status of Chiefs was enhanced as their intercalary position between government and Africans became ever more crucial. As state intervention in the rural economy increased, so too did the administrative

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[9] Report on an Inquiry into Native Courts, Salisbury: 1952.

role of Chiefs, while they were given a platform to speak out against African nationalists.

The NAD re-considers the value of Native Courts

The inquiry into the Native Courts in 1952 considered that the "repugnancy" clause of the Order-in-Council, (which stated that in civil cases involving only Africans the courts were to be guided by "Native law...so far as that law is not repugnant to natural justice or morality",[10]) was no longer adequate or appropriate to control African justice. Instead, the inquiry recommended that African courts be developed along correct lines by providing "more adequate supervision and guidance", "training ...Chiefs, Headmen and Clerks in legal work, procedure and laws of evidence", and generally improving "the dignity of Court proceedings".[11] The new policy was to be far more assertive in controlling the *process* of African law and courts, and thus the ideological realm in which these operated. The ideological control was represented on several levels through this new policy. First, the "supervision and guidance" that was provided underscored the view that state law was correct, and must be accompanied by the procedure of Roman-Dutch law. Secondly, the dignity and

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[10] Emmet V. Mittlebeeler, African Custom and Western Law, London:1976, p.17. See also Chapter 2, p.163 above.

[11] Report on an Inquiry into Native Courts.

authority of African courts must be increased, as courts must be held in esteem by the community that uses them. The symbolic power of the courtrooms may be seen from their actual layout, which was clearly designed to improve the dignity of judicial proceedings.[12] Further support was given to the construction of brick court houses.[13] Chiefs had been quick to make use of such symbolic power since as early as 1937 to legitimate and consolidate their positions.[14] One eager Native Commissioner declared that the date of the opening of such a building would be recorded as "A red letter day in the history of the Reserve" and explained,

> Such tangible evidence of the importance of the Chief, together with the facilities for modern judicial and administrative functioning of traditional power, should have incalculable influence, and that the Chief and his people appreciate such facilities is beyond doubt and expressed in many ways.

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[12] See the appended photographs. This are broadly representative of the development of "courtrooms" in Central Africa this century. The introduction of the table, and the tendency for the Chief or President and all counsellors to crowd behind it is remarkably reminiscent of Foucault's description of the symbolic role of the table in the courts of revolutionary Paris. For a theoretical discussion, see Michel Foucault, "On Popular Justice", especially pp. 8-12 in Power/Knowledge, Brighton: 1980. For other illustrations of this use of the table see "Free From Fear", Central African Film Unit, 1960 and "The Thief", Central African Film Unit, n.d.

[13] Report on an Inquiry into Native Courts.

[14] CNC, AR 1937, p.10.

It was felt amongst the Native Affairs Department officials in the 1950s that the political issue had been successfully addressed; there simply remained technical improvements such as giving "the judicial system a sound clerical basis".[15] This also furthered the aim of greater ideological consolidation.

The general standing of Chiefs within the Native Affairs Department by the 1960s owed much to their following the Native Commissioners' lead in court decisions dealing largely with "mercantile" law in the 1950s, and thereby promoting "modernisation". Likewise, the success of the Provincial Chiefs Assemblies in the 1950s encouraged the government to establish the National Chiefs Assembly, and later Council, through the promulgation of the Council of Chiefs and Provincial Assemblies Act (1961). The Provincial Chiefs Assembly was perceived as an elaborate sounding-board. The Acting NC Shangani in 1952 reported

> The establishment of a Chiefs' Assembly has done much to assist the District Officers. For the natives it means that they have a channel through which they can communicate their views.
>
> With this facility the necessity for Associations and Societies has fallen away and they should very soon become moribund.[16]

These "Associations and Societies" had been perceived by the Government as nationalist, or at least proto-

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[15] Asst. NC Wedza, AR 1948, S 1563.

[16] Acting NC Shangani, AR 1952, S 2403/2681.

nationalist, organisations that threatened the status of the "traditional" leaders. One of these had been the Rhodesian African Association which, as we have seen, demanded that the Provincial Assembly be listened to more closely.[17] The fact that such an organisation was calling for greater support for the government-constructed institution appears to have lulled the government into a false sense of security. The provincial assemblies both buttressed the "traditional" leaders and tested them. A decade of acceptable behaviour in this forum had to pass before the Government permitted (or felt the need for) the National Chiefs' Assembly to be established. Both Chiefs and the Government recognised the "double-edged"[18] character of the Assembly, which may largely explain why Chiefs pursued a politics of compliance, extracting from the Government concessions through the threatened use of the new tools.

Following the strengthening of the Chiefs' voices through the establishment of the National Chiefs' Council in 1961, the main issues pursued by the Chiefs were the abolition of the ceiling on *lobola* transactions, the raising of salaries and allowance for Chiefs and Headmen, greater judicial authority for Chiefs and Headmen, and the return of land allocation powers. All these measures extended the means of control at the disposal of Chiefs.

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[17] See p.293, above.

[18] Holleman, Chief, Council and Commissioner, p.368.

The Chiefs pursued their politics of compliance by lending their support to the proposed new constitution. The state provided the resources for Chiefs to extend their authority through ceding land to accommodate those who lost rights to occupation as a result of the Native Land Husbandry Act. This served several functions. It prevented the nationalists claiming total victory in the struggle over land and resistance to the Land Husbandry Act. The nationalists may have forced the repeal of the Act, but it was the Chiefs who were presented as having "secured" redress. It also shifted a politically delicate issue out of the hands of the Native Affairs Department.

It was clear to many Chiefs that the road to power for them was through supporting the state, not attacking it. The state had aided the formation of the Chiefs as a "national force" in opposition to the African nationalists whose influence many Chiefs wished to overcome.[19] After a period from the mid-1950s into the early 1960s, when both the Government and nationalist organisations had attempted to woo the support of the Chiefs, the nationalists perceived that they had lost the battle. As Holleman writes, the Chief's "attitude towards the maintenance of law and order and towards the new African political leadership in many respects

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[19] Ibid.

coincided with that of the European government."[20] Having become so close in many of their directions, the "traditional" leaders and the state had developed a "political interdependence ... so complex that the distinction between the Chiefs' position as hereditary rulers and that of their being subservient civil servants eludes precise definition."[21]

The increasing proximity that developed between Chiefs and officials of the Native Affairs Department in the 1950s formed the basis of the alliance that emerged in the 1960s. That alliance had its foundations in the integration of Chiefs' authority into the state, a process begun in the 1930s with the recognition of the "traditional" courts as selectively recognised by the Native Law and Courts Act (1937). Those foundations were extended in the 1950s through discussion within the Department concerning the addition of limited criminal jurisdiction to selected Chiefs' courts, as well as through local action, that is Native Commissioners encouraging Chiefs to hear new types of cases.

By the early 1960s, the Southern Rhodesian state was compelled to invigorate its alliance with the "traditional" leaders to counteract growing African nationalism. This

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[20] Ibid., p.345.

[21] Ibid.

> was largely brought about by the very pressure of the political tide, which not only widened the gulf between white and black Rhodesians generally, but also drove white government and tribal chieftainship closer together as comrades-in-arms against the common enemy of African nationalism.[22]

The direction this took was spelt out at the *Indaba* of 1961. It was through this conference that the state sought to strengthen the Chiefs' voice by consolidating the many into a unified, more coherent whole. Holleman later commented, "Rhodesian chieftainship, a splintered institution until then, had found its collective unity and strength and a cohering structure."[23] It must be emphasised that this structure was entirely the construct of the colonial government.

The Chiefs ably exploited the government's dependency upon them, pursuing their demands for greater judicial powers and the exclusive right to allocate land in the reserves. In the 1950s the Chiefs' courts emulated the Native Commissioners' courts they took on, in stages, both the form and content of the courts wholly controlled and staffed by the government. The introduction in 1952 of the Provincial Chiefs' Assemblies, and its national counterpart in 1961, resulted in the Chiefs speaking with a clearer voice in order to obtain their demands, but

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[22] Ibid., pp. 341-2.

[23] Ibid., p. 342.

speaking from a platform constructed by the white government.

From the beginning the National Chiefs' Council pursued a politics of compliance. In 1963 its first president was forced to resign by fellow council members due to his open and strong support of African nationalism and their fear that this would discredit their organization.[24] However, this politics of compliance also demonstrated the white government's dependence upon the Chiefs' support. This interdependence between many of the Chiefs and the government tied these Chiefs ever closer to the Rhodesian cause.

The Robinson Commission was appointed in 1960 to inquire into the administrative and judicial functions of the Native Affairs Department and district courts. The remit of this Commission was widened significantly to encompass four areas. Four working parties were subsequently established to study the proposals it put forward. These were: 'A' Judicial District Administration and Revenue; 'B' Agriculture, Economic Markets, Co-ops, Credit Facilities and the Native Development Fund; 'C' Chiefs' Courts; and 'D' The Tribal Authority and the Land. Regarding the Chiefs' courts, the government accepted virtually all the Commission's recommendations.[25]

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[24] Weinrich, Chiefs and Councils, p.21.

[25] Andrew S. Ladley, "Courts and Authority: A Shona Village Court", Ph.D. thesis, London: 1985, p.196.

Some were accepted prior to the Commission's report, as witnessed by the Native Affairs Advisory Board stating in March 1961 that the Native Affairs Department should "press for judicial evolution of Chiefs on both a civil + a criminal basis."[26]

The two working parties that have relevance here are 'C' and 'D' as both were entwined with Community Development and the strengthening of chiefly authority. Roger Howman sat on both working parties and brought to them his ideas concerning sources of authority available to the "traditional" leaders and would carry those ideas on to the enactment of the African Law and Tribal Courts Act (1969). Working Party 'D' was detailed "to propose measures...to retain the loyalty of chiefs."[27] Its recommendation led to the removal of the economic goals and the aim of individual land tenure embedded in the Native Land Husbandry Act. Ironically, Arthur Pendered, the draughtsman of the NLHA, was also the chairman of Working Party 'D'.[28]

Working Party 'C' considered the control of dispute proceedings to be an important, and potentially danger-

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[26] "Memorandum for Discussion on the Future of Chiefs", Native Affairs Advisory Board, 20-22 March, 1961, Records Centre, 6.1.9F 84256 Internal Affairs.

[27] Box no. 6.1.9F/84256, Minutes of the Native Affairs Advisory Board, 27-28 June, 1961.

[28] Alexander, "The State, Agrarian and Rural Politics", Chapter 3.

ous, source of power. One memorandum stated "It will be necessary to prohibit and penalise any usurption [*sic*] of judicial powers by unauthorized persons".[29] Elsewhere there was emphasis on

> the considerable dangers involved, especially in regard to security, when unofficial tribunals are permitted to operate, for subversive elements easily set up their own 'courts' and usurp the function of Chiefs and magistrates.[30]

The Government was now willing to act against these threats to Chiefly and state authority. When Working Party 'C' reported, it made many recommendations that would, it was believed, bolster chiefly status through the control of dispute proceedings. These included a devolution of authority to the Chiefs' courts. Previously, any case heard in such courts could be reheard *in toto* in the Native Commissioner's court. It was recommended that this cease: a court of first instance must have authority. Litigants would be free to choose between "tribal" and magisterial courts, but an end would be put to the practice of "forum shopping". Accordingly, appeals from Chiefs' courts would go to a new Chiefs' Appeal Court consisting of three Chiefs. Furthermore,

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[29] "Tribunals Presided over by Kraalheads, Headmen and Chiefs, and the Chiefs' Appeal Tribunal", Working Party 'C', Robinson Commission, 1961, 1369/91.

[30] Report of Working Party 'C' as cited in Ladley, "Courts and Authority", p.195.

the Chiefs' courts were to be empowered to award damages for breaches of communal rights and local bylaws.[31]

To further underline this effort to contain African civil proceedings within an African-dominated sphere, Working Party 'C' recommended that Native Commissioners' courts be abolished as soon as possible.[32] Although this never took place[33] it is clear that the District Commissioners accepted many fewer cases following publication of the Robinson Commission Report, referring many cases to, or back to, Chiefs' courts, thus signalling an increased appreciation of the authority of the Chiefs and refusing to undermine chiefly authority in judicial decision-making.

Accompanying this containment of litigation was a recognition of the extent to which unofficial courts were in fact operating. The Robinson Commission reported, "The statutory native courts are outnumbered by the cus-

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[31] See Report of Secretary for Internal Affairs, 1962, p.31, and "Tribunals Presided..."

[32] SIA, AR 1962, p.31.

[33] There appears to be some confusion over this. My own research indicated many of the cases heard by the District Commissioner were previously heard in the Chiefs' courts of Sipolilo after 1962, as they were before. See also Harold Child, The History and Extent of Recognition of Tribal Law in Rhodesia, Salisbury: 1965, p.113. Passmore, The National Policy of Community Development in Rhodesia, Salisbury: 1972 p.159, provides a different interpretation stating that appeals from chiefs' courts went direct to a Tribal Court of Appeal.

tomary African courts which have continued to try cases and settle disputes between Africans...."[34] Similarly, "attempts to limit jurisdiction appear to have been largely unsuccessful".[35] It is probable that the unofficial courts to which the Robinson Commission referred operated with the approval of a 'nod and a wink' from the local Native Commissioner as they had done since 1898.[36] The recommendation arising from this was that all such courts should be granted formal recognition. In a period of rising nationalist activity it was clearly the objective of senior members of the Native Affairs Department to incorporate these 'loose cannons' into the state structure so that they might be regulated and those operating the courts properly supervised.

The Commission found that Chiefs balanced their authority and the legitimacy of their position against the judicial decisions made in the Chief's court. The presence of the Native Commissioner's court had always to be taken into account as "the authority and status of Chiefs and Headmen in their community is lowered when their judgements are upset on a re-hearing by the native commissioner".[37] Some Native Commissioners had already adopted a position in which they were extremely reluctant

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[34] Robinson Report, p.56.

[35] Ibid., p.58.

[36] C. Bullock, CNC, AR 1936, p.10.

[37] Robinson Report, p. 58.

to upset any chief's decision.[38] In Sipolilo one docket had entered as judgment "Case sent back to the Court of [Chief] Sipolilo for final Judgment to be given."[39] It is also clear that Chiefs would refuse to give a decision if they expected the litigants to reject that decision.[40]

In May 1961 the first National Assembly of Chiefs was held at Gwelo, which "some 500 Chiefs and senior headmen" attended. Apart from being another, and very important, step in the development of the Chiefs as a "national force", it also indicated that the Government was prepared to give the Chiefs freer rein in the

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[38] Ibid.

[39] Gondora X14702 Sipolilo Nyakapupu NPA Farm 30 vs Herbert Chimbumu, Shinje Business Centre, CR 159/62, 6.11.62, GCC. This case is all the more remarkable for the fact that Gondora did not live on the Reserve and complainants were thus given the greater powers of choice in which court their case should be heard. The claim was £20 damages for the seduction of Gondora's daughter.

[40] Lloyd Fallers comments on this, "The chief whom I knew best, for example, once boasted: 'Thirty cases so far this year, and not a single appeal!'", Law Without Precedent, p.73. One of my informants, Sturben Gweshe, former secretary to the chief's court in Sipolilo Reserve, commented that the chief would be insulted if his decision was appealed against, but at the same time was happy to send cases on to the Native Commissioner because a harsher penalty was often given there. He also claimed that the appellant never won at the Native Commissioner's court because he or she appeared to the Native Commissioner as "argumentative and anti-authority who needed strict control". (Interview, Ruwinga, 1.9.91) Benson Kadzinga, Presiding Officer, Guruve Community Court, also supported the view that chiefs regarded appeals as insults. (Interview, Guruve Community Court, 29.8.91) See also Robinson Report, p.58.

discussions held. The agenda was determined, in large part, by the Chiefs themselves. On that agenda was placed the demand "to review the position of Chiefs in relation to their courts".[41] The Chiefs emphasized that, in their opinion, their prestige was eroded considerably by Native Commissioners overturning judicial decisions. The two clear demands regarding Chiefs' courts that emerged from this assembly were first, that Chiefs' "judgments should be final and not subject to either appeal or rehearing"; and second, "that their jurisdiction was far too restricted and that they should be permitted to adjudicate all matters concerning tribal law."[42]

Although it appears the Government and the Chiefs may simply have been discussing the same issues contemporaneously, Holleman (who was deeply involved in the whole process, having been a prominent member of the Mangwende Commission) gives us some insight into the political bargaining that was involved.

> The most urgent matters that the government wanted the Chiefs to take over were the control of tribal land and the problem of those rendered landless by the Land Husbandry Act. The latter problem had become an explosive political issue which Nationalist leaders were not slow to exploit. The Chiefs were prepared to handle this tricky situation

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[41] "Tribunals Presided...", Working Party 'C', Robinson Commission, 1961.

[42] Ibid.

> *provided* they were given more land and more power.[43]

In his 1961 report the NC Lomagundi noted that Chiefs did not like the NLHA "because it deprived them of their customary powers over the land."[44] The Chiefs of that district were exceptionally clear in their intentions. The sale of land holdings was arrested by the Chiefs' refusal to approve any such transactions. The Chiefs were prepared to grant free land but were "not prepared to sanction the purchase of land from someone else."[45] Chief Zwimba, at least, was intent on maintaining a resource/power base by channelling all land allocations through his own hands. Chiefs do not appear to have been opposed to the occupation of land, but rather to its alienation. Under the Native Land Husbandry Act any transaction concerning land or land rights bypassed the chief, thus undermining his power. The action taken by Chief Zwimba was in harmony with the demands to have allocating powers returned to the Chiefs. It is therefore clear that the Chiefs were exploiting the political situation and the failure of the NLHA in order to gain authority and avoid being perceived simply as doing the government's dirty work.

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[43] Holleman, Chief, Council and Commissioner, p.343, emphasis in the original.

[44] NC Lomagundi, AR 1961, p.23.

[45] Ibid.

With political pressure coming from two fronts, the Chiefs and the nationalists, the Rhodesian government was compelled to support the Chiefs. Thus the Chiefs were "turned into a political power",[46] or more precisely, the office of Chief increased in significance on the national stage. The Government's aim had been

> to increase the power of the tribal authorities sufficiently to strengthen its own powers of control over the majority of black citizens, but not to the extent of creating a force that might challenge Government's own authority.[47]

However, Chiefs were generally intent upon increasing their own powers and used the enhancement of their positions by the Government to speak out independently. Many Chiefs avoided serving the Government, but also avoided the nationalists. Holleman has commented, "Obviously the Rhodesian government hoped and trusted that it [Government support for Chiefs] would be used for the protection of the basic political *status quo*."[48] It does appear that few used their strengthened positions to challenge the state. They made demands upon the state, but did not challenge its basic legitimacy as the nationalists were doing.

Although the Chiefs had not yet in 1961 acquired a great deal of national political power, and thereby the

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[46] Holleman, Chief, Council and Commissioner, p.366.

[47] Ibid., p.362.

[48] Ibid., p.368.

ability to make demands on the government, they were clearly in the ascendant and continued to do so. As the Rhodesian government required more "vocal" support against the nationalists, and against the British government over the emerging constitutional issue, the Chiefs were in a position to make ever more direct demands. In the protracted posturing that culminated in the Unilateral Declaration of Independence (UDI), the Rhodesian Front government of Ian Smith organised in 1964 another *Indaba* - a consultation with the Chiefs and Headmen that recognised the "traditional" leaders as the legitimate voice of all Africans in Southern Rhodesia. Again, there is evidence that this "consultation" involved negotiation in which the Government did not simply listen, nor the "traditional" leaders address only the issue at hand. Holleman has commented that UDI

> was brought about not least because of the loyal support of the tribal authorities. This obviously imposed the obligation on Government to redeem its promises upon which this had, to a considerable extent, been conditional. Among these had been the granting of 'greater powers' to the Chiefs.[49]

Five weeks following UDI the Council of Chiefs met in informal session with the Minister of Internal Affairs in attendance. At this meeting £500,000 which had been made available to the Council were allocated: £100,000 was allocated to assist local councils with building schools,

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[49] Ibid., p.357.

an issue highlighted several years earlier in the Mangwende Reserve[50] and on the agenda of many councils; and £25,000 was allocated for a school "for sons of Chiefs and Headmen". Furthermore, at this same meeting the government agreed to the reduction of local taxes from £2 to £1, ostensibly due to "crop shortages" that year.[51] Crop shortages as recently as 1960 had prompted no such action on the part of the government. Another possible reason why money was earmarked for the schools was the awareness that it was in the mission schools, especially Methodist ones, that African nationalist ideas were being spread.[52]

The Council of Chiefs was ensuring that Chiefs could be seen to be having a significant beneficial impact on the day-to-day lives of the people in the Reserves. The Government was clearly acquiescing in its demands. At the Dombashawa *Indaba* an unnamed chief is recorded as having said

> Should we be given independence and these strings that tie us with Britain were cut we would be extremely happy. After this is done our Government should not forget us whenever there are important matters to discuss, and furthermore in the Parliament that makes the

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[50] See Mangwende Report (1961), and Holleman, Chief, Council and Commissioner, which is substantially the report with added commentary.

[51] "Chiefs and Headmen", AR 1965, in ACC/8, Annual Reports Internal Affairs, 16.6.3F; Box No. 100327, Records Centre.

[52] NC Marandellas, AR 1959, S 2827/2/2/7.

> laws of this country we ask that we should have representation, because I understand that according to the present Constitution this is not possible. I am sure that if we then go forward and work together with the Government that we will be able with Government to put down all this trouble in the tribal areas.[53]

Furthermore the Chiefs at Domboshawa demanded "powers...to punish people in our reserves...[and]...to be represented in the central Parliament."[54]

Pressured by the British Government to consult Africans meaningfully before pushing ahead with independence, the Rhodesian government considered including kraalheads in the consultative forum. This would have added a further 28 000 men to the approximately 700 Chiefs and headmen who made up the Domboshawa *Indaba*.[55] The Rhodesian Government was initially attracted to this option because it would help counter the criticisms the British Government was levelling at them. However, the Chiefs and headmen moved decisively to exclude the "kraalheads" and to reserve the decision-making powers for themselves.

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[53] "The Domboshawa 'Indaba': The Demand for Independence in Rhodesia: Consultation with the African Tribesmen through their Chiefs and Headmen", Salisbury: 1964, pp.18-19

[54] Ibid.

[55] Ibid., p.7.

Community Development

Community development, as it was shaped for Southern Rhodesia, was distinct from its namesake in other parts of Africa and the world. The pursuance of the policy was seen to intensify the segregation of Africans and Whites in Rhodesia. It acquired racial overtones and was seen by many to be a Rhodesian version of South Africa's apartheid policies.[56] This emerged largely during the election campaign leading to the Rhodesian Front victory in December, 1962.[57]

The Community Development administrators were keen on channelling development, as defined by the government, through institutions perceived as being organic to the community itself. This was indicated in the statements made by Community Development officials.

> The existence of the *dare*-procedure provided a traditional means of decision-making and problem-solving in which consensus influenced to a large degree the action that was taken. It was only after ascertaining the feeling of those present at the *dare* that a conclusion would be reached and it was seldom if ever that such decision did not reflect the general viewpoint. The decision, however, was made by the chief or other tribal leader, as the recognised decision-taker and voice of the people.[58]

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[56] Passmore, The National Policy of Community Development, p.167.

[57] Ibid., p.137.

[58] "Aspects of Development in Tribal Organization", Community Development and Local Government Bulletin, 15 March,

It is notable that this was the first time that anyone associated with the NAD or MIA had commented other than negatively upon consensus decision making.

The Senior Delineation Officer, C.J.K. Latham, defined a community as

> 'a locality (geographic entity) whose boundaries are defined by the people living in it and recognised by them as an entity, and in which there are a number of institutions (family, economic, educational, religious, etc.) serving the basic needs, a sense of togetherness within the locality which exceeds any sense of togetherness with outsiders that they may have, and a potential to work together in matters of common need.'
>
> This definition has been found after a considerable amount of research in tribal areas to be defined best as those villages which comprise a unit *of common judicial authority*.[59]

The emphasis upon courts is a little surprising, considering how many cases simply found their way to the Native Commissioners' courts in the first instance. However, it throws light on the belief of Chiefs in the authority of African courts and may explain to some extent why Chiefs were keen to have their courts recognised by the Government.

1965, Salisbury, mimeo., p.18. It should be noted that in this quotation the author is using the term "*dare*" to refer to a body with executive authority. See Hannan, Standard Shona Dictionary, 1984.

[59] C.J.K. Latham, General Introduction to: B.P. Kaschula, "Delineation of Communities: Sinoia District", July - November, 1965, p.i.

In justifying the adoption of the Community Development policy the CNC, in 1959, presented a "traditionalist" argument, stating that the Native Affairs Department had pursued the introduction of community development principles as early as 1929 with the Native Development Act.[60] There was some truth in this argument. In 1950 Roger Howman made a policy survey for the Native Affairs Department in which he remarked that since

> [d]emocratic ideas are...entirely alien to African tradition....[t]he development of local self-government as a step towards greater political responsibility is therefore inevitably a slow process requiring much patience and education.[61]

This statement would become very resonant of the officially proclaimed policy that was to follow more than a decade later. However, therein lies a significant difference: Howman's study was a survey of policy in action whereas Community Development was an explicit policy. Weinrich has argued that by making such an explicit policy "and by implementing this policy through indirect pressure, the Rhodesian government eliminated an essential element of the philosophy: its voluntary character."[62]

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[60] Passmore, The National Policy of Community Development, p. 73.

[61] Survey of Native Policy, 1950, p.28, S 520.

[62] Weinrich, Chiefs and Councils, p.168.

In the period 1950 to 1962 the position of Native Commissioners changed substantially. It is worth quoting Holleman at length here as he illuminates the view of Native Commissioners. The "African mental [i.e. political] climate had changed", the Native Affairs Department came under increasing criticism for its implementation of "oppressive legislation".

> Unavoidably it was the local commissioner who became the focal point of this turbulent change. As he perforce became more remote and estranged from the people, his traditional image as a stern but often helpful and understanding 'father' faded from the public eye. Instead, he...had become regarded as the local symbol of a restrictive if not 'oppressive' white government....Comparatively few had understood what was happening to them....the great majority battled on...in the mistaken belief that they were indispensable to the welfare of the people. Not realizing the ties of dependency had actually slackened and that, in the eyes of many Africans, they had become rather an obstacle to the fulfilment of growing needs and ambitions, many commissioners felt themselves betrayed by the people whose interests they had tried to serve....not understanding the cause of frustration and sometimes violent resentment on the African side, many district officials felt deeply frustrated themselves. Harassed and unable...to find fault with their own hard efforts, they looked for scapegoats elsewhere....from head office downwards to recalcitrant Chiefs, headmen and commoners. But the most bitter reaction was aimed at the 'political agitators', those who were attacking the very system of government to which the commissioner himself owed his ultimate loyalty.[63]

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[63] Holleman, Chief, Council and Commissioner, p.42.

This frustration led many Native Commissioners to implement community development coercively, which was, of course, entirely at odds with the theory of it. Their paternalism became insistent, although, as we shall see, other factors were involved.

Community development was officially adopted in June 1962 by the Whitehead government.[64] At the governmental level, the new approach included a restructuring of several ministries as a result of the outcome of several Commissions in the early 1960s.[65] The Native Affairs Department was succeeded in many of its functions by the Ministry of Internal Affairs (MIA). However, anomalies persisted. The judicial functions of the NAD had been transferred to the Ministry of Justice, but the administration of Chiefs' courts remained within MIA, the appeals from Chiefs' courts going, officially, to the Tribal Court of Appeal and on to the High Court.[66] The District Commissioners were civil servants under

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[64] Ibid., p. 129.

[65] The key commissions leading to the reorganisation of ministries were "The Commission appointed to Inquire into and Report on the Administrative and Judicial Functions in the Native Affairs and District Courts Departments", Chairman Sir Victor Robinson; "The Commission of Inquiry into the Organisation of the Southern Rhodesian Public Services", Chairman T.T. Paterson; and "Report of the Advisory Committee on the Economic Development of Southern Rhodesia with particular reference to the Role of African Agriculture", Chairman John Phillips.

[66] Passmore, The National Policy of Community Development, p. 159.

different ministries, and the Chiefs were "traditional leaders" and civil servants but their amalgam of responsibilities straddled logical ministerial boundaries.

Over a period of twelve years the key "institution-building" legislation of Community development was passed. These were the African Councils Act (1957), the Tribal Land Authority Act (1967), and the African Law and Tribal Courts Act (1969). The Councils Act was an attempt to revive a vent for "legitimate" African demands without involving Africans in national politics: to contain African politics on the periphery and at the level of local government. The Tribal Land Authority Act had its genesis in the failure of the Native Land Husbandry Act. The strenuous efforts to impose the NLHA and the stiff, broad resistance to it reflected the fact that it had alienated many Chiefs and "traditional" leaders who had formerly controlled land allocation. The NLHA had severely disturbed the pattern of land allocation through redistribution, centralization and the removal of entire villages. Following the collapse of the NLHA, many "traditional" leaders and Chiefs reassumed the power to allocate land. But at the same time, others were attempting to assume such authority, for example the storeowner in Sipolilo who claimed land-allocating powers.[67] Thus by 1967 the Tribal Land Authority Act was,

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[67] See p.348 above.

in many ways, merely regularising the existing situation; it brought nothing new on the ground.

The African Law and Tribal Courts Act, likewise, sought to regulate a situation that already went beyond the legal boundaries. The Robinson Commission reported in 1961 that unrecognised courts continued to outnumber those officially sanctioned.[68] This Commission went on to recommend that all such courts be brought into the official domain. The 1969 legislation made only a limited, and indirect, attempt to address this subject by outlawing unofficial courts. It differed from the 1937 Act in four ways: by granting criminal jurisdiction, allowing Africans to try cases involving non-Africans, introducing 'customary' procedure and introducing some 'customary' penalties.[69] The first three, at least, simply acknowledged the existing situation. Community development policy also reflected a "clear perception of the central role of local courts in local rule" and the ALTC Act was the formalisation of this.[70]

This triad of councils, Tribal Courts and the Tribal Land Authority, was fraught with tension. As Weinrich has shown, the councils were perceived as an extreme

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[68] Robinson Report, para. 179, p. 56.

[69] H.J. Magan, "The Criminal Law of Rhodesia - Its Development and Administration", Ph.D. (Laws) Thesis, London: 1972, p.90.

[70] Ladley, "Courts and Authority", p.200.

threat by some Chiefs, rejected out of hand by the "commoners" in some areas, and the chief seldom had the strength of character to impose the council on his people, or the political skill and/or will to balance the diverse demands required in order to make the council a success.[71]

Under Community Development the community was "delineated" or defined as that group of people who took their cases to the common court. The Robinson Commission found that

> A chief has been appointed in the eastern districts whom a large number of Africans do not regard as the proper incumbent and the man who thought he should be appointed the chief crossed the border and lives in Portuguese East Africa, and that is the man to whom some Africans of the tribe go to have their civil disputes settled.[72]

Roger Howman conceded that there were instances in which the Government appointments were impolitic, if not wrong, but observed that the community would simply continue to take their cases to the leader they deemed the most legitimate. Some of the appointments were corrected.[73]

African Law and Tribal Courts Act (1969)

The African Law and Tribal Courts (ALTC) Act represents the final legislative attempt on the part of

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[71] Weinrich, Chiefs and Councils, in particular Chapter 5.

[72] Robinson Report, pp.57-58.

[73] Roger Howman, Harare, 1 August, 1991.

the colonial regime to bolster chiefly authority by strengthening the vestiges of traditional institutions. It was an attempt not only to regulate and augment the authority of the acceptable Chiefs, but to actively debar others from a source of social authority[74] that could be channelled to the benefit of the nationalist cause. By the time the Act was finally passed, nationalism had long since resorted to armed struggle and Rhodesia was on the verge of severing all ties with the UK and declaring itself a republic. The Act was a long time in the making: some of its principal elements gaining currency in the Native Affairs Department as early as 1948. The legal draughtsmen had already dealt with the bill by 1962, but, as noted above, other matters were given higher priority. Tensions between the Law Department and the Native Affairs Dept/Ministry of Internal Affairs[75] caused further delay, and the Act was not passed until 1969.

The origins of the ALTC, and the judicial context in which it was set, can be traced back to the publication in 1952 of the Report on the Inquiry into Native Courts by Roger Howman. However, as early as 1932 the NC Bulalima-Mangwe, F.W.T. Posselt, had urged his superiors to consider a request from "one of the leading Chiefs in

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[74] For an extended discussion on courts as a tool for generating social authority see Ladley, "Courts and Authority", *passim*.

[75] Roger Howman, Harare, 1 August 1991.

this District" that Chiefs "be empowered to impose fines and corporal punishment to enable them to control their people".[76] The 1952 Report used the phrase "when criminal jurisdiction is granted" in Southern Rhodesia, suggesting that this was expected by others besides the author of this report. But there is no evidence that the issue touched anyone outside the Native Affairs Department.

The first alterations in the judicial organization came in the late 1950s and concerned the appeal structure. This step was an attempt to bring the appeal court "closer" to fast-changing customs, and provide a clearer framework for the "gradual convergence of native and European Law."[77] This concern reflected an awareness of the need to adapt law to contemporary innovations in agriculture.

> The new Native Appeal Court consisted of
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> a president, who must be a retired judge or advocate of not less than twelve years standing, sitting with two assessors selected by the president...who are or have been Native Commissioners or District Commissioners.[78]

The inclusion, for the first time, of a qualified, professional lawyer in the court reflected an understanding of the changing situation and indicated the

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[76] NC Bulalima-Mangwe to Superintendent of Natives, Bulawayo, 18 November, 1932, S 138/43.

[77] CNC, AR 1958, p.6.

[78] Palley, The Constitutional History and Law of Southern Rhodesia 1888-1965 with special reference to Imperial Control, Oxford: 1966, p.541.

course which the Government sought to pursue. In 1958 the CNC reported,

> The original task of the Court - that of unravelling the texture of many different kinds of Native Law and Custom, and trying to respect the values, sentiments and beliefs of the people - has been undermined by such factors as a money economy, changes in the basis of relationships, struggles to adapt tribal ways to a commercial environment and an increasing number os cases unknown to Native Law, for which the only remedy is Roman Dutch or commercial Law.[79]

This was a critical time for the position of Chiefs. The Native Affairs Department was beginning its push to boost Chiefs' status, but the reconstitution of the Native Appeal Court was primarily a response to rapid changes. The intention of assimilating "Native Law" to its European counterpart was abandoned four years later when Community Development definitively redirected policy. An informal policy of "convergence" was abandoned in favour of one more starkly segregationist in nature.

The appeal structure established under the ALTC (1969) comprised Tribal Appeal Courts staffed by "three Chiefs who are presidents of tribal courts".[80] No longer was there a white official to oversee the administration of African civil law in a formal sense. This marked the

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[79] Ibid.

[80] African law and Tribal Courts Act (1969) section 21 (1).

importance attached by the Government to confining African litigation to African jurisdiction.

The draft of the African Law and Courts bill was ready by the end of September, 1962, only four months after the first National Chiefs' Assembly. Consultations continued with the Chiefs and Headmen and this piece of legislation was discussed at the provincial assemblies in 1964. This consultation procedure was in sharp contrast to the process followed thirty years earlier when the Native Affairs Department officials, more paternalistic than in the 1960s, did not feel the need for any formal consultation; it was enough for the provisions of the Native Law and Courts bill to be <u>believed</u> to be "acceptable...to Native Chiefs and people".[81] This is another example of the Chiefs' and Headmen's closer ties to the Rhodesian Government, and the form of the growing interdependence between the two. The Government was increasingly willing to consult, and likewise the "traditional" leaders were increasingly willing to aid the Government.

The African Law and Tribal Courts bill was designed to provide recognised Chiefs and headmen with increased authority and power. These provisions were, as discussed above, the result of negotiation and discussions between the Government and the "traditional" leaders. The ALTC

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[81] Charles Bullock, Acting CNC, "Memorandum to Accompany the Native Courts Bill, 1936", 13 February, 1936, S 1561/59.

bill sought to achieve the aim of increasing Chiefs' and headmen's authority by confining African litigation to African jurisdiction, as evidenced by the appeal structure it created. Furthermore, in 1963 the caseloads of District Commissioners fell off dramatically in most districts, while the caseloads of Chiefs' courts correspondingly increased. This was due, in part, to the informal implementation of measures contained in the bill.

In 1970, when the ALTC Act was implemented nationally, the caseloads of Chiefs' courts began to decrease and those of the district commissioners' to increase.[82] This is in contrast to Ladley's findings that in rural district commissioners' courts the caseload "declined markedly."[83] In Sipolilo District the caseload of Chief Sipolilo's court declined from 1966 until his death in 1977.[84] In the District Commissioner's court the caseload reached a low of 14 in 1969, but by 1972 it had reached 175 cases in the first nine months of the year. Although this may have been unusually high, it also marked a new use of the courts by the local schools and councils to collect fees and taxes.[85] Thus, one aim of

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[82] Based on data from SIA annual reports.

[83] Ladley, "Courts and Authority", p.217.

[84] Interview with Actor Tapfumaneyi, Guruve, July 31, 1991.

[85] Analysis of cases held at the Guruve Community Court.

the Act was at least partially fulfilled in the period 1963 through 1970, that is before the liberation war became intense in Sipolilo, in which the policies contained in the Act were being informally implemented. However, following 1970 the trends reversed. The extent to which the liberation war played a role in this, and the wider changes of chiefs' authority is beyond the scope of this thesis.

Confining cases to the jurisdiction of African-operated courts had three effects. First, it addressed a demand which Chiefs had been making for decades and was a partial reward for their support for Rhodesian Front policies, including UDI. It is notable that the first draft of the African Law and Tribal Courts bill was ready only four months after the first meeting of the National Chiefs' Assembly in September, 1962. Second, it enhanced the authority of those perceived to need it most at the time, namely the recognised Chiefs and Headmen. Third, it reduced the workload of hard-pressed District Commissioners. The ALTC Act further secured exclusive access to the authority derived from operating courts for those Chiefs and Headmen the Government considered fit. It did so in two ways, first by allowing very few courts to exercise the limited criminal jurisdiction granted to African courts in the Act,[86] and secondly by making it an

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[86] See papers in PER 5, Guruve Administrative Offices.

offence to "adjudicate without authority or to impersonate a tribal court".[87]

The criminal jurisdiction conferred on Tribal Courts by the 1969 Act was limited primarily to "certain types of theft and malicious injury to property."[88] But it also included many statutory regulations made at various times under the Native Affairs Act (1927), the Native Beer Act (1953), the Native Councils Act (1957), the Land Husbandry Act (1951) and several conservation-related acts pertaining to the Tribal Trust Lands. Here again there is evidence that the ALTC Act had been anticipated, some courts were hearing such cases as early as 1965.[89] However, despite the apparent transfer of judicial authority, white administrative supervision persisted as African courts were required to submit records to the DC for his perusal, and he had the power to annul any decision he felt to be beyond the competency of the court.[90]

There was a further departure from past policy. Hitherto, "native law and custom" had been restricted to

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[87] Ladley, "Courts and Authority", p.201.

[88] Magan, "The Criminal Law of Rhodesia", pp.90-91.

[89] Chief vs Jairos, CR 33/65, 18.12.65, S 2932/2. In this case the Chief in Mawanga Township had attempted to punish Jairos for "ploughing illegally". Interestingly the DC dismissed the case because Jairos had an alibi, not because the Chief had no business bringing a public civil suit against him.

[90] Magan, "The Criminal Law of Rhodesia", pp.99-100.

that which was considered by colonial administrators to be "traditional". Subjects not previously known to have been adjudicated by Chiefs' courts had been dealt with in the Native Commissioner's court. Such tight control was formally relaxed with the Act, although once again there had been some anticipation of this in the 1950s. The Act formally expanded the competency of the Tribal Courts to include "cases where no express rule is applicable" by simply applying "the principles of justice, equity and good conscience."[91] These courts were also allowed to deal with compensatory claims arising from criminal cases even when such cases had yet to be adjudicated by other courts. (The regular procedure had been that the criminal action should be completed first.[92]) This allowed the Chiefs to deal with such matters openly, whereas previously they had to deal with them clandestinely and in breach of the law.

The final impact of the African Law and Tribal Courts Act is difficult to assess due to the increasing intensity of the war at the time of its implementation, especially in the Sipolilo and Darwin regions. But the aims of the policies that in practice pre-dated, and were enshrined in the Act are clear. The political terrain in which the "traditional" leaders were operating changed

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[91] Goldin and Gelfand, African Law and Custom in Rhodesia, Cape Town: 1975, p.73.

[92] Ladley, "Courts and Authority", p.200.

rapidly over the period 1958-1972, making it impossible to assess whether the courts were indeed a generator of social authority. Any consideration of that would be highly speculative due to the incalculable variables during that period. What remains clear is that both the Rhodesian government and the compliant and defiant Chiefs considered them an important institution to control, indeed at least as important as the power to allocate land.

Conclusion

Following years of loose, though growing, association between the government and the "traditional" leaders the 1960s marked a period formalizing those ties more intensively than at any other time since the 1920s and 1930s. Circumstances were parallel in that in both periods there was a third party threat: in the 1920s the Southern Rhodesian Missionary Conference and mission educated Africans; in the late 1950s and the 1960s, the nationalists. This factor compelled the government to construct legitimate, and legitimating, support amongst Africans. It chose to ally itself with the powerful men of the communities, the "traditional" leaders, thus calling upon a traditionalist agenda, and sought to maintain the local community as the main focus of African politics through the policy of Community Development.

The implication of such a policy was to exclude Africans from the politics of the nation-state.

The Chiefs, on the whole, reacted to the policy of Community Development relatively disapprovingly. Few councils were ever supported, and the restoration of land-allocating powers and extended judicial jurisdiction was more a matter of the Government recognising the *status quo* than gaining active support from the Chiefs. The Chiefs' involvement in the two latter areas by no means implied that they embraced the policy as a whole.

In her analysis of Community Development, Weinrich declined to give any emphasis to the role that the African courts played in community development politics, concentrating almost exclusively on the councils. The belief of community development officers that courts were central community institutions dovetailed neatly with the Chiefs' bargaining position for more powers as set out in the early 1960s; it was also crucial to securing an instrument of social control in the hands of the Chiefs. However, the Chiefs' compliant participation, perhaps more charitably described as working from within the system, in the National Chiefs' Council and the Dombashawa *Indaba* made it clear to the nationalists that these men were supporting and being supported by the white government. The Chiefs' position in the late 1950s had been, for a moment when both the nationalists and the Government had been wooing their support, one of

"ambiguous dependence".[93] By the mid-1960s the interdependence between Government and the Chiefs was clear, if complex.

The African Law and Tribal Courts Act (1969) marked the last extension of jurisdiction for the Chiefs' courts in the colonial period. Its major component was the granting of limited criminal jurisdiction courts presided over by selected Chiefs. Thus the Chiefs supportive of, or at least compliant with, government policy could be given a tool to maintain and extend their authority where necessary. The Act also made holding unofficial courts an offence. This was aimed at securing for Government-recognised Chiefs exclusive access to the social authority derived from the control of dispute proceedings.

These numerous threads tied many, though by no means all, Chiefs tightly to the government's fortunes. It was not simply the state-level politics that led so many Chiefs to follow such a path; rather, this course had its roots in the local politics of the courts analyzed in detail in Chapter Five. The deep social transformations of the period 1945-60 in Southern Rhodesia, some of which were mediated by the local Chiefs' courts, demonstrated that these courts and Chiefs could play an important role as agents for change: indeed, the extension of the cash

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[93] See Shula Marks, The Ambiguities of Dependence in South Africa: Class, Nationalism and the State in Twentieth-Century Natal, London: 1986.

economy was considered "development" by the Southern Rhodesian government. Despite the traditionalist discourse adopted in the 1960s, the Southern Rhodesian government did not shun change, but attempted to control it. Equally, Chiefs were agents of change and the institutions they controlled were deployed to assist in key changes. Where interests coincided with the Government, many Chiefs were willing to exploit that situation. Likewise, where interests coincided with the nationalists, Chiefs exploited this position. In short, in the increasingly polarized political climate of the 1960s, Chiefs developed strategies, both individually and collectively, to achieve their own specific aims. Many remained their own men, and exploited that climate. Their means varied enormously, from those pursuing the politics of compliance epitomised by the National Chiefs Council, to those who openly aligned themselves with the nationalist parties.

Conclusion

Law is a reflection and a source of prejudice. It both enforces and suggests forms of bias.[1]

Between 1930 and 1970, the powerful men of African society in Southern Rhodesia sought to claim a legitimate position within the state for one of their most powerful instruments of social control: the courts. Equally, the Government was aware of its failure to stamp out the functioning of African judicial bodies from the time of the High Commissioner's Proclamation in 1898 and sought to control these hitherto 'loose canons'. Legislation in 1937, the Native Law and Courts Act, marked the initial step to achieve this end, and others.

The demands of the powerful African men gained acceptance with the Native Affairs Department when it became apparent that bolstering these leaders would benefit the Department as well. Thus the NAD began to pursue a neo-traditionalist agenda involving "traditional" leaders, courts and councils. Although the councils soon fell into disuse, the courts, now recognised, thrived. A further purpose served by the "Chief"- court complex was that it provided for the government a local, organic connection in African society. At the same time the decisions by the courts

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[1] Diane B. Schulder, in Robin Morgan, Sisterhood is Powerful, p. 139, from Tony Augarde (ed.) The Oxford Dictionary of Modern Quotations, p.193.

were supervised by the local representative of colonial authority, the Native Commissioner, whose court also acted as a court of appeal to that of the Chief. Through the powers of supervision and the appellate position of his court the Native Commissioner was able to regulate a Chief's power and authority both positively and in reaction to Africans dissatisfaction. At the same time the Native Commissioner was in a position to deploy coercive power against individuals he regarded as recalcitrant when they challenged the Chief's authority.

Following the rebellions in 1896-7, the Southern Rhodesian state attempted a "crackdown" as a means of dealing with potential African rebellion in the territory. This included the removal of official recognition of Chiefs' judicial powers. More generally there was an attack on Chiefly power. But what is most important in this period is that the government refused to bolster the status of African "traditional" leaders and was happy to see their power erode where it did. However, by the early 1920s this policy began to be reconsidered with greater sophistication and contemplation given to more imaginative roles for Africans to play within the Southern Rhodesian regime.

The initial motivation to cede legitimate judicial power to local African potentates emanated from the challenge raised by the Southern Rhodesian Missionary Conference to the exclusive privileges enjoyed the Native

Affairs Department with regard to the governance of Africans. The coalescence of interests that emerged between local African potentates and the NAD in response to this challenge led to the Government increasing formal support for these men. The office of "Chief" was defined through the Native Affairs Act (1927) and additional duties and powers conferred upon recognized Chiefs by virtue of the Native Law and Courts Act (1937) and the Native Councils Act (1937). Each of these were modest steps in the formalization and institutionalization of the relationship between the NAD and the "Chiefs".

The revival of structures (e.g. chiefs and courts) which the colonial regime perceived, or at least presented, as "traditional" in the 1920s and 1930s marked the beginning of the neo-traditional agenda the Native Affairs Department pursued to the end of the Rhodesian era. However, the genuinely traditional nature of these institutions was undermined by the various ways in which they were manipulated: through the exclusivity and symbolic power of brick court houses; the support of decisions in accordance with state interests in the Native Commissioner's court over others; the option of the Native Commissioner's court; and the limitation of Chiefs' legitimating practices, e.g. famine management. Furthermore, in Southern Rhodesia the changing economic setting upset pre-colonial social relations to such an extent that relations remained in a state of flux for

many decades. The impact of capital penetration in the region was experienced extremely unevenly, according to district and time. All these factors influenced the change of norms in a given community. The civil courts were one of the major forums in which the contestation and formation of new norms took place, and those courts sought to *implement* those norms. Thus, those who controlled the courts believed they had a significant impact upon the development of society itself.

The courts were of particular importance in the maintenance and development of local political bases. The Native Boards of the 1930s failed to fulfil this role for several reasons. First they met only once a year, secondly they comprised all important men from the administrative district, and thirdly the Native Commissioner chaired these meetings. To all participants, the time lag between a demand being made and a (sometimes only initial) response being made rendered them ineffective. The Native Councils created in 1937 never really succeeded either, nor did the attempt to reform and revive the idea in 1957. It would be dangerous to generalise for the country as a whole on the reasons for failure but tensions between strong-willed Chiefs and Native Commissioners, and between "backward looking" Chiefs and "modernizing" members of

the councils have been blamed, in some instances, for their failure.[2]

Control and responsibility for the Chiefs' courts lay, to a great extent, in the hands of the Chiefs themselves. Although Native Commissioners supervised these courts, it was far more in a "hands off" manner. Rather than intervening in disputes, appeals were made to the Native Commissioner's court. The differing dynamics of intervention and appeal are key to the development of even the slightest hegemony, which was crucial to the maintenance of the Southern Rhodesian state.

The Southern Rhodesian government began its attempts to involve Chiefs in the administration of localities in the 1950s, establishing Provincial Chiefs' Assemblies and later attempting to revive the councils. However, in that same decade the government attempted to force Chiefs to implement the despised Native Land Husbandry Act (1951). The fact that this would expose them on the front line of redistributing insufficient land made many wary of the operation. Furthermore, it became a highly politicised issue and in Sipolilo district the leaders of those rejecting the NLHA were those with the most land under plough, with even those likely to gain out of the

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[2] See the Mangwende Report, or J.F. Holleman, Chief, Council and Commissioner, Assen: 1969, and A.H.K. Weinrich, Chiefs and Councils in Rhodesia, Salisbury: 1971.

redistribution firmly in support. Within the Native Affairs Department there was a drive to grant the Chiefs greater authority through the granting of criminal jurisdiction. The Law Department contested such a move.

In the early 1960s the NLHA was suspended, Chiefs were being courted by the government as representatives of the African population and deployed in the demands for independence from the United Kingdom. For their part, Chiefs were demanding more land, more powers of land allocation and increased judicial powers. Although the first was not achieved, the others were. In 1969 the African Law and Tribal Courts Act was passed, conferring criminal jurisdiction upon a limited number of Chiefs' courts.

The dynamics apparent at the local level reveal a much finer texture than it is possible to perceive at the country-wide level. At the local level it is possible to observe the process by which the courts, having first been incorporated into the state institutionally, can undergo an ideological incorporation through the shaping of decisions in accordance with state interests. This allowed the colonial state to ensure that its own interests were bolstered in African society.

Thus in the 1950s, once the courts had been securely established and Chiefs for the most part bolstered sufficiently, these institutions were in a position to further the interests of the state far beyond relieving a

great deal of the judicial burden from the Native Commissioners. As the cash economy extended into areas in which it had not previously taken hold, Chiefs and their courts were able to reinforce the process. The Africans in Sipolilo Reserve did not simply move in and out of the cash economy according to need, as they had done previously, but became fully paid-up members of that economy. Commercial debt became part of the district's life in the 1950s and bridewealth payments were adjusted to fit into the emerging scheme of debtor-creditor relations. This process of consolidation of the cash economy in outlying areas was not unique to Sipolilo; however, there remained many remote regions, including the areas in Sipolilo bordering Mozambique and Northern Rhodesia, that remained beyond the frontier.

The fact that the Chiefs were actively boosting "modernisation", following the Native Commissioners' lead, through court decisions dealing largely with "mercantile" law in the 1950s gave them greater credibility with the Native Affairs Department in the 1960s. Following the strengthening of the Chiefs' voices through the establishment of the Chiefs' Council in 1961, the main issues pursued were the abolition of the ceiling on bridewealth payments, the raising of salaries and allowance for Chiefs and Headmen, and greater judicial authority for Chiefs and Headmen. All these extended the means of control in the hands of the Chiefs, who in turn

supported the government's proposed constitution. The state provided the resources for Chiefs to extend their authority through ceding land to accommodate those who lost rights to occupation as a result of the Land Husbandry Act. This served several functions. It prevented the nationalists claiming total victory. They may have forced the repeal of the Act, but it was the Chiefs who "secured" redress, and it also shifted a political predicament out of the hands of the Native Affairs Department.

It was clear to many Chiefs that the road to power for them was through supporting the state, not attacking it. The state had aided the formation of the Chiefs as a "national force" in opposition to the African nationalists whose influence the Chiefs wished to overcome. As Holleman writes, the Chief's "attitude towards the maintenance of law and order and towards the new African political leadership in many respects coincided with that of the European government."[3] Having become so intertwined in their directions, the "traditional" leaders and the state had developed a "political interdependence ... so complex that the distinction between the chiefs' position as hereditary rulers and that of their being subservient civil servants eludes precise definition."[4]

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[3] Holleman, Chief, Council and Commissioner, p.345.

[4] Ibid.

The increasing proximity that developed between "Chiefs" and officials of the Native Affairs Department in the 1950s formed the basis of the alliance that emerged in the 1960s. That alliance had its foundations in the integration of Chiefs' authority into the state, a process begun in the 1930s with the recognition of the "traditional" courts as selectively recognised by the Native Law and Courts Act (1937). Those foundations were extended in the 1950s through discussion within the Department concerning the addition of limited criminal jurisdiction to selected Chiefs' courts, as well as through local action, that is Native Commissioners encouraging Chiefs to hear new types of cases.

By the early 1960s, the Southern Rhodesian state was compelled to invigorate its alliance with the "traditional" leaders to counteract growing African nationalism. The direction this took was spelt out at the "*Indaba*" of 1961. It is clear that it was through this conference the state sought to strengthen the "Chiefs'" voice by consolidating the many into a unified, more coherent one.

This thesis has shown how the neo-traditional institutions of Chiefs and Chiefs' courts have been employed as mechanisms with organic connections to implement law and policies in accordance with state interests. It is of special interest that in Southern Rhodesia this strategy was pursued not only in the 1920s

and 1930s to govern the country more economically, as in the Colonial Office territories around it, but also in the 1950s and 1960s to counteract growing nationalist pressure.

From the point when African "big men" or "traditional" leaders began to regain formal access to the state we are informed clearly that they demanded recognition for the courts they already operated. We must ask why this was so. It appears that the Native Affairs Department was correct in its belief that the control of judicial proceedings, when used judiciously, lent the "judge" social authority that could be deployed elsewhere in the social and political domain. This broadly confirms Ladley's thesis.

The control of judicial proceedings implies many things, including the power to shape or reject certain practices and values. However, this is not a total control. It is highly unlikely that anyone involved in the debt cases before the local courts in Sipolilo in the 1950s had any notion that those concepts would move into the sphere of *roora* transactions. Yet the courts did play a role in this. This is but one example in the shaping of "customary" law achieved by the courts.

This thesis has shown how judicial authority was an integral part of Chiefs' political authority in Southern Rhodesia in the period 1930 to 1970. The gaining of official recognition for their courts in 1937 was

followed by increasing political authority locally, and following the Second World War, nationally. The harmonious operation of the Chiefs' and Native Commissioners' courts in the 1950s, on both the institution and ideological levels, and the decision of the National Chiefs' Council to pursue a politics of collaboration, led to greater political involvement for (some) Chiefs on the national stage and the government meeting some important demands regarding land and judicial authority. For other Chiefs their rejection of the collaborationist politics boosted their political standing, which had been built around a base of judicial authority. Here, we have seen that Africans considered judicial authority to be worth controlling throughout this period. The Native Affairs Department recognised its potential power but was not always in a position to make use of it. The national governemnt showed little interest in building a strong base amongst the Chiefs, rather appealing to them only when needed to legitimate decisions already made. Consequently, Chiefs' demands were not given the priority that even the Native Affairs Department, and later the Ministry of Internal Affairs, wished. But it remains clear that Africans asserted a degree of control over dispute proceedings in Southern Rhodesia, and this remained central to African political authority throughout the colonial era and indeed beyond.

Afterword

In this afterword I would like to provide the reader with a brief overview of the history of the struggle over dispute proceedings from the passage of the African Law and Tribal Courts Act (1969) up to 1992. It has been a difficult and unpredictable course for anyone claiming jurisdiction at the lower levels of dispute proceedings during the final years of the Rhodesian regime, and indeed in independent Zimbabwe. Broadly speaking, it may be said that this period has been marked by increased attempts by the state to centralise institutions of power and authority. However, on occasion, concessions have been made.

In the decade following the promulgation of the African Law and Tribal Courts Act (1969), all Rhodesian life was dominated by the increasingly intensive liberation war. The war had a great impact on the locus, or loci, of authority in the community. In some spheres, though not all, the liberation fighters and the state competed for authority. Judicial authority was one such sphere.

In Sipolilo District, an important war zone for all armies (see Chapter 4), the incidence of disputes brought before Chief Sipolilo's court, decreasing moderately from 1966, fell off dramatically in the years following 1973

to the point that by mid-1975 there were virtually none.[1] In another part of Sipolilo Tribal Trust Lands there was a much more direct attack on judicial authority. Ladley informs us that,

> In southern Guruwe [*sic*], one of the first and most symbolic of the guerrilla attacks against the structure of local administration was against the *dare* of Chief Bepura...the impressive brick court house was razed to the ground.[2]

However, in Salisbury Chief Makoni was hoping, as late as 1979, that the government would supply him with the "funds to build a proper courtroom soon."[3]

In an attempt to strengthen the Chiefs as government agents, further authority was devolved to the courts in an amendment to the African Law and Tribal Courts Act (1969) in February, 1977. The amendment was introduced to give the Tribal courts the authority to seize property in lieu of fines. However, more importantly it made the "tribal land authorities and provincial authorities subject to the jurisdiction of tribal courts."[4] The social authority of those presiding over courts was thus institutionally augmented.

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[1] Actor Tapfumaneyi, Guruve, 31 August 1991.

[2] Ladley, "Courts and Authority: A Shona Village Court", Ph.D. thesis, London: 1985, p.339.

[3] "People's Court", Rhodesian Herald, May 14, 1979.

[4] "Tribal Courts", Rhodesian Herald, Feb. 16, 1977, p.2.

In 1978 the Tribal Courts numbered only 175, down from over three hundred in the 1950s. Of these, 132 had been granted criminal jurisdiction in accordance with the ALTC Act. This contrasts dramatically with the situation some by 1982 when, according to Ladley, that "nearly fifteen hundred village courts [were] scattered all over the country."[5] This sudden burgeoning of courts suggests several possibilities. First, the strict regime of the colonial period successfully limited judicial authority, if not to the stated 175 courts, at least to something under four hundred. Secondly, that with the coming of independence in 1980 there was a "power vacuum", primarily in the rural areas, that was quickly filled by many who claimed authority and were quick to get a dispute settlement mechanism in place. The confusion brought with it conflicting claims of legitimacy. Former guerrillas claimed that their achievements entitled them to continue to exert social authority in the post-independence era. Thirdly, the Customary Law and Primary Courts Act (1981) successfully devolved and democratized judicial authority.

Independence

> Without guidance from the past, how can we know what has changed, what has stayed the same? ...if there can be revolution with continuity then I think that the term is fully appropriate

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[5] Ladley, "Courts and Authority", p.47.

> for describing the replacement of the chiefs by the village committees as the source of ancestral authority and law.[6]

With these words David Lan summed up the comprehensive change perceived to have taken place with the creation of the newly independent state of Zimbabwe in April 1980, and the far-reaching legislation that followed. One of the pieces of legislation relevant to the themes of this study is the Customary Law and Primary Courts Act (1981) which removed judicial powers from the hands of the Chiefs and Headmen, much as the High Commissioner's Proclamation of 1898 had done following the quashing of the rebellion in 1896-97, and placed judicial power in the hands of "presiding officers" who were in some part elected officials.[7]

The Customary Law and Primary Courts Act (CLPC) was also aimed at instituting formal local courts to counteract the judicial role of the political committees operated by the guerrillas,[8] previously known as "kangaroo courts", or "comrades' courts". Indeed, Ladley asserts that one specific goal of the CLPC was "to wrest back to the central state the authority which had been assumed by

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[6] David Lan, Guns & Rain, Harare: 1985, p.226.

[7] Simon Coldham, "Customary Law and Local Courts Act, 1990 of Zimbabwe", Journal of African Law, vol. 34, no.2, 1990, p. 163.

[8] Ladley, "Courts and Authority", pp.13-14.

these vibrant local democracies."[9] This dynamic of the state seeking to displace or integrate local courts acting autonomously in order to exert comprehensive control ran throughout the period this thesis has considered. It clearly continues today. The Act also separated administrative and judicial functions.

Ladley considers that the period when "the political committees superseded the guerillas"[10] and before they were absorbed by ZANU (PF) village committees marked the most significant level of public participation in the judicial forums. Without using the terms, Ladley has analyzed the process as civil society institutions prevailing over state institutions. It is likely that in such a fluid situation many felt that they could have influence, or at least that they were not limited any more than anyone else.

Ten years after independence it was all change in the lower courts, again. The Customary Law and Local Courts Act (1990) repealed the CLPC Act (1981) and, most significantly, formally reinstated Chiefs and Headmen as "judges" in local courts. This followed a period in which the primary courts established by the CLPC had collapsed. By 1987 the Zimbabwe Herald reported that corruption and inefficiency due to lack of supervision was undermining the local courts. Some sixty presiding

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[9] Ibid., p.14.

[10] Ibid., p.253.

officers had been suspended or dismissed between 1985 and 1987. Furthermore, the article reported that "In some areas where the primary courts have not been established, chiefs' courts may...still be operating."[11] In Guruve District the presiding officer of the Community Court said that virtually all the village courts had "lost quorum" by 1988 and none ever regained it. Furthermore, he complained of the preponderance of petty cases arriving at his court to be dealt with, cases he felt could be better dealt with at a more local level.[12] Although Ladley asserts that the elections for presiding officers following the enactment of the CLPC produced a "general pattern...[in which]...chiefs and headmen were not chosen,"[13] Alexander argues that such posts were occupied by "traditional" leaders in the districts of Insiza and Chimanimani from relatively soon after Independence.[14]

It remains unclear precisely how and when the shift towards the reinstatement of Chiefs in connection with judicial authority gained momentum leading to the

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[11] "Corruption, inefficiency threaten credibility of primary courts", Zimbabwe Herald, May 5, 1987, p.4.

[12] Benson Kadzinga, Guruve, 29 August 1991.

[13] Andrew Ladley, "Changing the courts in Zimbabwe: the Customary Law and Primary Courts Act", Journal of African Law, 1982, p.85.

[14] Jocelyn Alexander, "The State, Agrarian and Rural Politics in Zimbabwe: case studies of Insiza and Chimanimani Districts, 1940-1990", D.Phil. thesis, Oxford: 1993.

Customary Law and Local Courts Act (CLLC). This would certainly be a field for fruitful research. But we can hazard a guess that by 1985 the primary courts were being eroded by inept staff, lack of supervision and the lack of government commitment to training staff and replacing those dismissed.

Writing in 1985 Lan stated,

> At present, the likelihood that the mediums will actually transfer their allegiance, and that of the ancestors, away from ZANU/PF and the government is slight, though the possibility that if they did so the chiefs might be the beneficiaries is perhaps one of the reasons that the chiefs' old relationship of subservience and dependence on the state has been perpetuated from the previous government.[15]

At the time Lan did the fieldwork for his thesis (October 1980 to May 1982) the village committees (also referred to as party political committees) had displaced many Chiefs in their political functions, the allocation of land and the administration of law. Lan could even claim confidently that "the chiefs have gone".[16] In Upper Guruve, in 1993, there was indeed "no recognition, respect, [or] honour for the Chiefs at all."[17] At that time, they had not yet assumed any judicial powers. However, in Lower Guruve, that is Dande where Lan

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[15] Lan, Guns and Rain, p.221.

[16] Ibid., pp.230-31.

[17] Personal communication with Actor Tapfumaneyi, March 3, 1993.

concentrated his fieldwork,[18] the people "have full respect for the Chiefs and headmen."[19]

Despite the recognition of the judicial authority of the Chiefs and Headmen in the CLLC Act (1990), the state has placed greater emphasis on education as a means of controlling the judicial sphere. Before being granted formal recognition, the "traditional" leaders were given training by magistrates in the proper way to apply "customary" law. The attempt to control the content if not the form is not, however, an innovation of the independent government. As early as 1945 "It was found necessary to give native Chiefs some training before allowing them to try...cases".[20]

The Chiefs and headmen of Zimbabwe are obviously still energetically fighting for the right to control disputing proceedings at the lower levels. It may be that in the coming years they will demand the extension of their jurisdiction to include petty crimes, and issues more likely to be hotly contested such as the dissolution of marriages, child maintenance and custody rights. The government has attempted to keep these issues within the field of the less manipulable statutory law administered by the assistant magistrates in the former "community

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[18] Ibid.

[19] Personal communication with Actor Tapfumaneyi, March 3, 1993.

[20] NC Chipinga, AR 1945, S1051.

courts" (also referred to derisively by men as maintenance or women's courts) rather than relinquishing them to the conservative "customary" law administered by the Chiefs and Headmen in their courts.

Let me end by noting that the contest over law and courts in Zimbabwe has taken on religious idioms in an attempt to instill in people the authority of the state. A ZANU (PF) sticker on the wall of the court office in Guruve Community Court in 1992 reads:

> The whole law is summed in one word, *love* ...It was given in love for us, and love is the fulfilling of the law - love in action.

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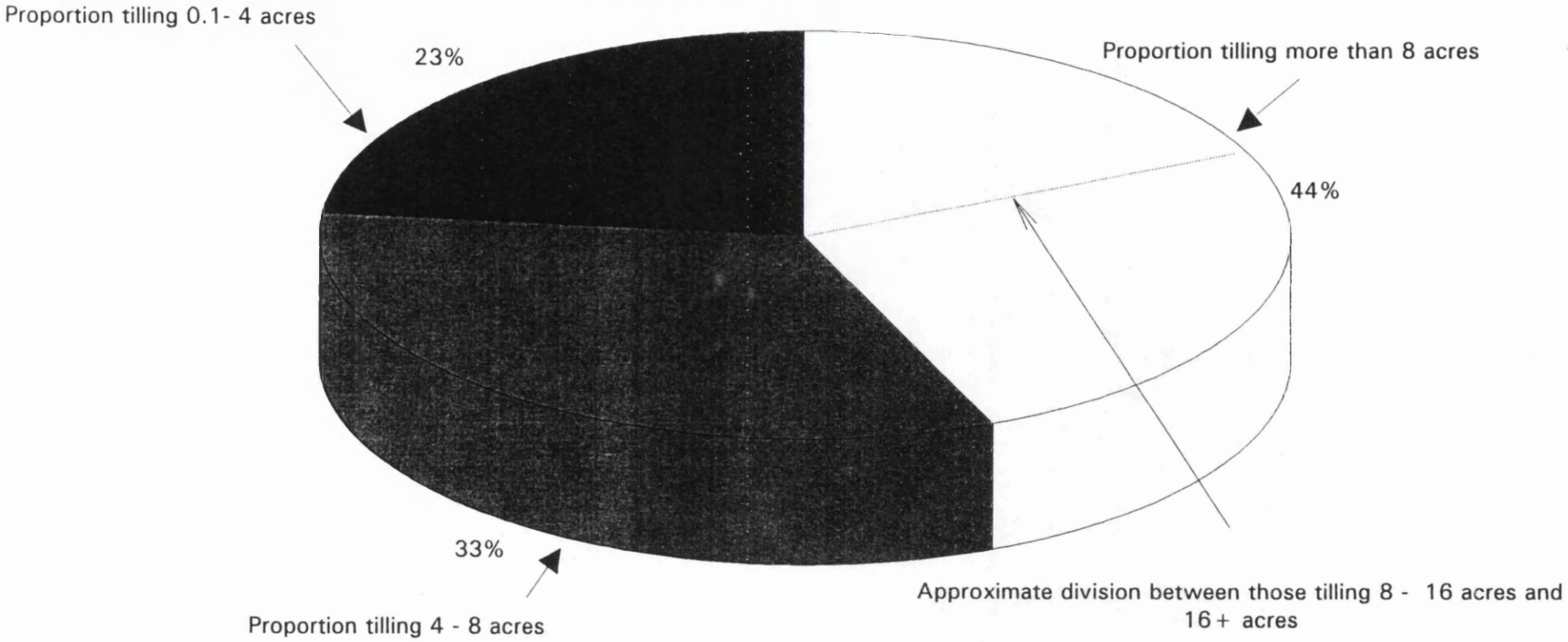
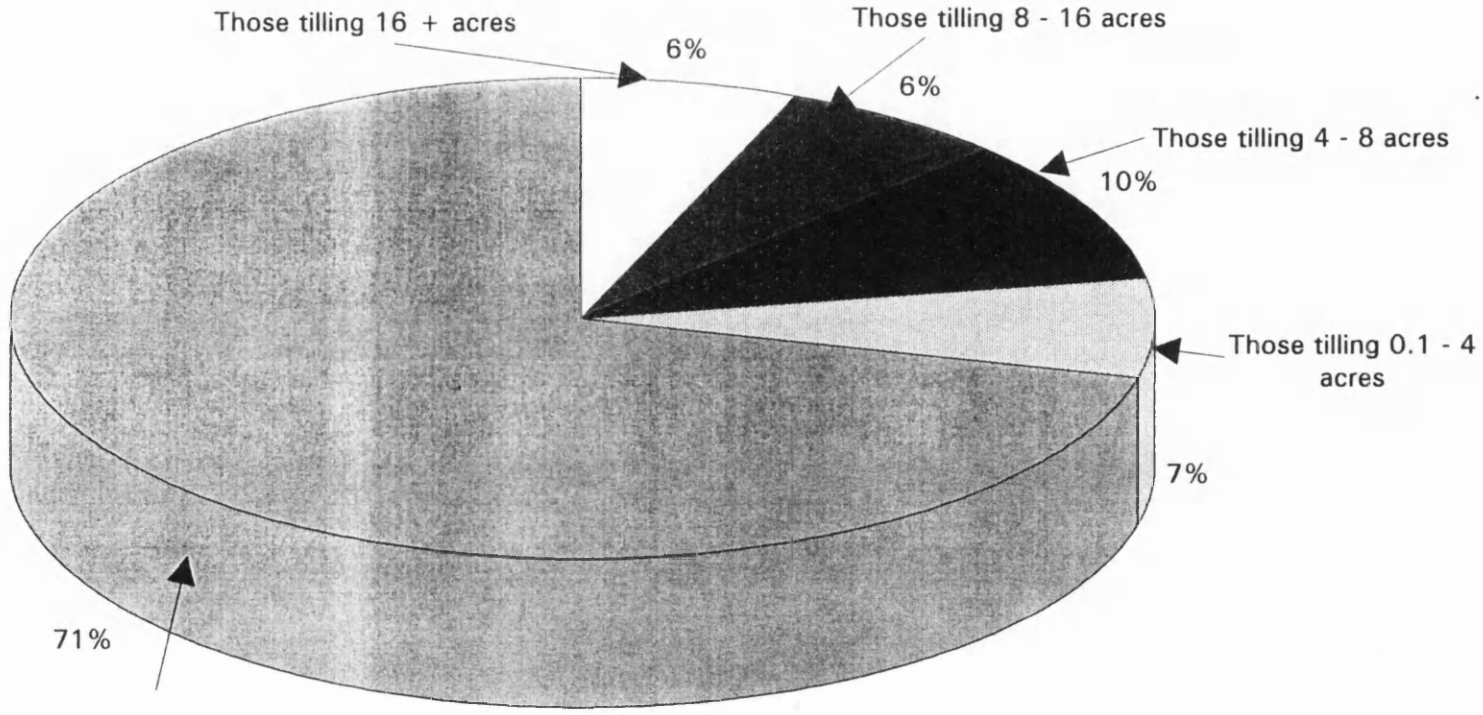
Land Distribution Amongst Those Tilling: Sipolilo Reserve 1957

(Source: NC Sipolilo AR, 1958)



Land Distribution Amongst All Taxpayers: Sipolilo Reserve, 1957



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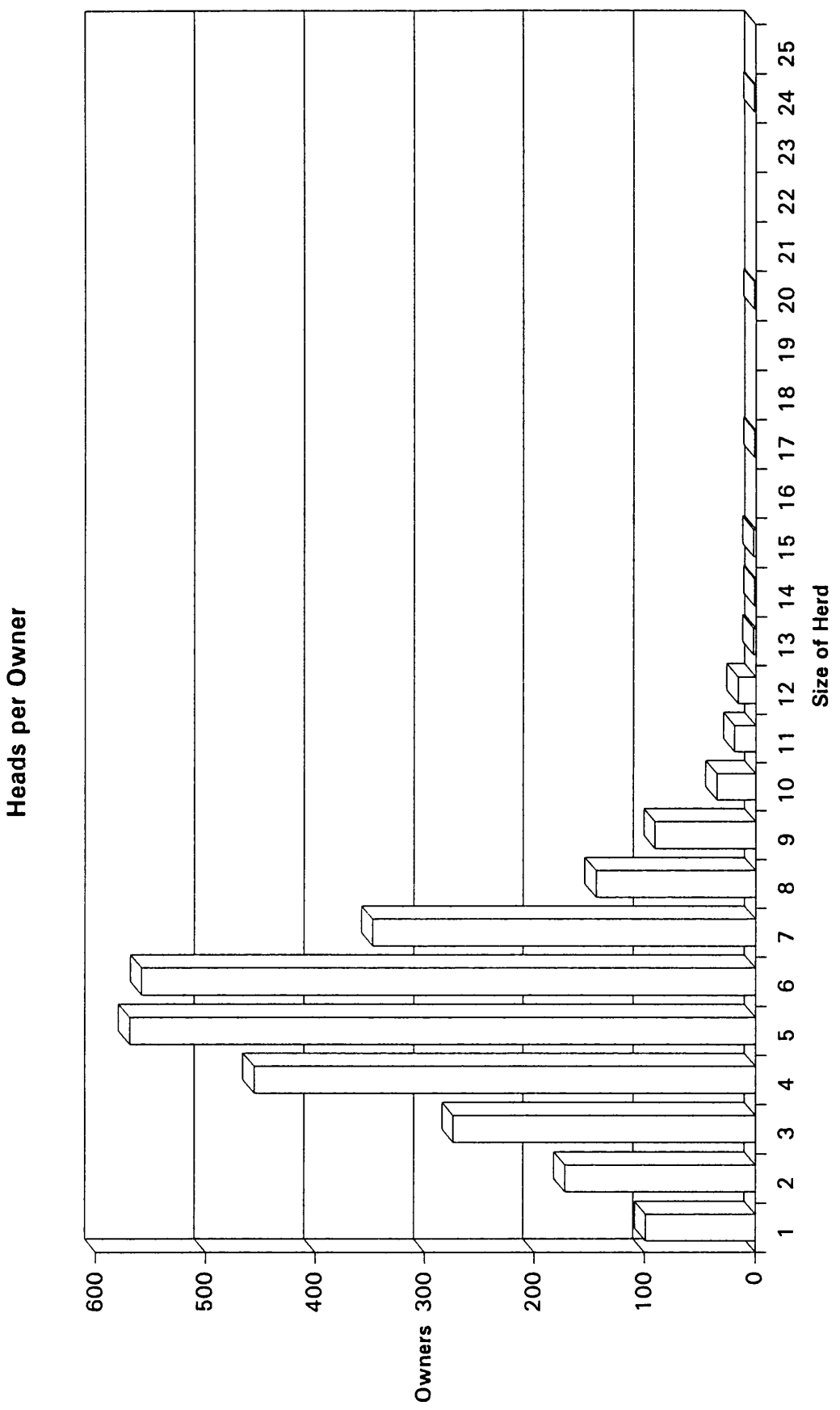
Heads per Owner
Owners
0
100
200
300
400
500
600
Size of Herd
1
2
3
4
5
6
7
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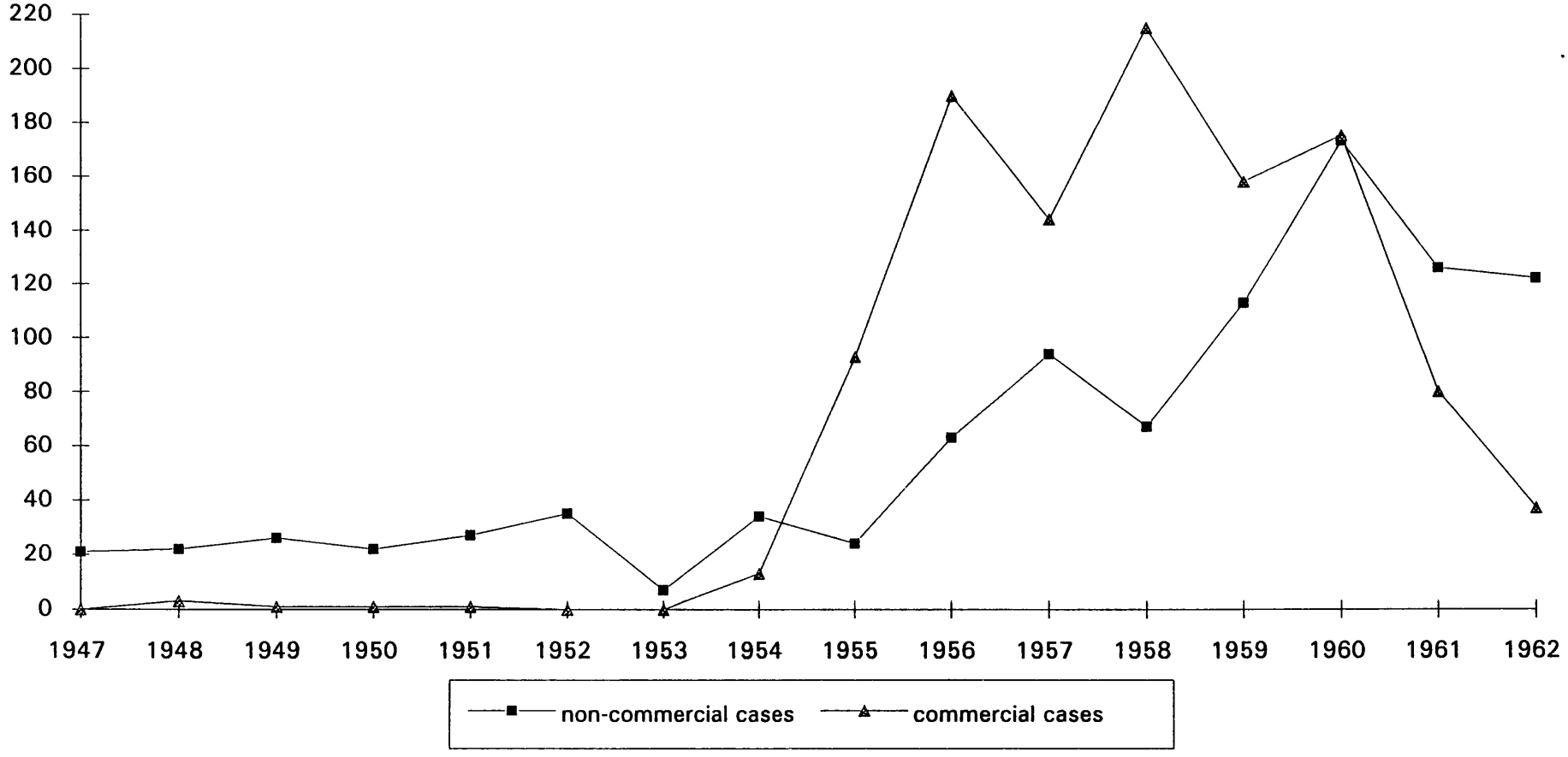
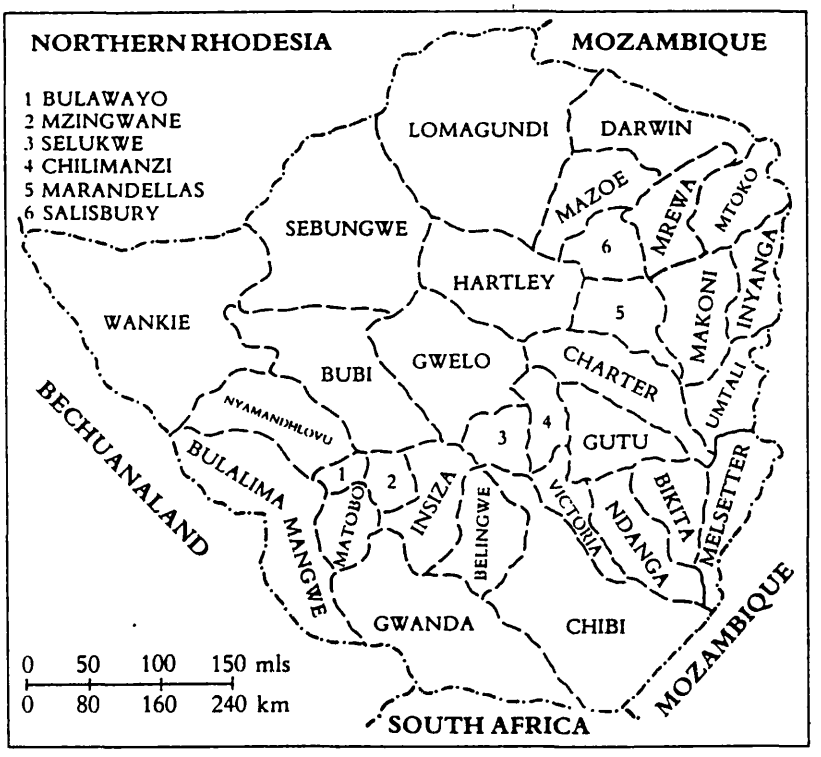
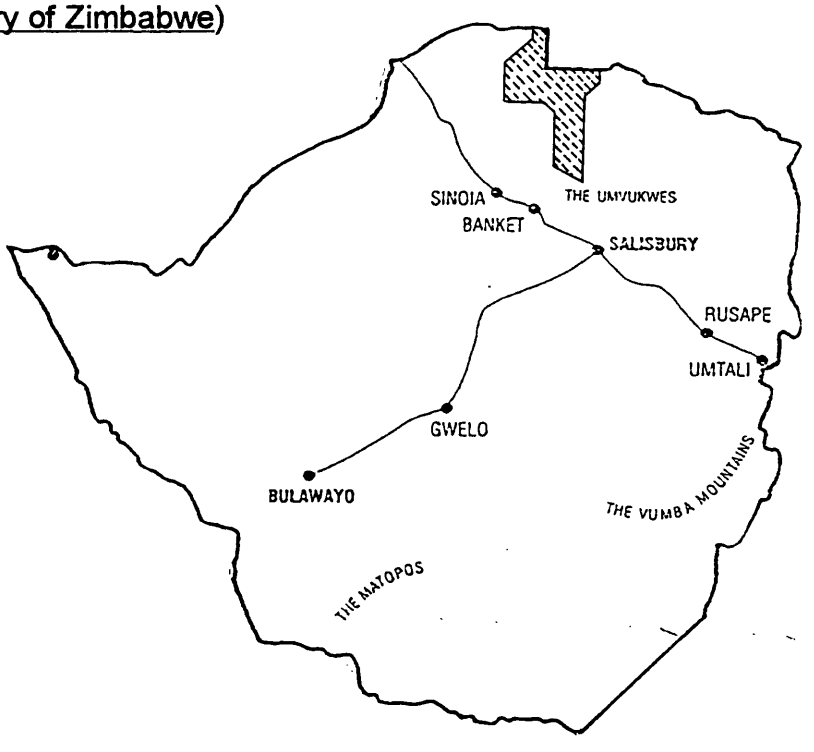
Native Commissioner's Court, Sipolilo: disaggregate of cases

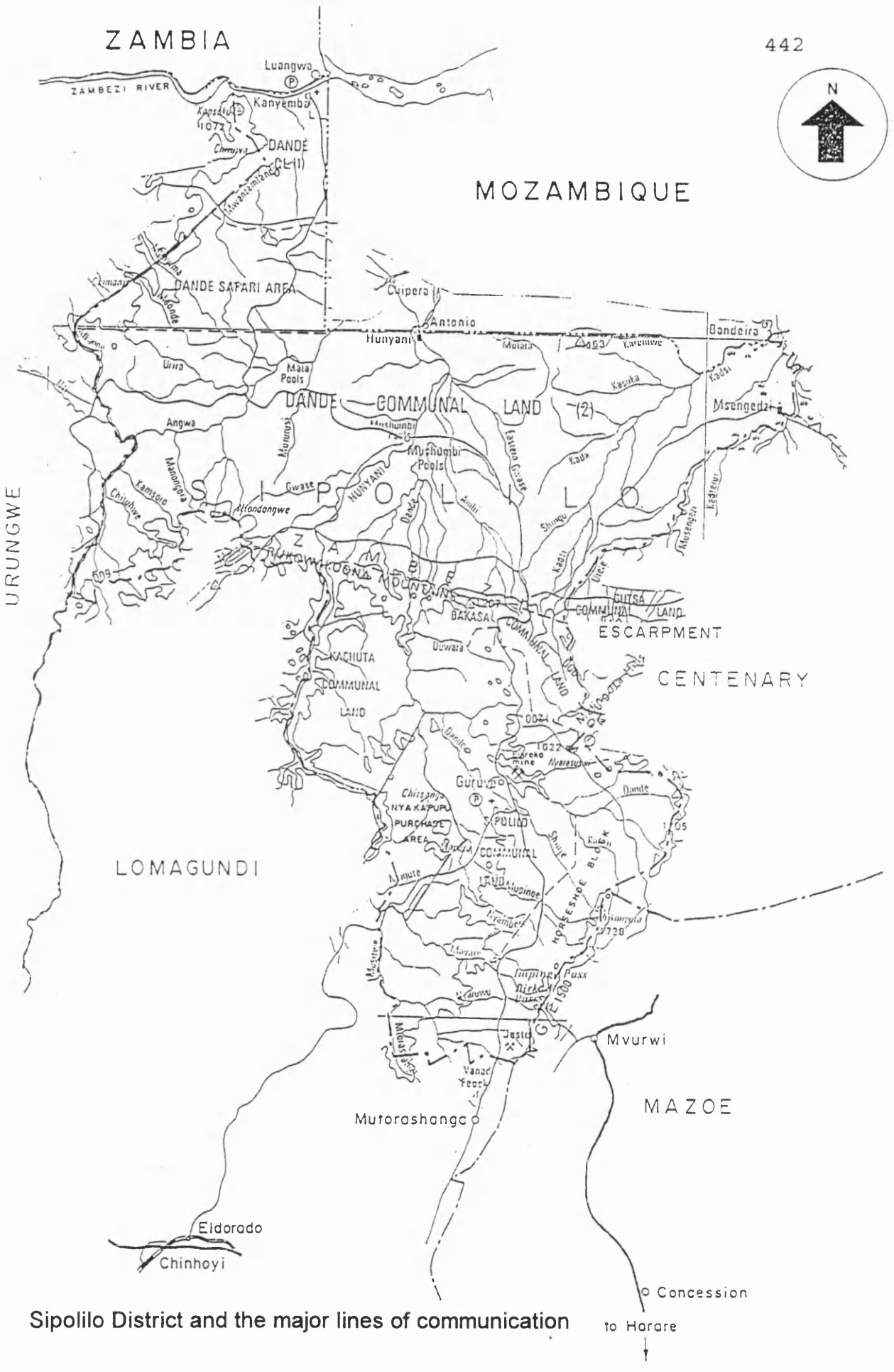




Districts of Southern Rhodesia: 1918 (Source: Phimister, Economic and Social History of Zimbabwe)

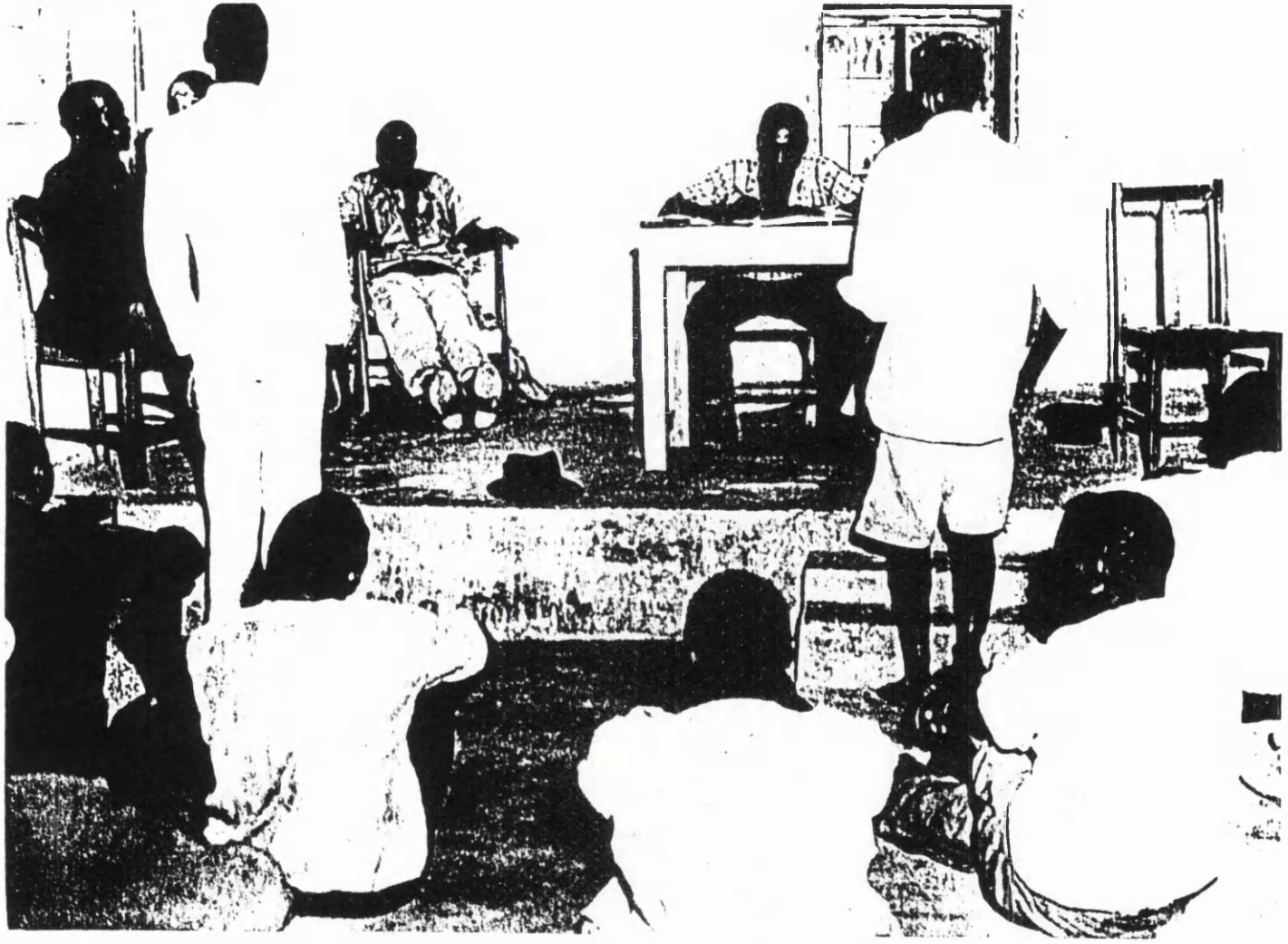


Sipolilo District in Southern Rhodesia

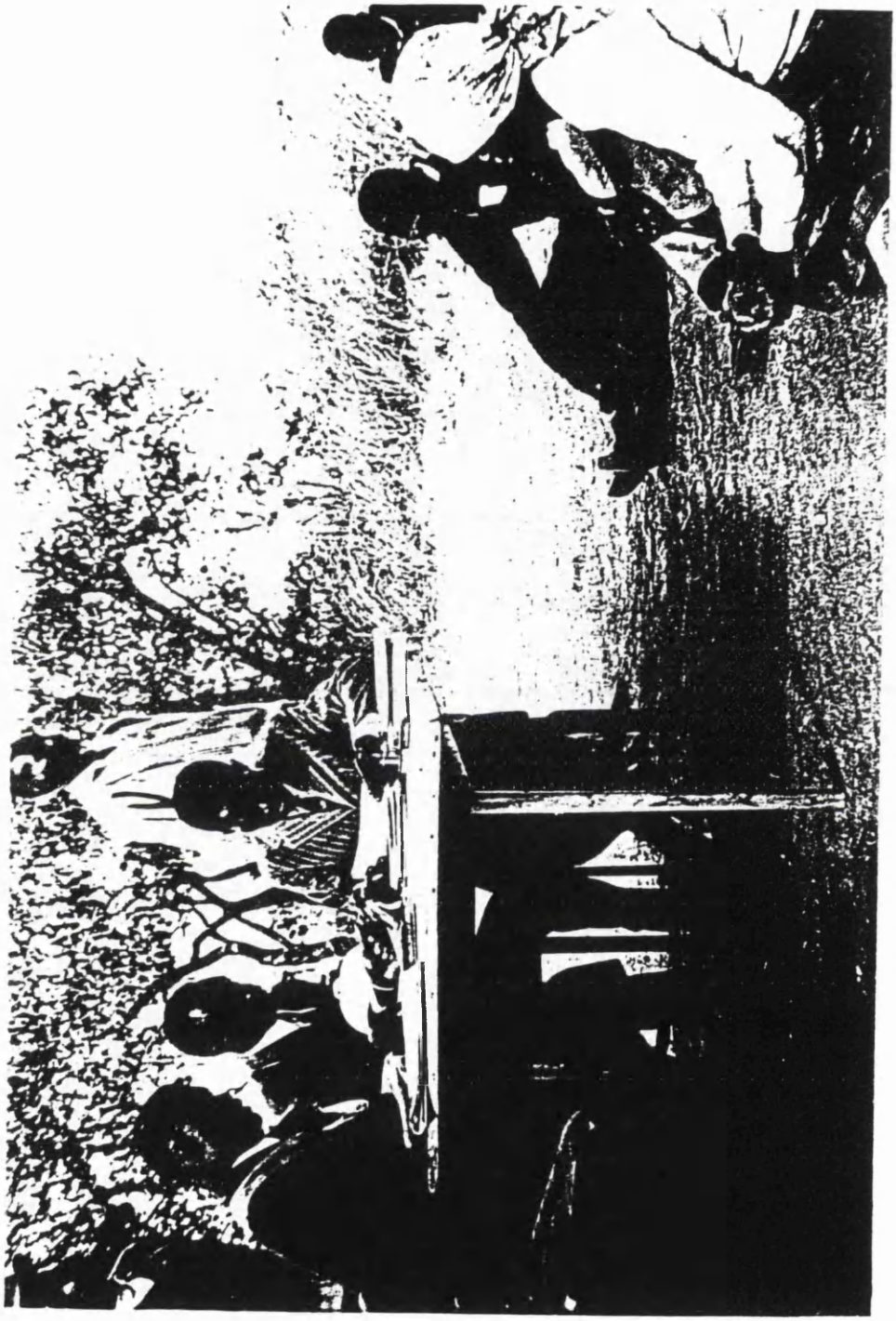


Sipolilo District and the major lines of communication

District Commissioner, Kasuma, Northern Rhodesia, hearing a case, 1929. (NAZ 2864)



African Court hearing, Chief's Court: 1952 (NAZ/22445)



Tribal Court in session, 1973 (NAZ/15703)