Chiefs! Law, powe & culture in contemporary South Africa

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Introduction

'*Re buswitše!* We are being ruled again!', shrieked a praise-singer in animal skins, his feet kicking up the red Sekhukhune sand. It was 19 December 1998, and in front of him sat the newly enthroned Billy Sekwati Mampuru III, king of the important Pedi lineage of Mamone. Behind him thousands of people roared in agreement, women in colourful attire ululated shrilly, the trumpets of the khaki-clad Zionist marching band sounded, old men hymned songs from the initiation schools, disco music pulsed, and against the clear blue sky a helicopter carrying VIPs prepared to land. The whole cacophony of sound seemed to add up to one message, voiced by an old man later that evening: 'It is time to go back to our history.'

A similar spirit seemed to permeate the inauguration of another leader, half a year later. In contrast to Sekwati's coronation, Thabo Mbeki's ascent to the presidency was world news, with press, presidents and royalty gathered to hear how the new leader intended to build on the policies of his already legendary predecessor, Nelson Mandela. Thousands listened breathlessly as Mbeki sketched how South Africa was at the time of the '*malube a naka tsa kgomo* – the dawning of the dawn, when only the tips of the horns of cattle can be seen etched against the morning sky'. He said these times were characterized by the need to rediscover and claim the African heritage, and to redefine South Africa as an 'African nation in the complex process simultaneously of formation and renewal'. The time had come for an African Renaissance, the new president declared amid a storm of applause.

One striking aspect of this African Renaissance forms the subject-matter of this contribution: the surprising resurgence of traditional authority and customary law within South Africa's democratic dispensation. Approaching this issue from a socio-legal perspective, I concentrate on three questions: What was the relation between the changing legal and socio-political position of traditional authority and customary law in post-apartheid South Africa? Why was this so? And what does this teach us about the interrelation between law, politics and culture in the post-modern world? In answering these questions, this article will start with a brief discussion of the theoretical relevance as well as methodological approach of the research it summarizes: a legal-anthropological PhD project concerning the position of chieftainship in the post-Apartheid era, conducted by myself at the end of the twentieth century.[1] This research called for a specific methodology that combined extensive and in-depth fieldwork with a more multi-sited and ethnographic approach. This is why, in addition to a total of 15 months spent on classic qualitative and quantitative field research in the Northern Province, I also spent five months of research interviewing policy-makers and parliamentarians, visiting conferences on the future of traditional leadership and generally recording South Africa's 'struggle for the soul of custom'.

This contribution will first discuss the causes and consequences of the return of 'chiefs and customs' in national and international policy discourse, and subsequently turn to the implications of this phenomenon in one particular locality, Sekhukhune. Finally, it will briefly look at the implications of this case-study for general theory on the relations between law, politics and culture.

Background

What is the relevance of a study on traditional leadership and customary law in South Africa to a reader on modernity in Africa? For one, the reappraisal of 'chiefs and customs' within South Africa's first democratic dispensation seems to exemplify a much wider trend at the end of the twentieth century described in other articles in this volume: a widespread challenge to the nation-state, once considered to be the only vehicle to progress. Instead, a number of alternative sub-, supra- and transnational polities, some vintage, others virgin, seemed eager to take over some of the state's practical and symbolic functions. A striking aspect of this renegotiation of the nation-state was how it was often played along the lines of culture, with communities claiming political autonomy on the basis of their cultural uniqueness. One manifestation of this 'culturalism', and the way in which it knitted together law, politics and culture, was the ubiquitous rise of 'rights to roots', with indigenous peoples claiming and receiving more autonomy.[2] A second example was the revival, all over Africa, of traditional leadership, not only informally but also in laws and policy documents.

For all the newness of this cultural rights discourse, there was also something disturbingly familiar about it. Often, it seemed to rest on the idea that society consisted of a tapestry of distinct cultures, and that the – ascertainable – normative and governmental systems of these cultures were worthy of official legal recognition. While these images and notions were presented as new postulates of post-modern times, they nonetheless at times bore a striking resemblance to the paradigms of both colonial and apartheid policies. Both policies made use of notions of cultural difference in order to legitimate discriminatory systems of indirect rule. A bureaucratized chieftaincy, for instance, was frequently incorporated into the colonial state, and transformed beyond recognition in the process. Customary law suffered a similar fate: an essentially flexible system was chiselled into 'the austerity of tabulated legalism', and made subject to colonial laws and so-called repugnancy clauses. A substantial amount of literature has pointed out how this was hardly a top-down exercise, how those versions of chieftaincy, custom and culture that made it to law were often determined in a dialogue between government officials and traditional leaders, and were thus foremost the versions in their interest.[3]

It is at the juncture of these two sets of givens – the enthusiastic embracing of chiefs, custom and culture in a new world and the lessons customary law studies hold about their artificial origins – that the set of key theoretical challenges arises to which this article seeks to provide part of an answer. First, now that an increasing number of states are drawing their legitimacy from associations with traditional leaders, and other polities – chiefdoms, first nations – are relying on

'cultural difference' to attain autonomy from states, there is a need to rethink the relation between law, power and culture. What is law in these situations, what does it reflect? A second topic concerns the constitutive effects of cultural rights legislation: what does state recognition of chiefs and customs do locally? Finally, and related to all this, there is a challenge in rethinking the connections between the state recognition of traditional leadership and its resurgence all over Africa – not only in constitutions and parliaments, but also in villages like Mamone, seemingly far from the wider world. What legitimacy do these chiefs have? Is their revival locally driven; the local adoption of a bureaucratic myth (as deconstructivists would have us believe) or is there an alternative, more balanced explanation?

For a number of reasons, South Africa is an ideal case-study for examination of both the empirical resurgence of traditional leadership and its theoretical implications. For one, there is the starkness of the contrast between the abuse of notions of cultural difference under apartheid, and their unexpected comeback in the post-apartheid era. The struggle against apartheid was above all against this imposition of cultural diversity, which caused even the even-tempered Bishop Tutu to fulminate in the 1980s: 'We blacks – most of us – execrate ethnicity with all our being.'[4] Yet, less than two decades later, the country's constitution re-recognized chieftaincy and customary law, and the country's vice-president advocated an 'African Renaissance [...] where all communities are free to explore, explain, reflect and rejoice in that which makes them unique....'[5] Another reason why South Africa, of all countries, turned out to be such an interesting case-study for analysis of the changing position of chieftaincy, culture and custom was the period in which the research for it was conducted. There was the titillating excitement of the 'dawning of the dawn', the daybreak of democracy which seemingly opened all positions, made them debatable. In considering these issues, this study thus forms an explicit attempt to link the local to the national and even the global, and to focus on the dialectical interactions between these polities. Even though it describes the position of chiefs and customary law in one place – Sekhukhune in South Africa's Northern Province – its concern is with the complex dialogue between this locality and the wider world.

The patchwork democracy

What were the outcomes of the national discussion on the future of traditional leadership and customary law after 1994? Those observers who, in the 1980s, had expected chieftaincy to 'melt away like ice in the sun' noted with surprise how the strong formal position of chiefs under apartheid did not diminish after South Africa's democratization.[6] If anything, the position of chiefs was strengthened. Six years after the elections, practically all the institutional arrangements that singled out the former homelands as separate spheres of rule, largely under chiefly jurisdiction, were still in place. This legal and institutional legacy consisted of over 1500 pieces of legislation, many of them based on the 1927 Black Administration Act and the 1951 Black Authorities Act, which had turned traditional leaders in the former homelands into 'decentralised despots', with wide-ranging powers in local government, land allocation and dispute settlement. Other authors have labelled this legacy 'bifurcated', but the number of different laws and regulations passed in individual homelands, regional authorities and traditional authorities led to and comprised proof of so many different scenarios of governance that the term 'patchwork democracy' seems to be a more suitable description of the situation.[7]

Of course, much did change in the new South Africa. For one, the system of racial segregation was officially replaced by a 'sovereign and democratic constitutional state in which there is equality between men and women and people of all races'. Ever since Nelson Mandela, in his first speech after 27 years of imprisonment, explicitly saluted the traditional leaders of the country, it had been clear that they too would somehow have to be granted a place in this egalitarian constitutional order. A strong presence of traditional leaders in the constitutional negotiation process, combined with Inkatha Freedom Party (IFP) leader Buthelezi's threat not to participate in the elections if chieftaincy was not recognized, ensured that a constitutional principle on the recognition of traditional leadership and customary law was adopted even before the 1994 elections. Like an alimony agreement from a former marriage, this principle would tie the hands of the democratically elected Constitutional Assembly when it was drawing up the final constitution. Thus, this final constitution, adopted in 1996, declared:

> 211. 1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution

Nevertheless, the real decisions concerning the future of these institutions still had to be taken. The years that followed showed how difficult this process would be. For instance, a Traditional Authorities Act to replace the still-valid apartheid legislation concerning chieftaincy was originally planned for 1998 but was nowhere near adoption in 2002. Likewise, the patchy institutional legacy persisted in the key policy areas of local government, land allocation and dispute resolution. Concerning local government, elected municipalities were installed in the rural areas, but traditional leaders protested vehemently against this situation of 'two bulls in one kraal'.[8] This caused President Mbeki to promise in 2000 that he would, if necessary, amend the constitution to ensure 'a dual system (providing) for the retention of traditional leadership, while at the same time allowing local communities to elect public representatives'. Similarly, little changed in land allocation: a Bill seeking to democratize access to land in traditional authority areas was shelved, and the responsible minister was dismissed to make place for a staunchly pro-traditionalist colleague. And in the field of customary law, traditional leaders managed to retain civil and criminal jurisdiction over 'their' subjects, perpetuating duality in this area as well.

The pressing question is, of course, why? Why did that legal and institutional web designed to perpetuate social and economic inequality, and based on ethnicity and patriarchy, prove so hard to unravel? The answer lies in the interplay of the actors and the more structural conditions at work. One of the central actors, for instance, was the very active and able body representing the traditional leaders, CONTRALESA, which ranked among its members chiefs who combined law degrees with political agility and popular support. These traditional leaders were able to profit from the indecisiveness of the ANC, which was ripped apart over this issue of identity, as well as from the willingness of other parties to endorse their position. In addition, the wilting of activist organizations after democratization made alternative voices representing 'rural communities' less strong than they used to be. And then there was the staunch support of government departments like Traditional Affairs, which considered its main challenge to be to 'restore the traditional nature and respectability of the institution of traditional leadership'.[9] But all these actors operated in, drew on and contributed to, a wider set of conditions favourable to a resurgence of traditional leadership. The South African party-political landscape, for one, made the ANC feel that it somehow

had to co-opt the chiefs, if only as 'voter brokers'. Also, there was apartheid's heritage, which made it so easy to slip into familiar discourses, representations and ideas about rural reality. But there was more, like the deeply and widely felt need to reconnect with the roots, to rediscover an African identity, to relive an African Renaissance. This quest for cultural revival reflected, as we have seen, a global mood of recognizing culture within law and politics, and of 'rights to roots'.

The power of definition

The post-apartheid political constellation was thus not only one which favoured a strong formal position for 'chiefs and customs', but also one which allowed traditional leaders themselves to take centre stage in discussions that, essentially, affected not only them but also the at least 13 million people considered to be their 'subjects'. Because it was a central presupposition in policy debates that South Africa had a cultural diversity that needed to be 'recognized', what was essentially at issue in these debates was the contents of culture, custom and tradition. And because traditional leaders played such a central role in the policy debate, they had the power of definition and virtually monopolized knowledge on the rural condition, the popularity of traditional authority and the character of customary law. To give one example: when the national Department of Traditional Affairs embarked on a research project concerning the popularity of traditional leadership, it only sent out questionnaires to the Houses of Traditional Leaders, and not to chiefly subjects.

All this led not only to a strengthening of the legal and socio-political position of traditional leaders in the national power landscape, but also to an acceptance of a certain understanding, a specific definition of the character and the value of traditional leadership. This understanding seemed to rest on four – all too familiar – assumptions that made it to policy debates and, finally, into law. The first assumption concerned the popularity of traditional leadership and the immutability of support for the institution. The second, perpetuated by government officials and traditional leaders, was that rural society consisted of coherent communities, which could be represented as such. A third assumption pertained to the existence of coherent systems of customary law, ready to be ascertained and 'recognized'. Finally, there was the idea of an irreconcilable difference, in terms of needs and aspirations, between the 'rural' and the 'urban'.

The institutional landscape

How did these assumptions, which determined the extent to which, as well as how, traditional leaders received recognition at the national level, compare with the locally lived reality of Sekhukhune?

One central reason for this study was the often-signalled lack of empirical information on 'what occurs on the ground', people's perspectives on the legitimacy of traditional leadership. Here, possibly surprisingly, the data from Sekhukhune, an impoverished area in the Northern Province with a long history of famous traditional rulers, show that there was as much a call for 'retraditionalization' locally as there was nationally. The freedoms of democracy, and the chances it offered to rethink and re-express identities, led to the revival of Pedi dancing, the zealous reinstallation of chiefs and calls for the reanimation of 'traditional' systems of dispute resolution. Not only did 80 per cent of the people we interviewed say that they supported a traditional leader,[10] but many of them also underlined the changes that this support had undergone: 'During the struggle we'd fight like dogs with our chief, but now we're back together again.'

Even though there was a revival of chiefly popularity in Sekhukhune, there seemed to be a large fissure between the national assumptions of culture, custom, communities and chieftaincy, and the rural realities. While there was general support for institutions such as traditional leadership and customary law, the *character* of this support differed drastically from the ideas held, circulated and perpetuated in national discourse.

Let us start with the assumed popularity of traditional leadership. While the national image was one of a sole representative institution, with a fixed set of functions and responsibilities and an immutable support base rooted in tradition, even the briefest of visits to Sekhukhune would reveal a rather different picture. We find an institutionally plural landscape in which a variety of actors compete, or sometimes co-operate, over local power. In each village, a different constellation of actors, such as the widely influential vigilante organization *Mapogo*, the civic organizations, elected representatives, Churches, and business and migrants' organizations, worked with or against the traditional authorities in order to attain control over resources, boundaries, people and meaning. It was precisely the ability of traditional leaders to form a 'hegemonic bloc' with the more conservative of these actors over the need to restore law and order that facilitated their comeback in many places. Also, traditional leaders themselves were surrounded by a variety of other actors, be they the royal family, a wider group outside the family, or the Tribal Council. Successful traditional leaders were those that could operate in three different spheres – party politics, bureaucracy and palace politics – belying the notion of solitary rulers.

Additionally, the functions and responsibilities of traditional leaders appeared to be far from fixed, and subject to permanent discussion. Even if most people theoretically approved of the notion of traditional leadership, there was a permanent tussle to make the institution more accountable, to ensure that it delivered, to open it up (or keep it closed) to women, to redefine its contents. Of course, the way in which this was done differed from place to place: In Madibong, for instance, a progressive chief decided to replace some of the royals in the Tribal Council with elected members, among which were women. In Mamone, on the other hand, villagers embarked on a process to write a 'Tribal Constitution', circumscribing and redefining the powers of the traditional authority. But in every village support for chieftaincy depended not only on individual and village characteristics, but also on the governance of the chief concerned: wise, accountable, assertive and 'obedient' traditional leaders who 'delivered' – projects, spoils – could count on increase in support. Many Bapedi, for instance, related their support for traditional leadership to the failure of local councils to deliver: 'As these boys have brought us nothing, for now let's keep the *magoši*.'

A look at local 'living law' revealed a similar discrepancy between the assumption held nationally – that of a legitimate, coherent and distinct system of customary law – and the dynamic and discursive local filling-in of the concept. While many Sekhukhune citizens acknowledged the importance of *melao*, law, this did not at all mean that its contents were fixed. Rather, law as lived in day-to-day life – under thorn trees, in rickety school buildings – and the values and norms it drew on were the outcome of an ongoing series of negotiations, firmly embedded in local power relations, in which actors could draw on a wide variety of resources. 'The loosely constructed repertoire' of custom was one, as were constitutional and developmental values, Biblical wisdom, force, common sense, and information from outside sources, for instance, that received over the

radio. Even in cases where norms were clear, those interested in predicting outcomes were better off looking at power relations than the rules involved.

A third assumption held nationally was that rural society consisted of communities coherent enough to be represented by a single institution such as traditional leadership. Again, a superficial glance at Sekhukhune reality would have confirmed this assumption: people identified strongly with their *setšaba* (community/nation) and related community identity to the presence of a chief: *setšaba ke setšaba ka kgoši* – a community is a community because it has a traditional leader. This, however, did not imply homogeneity, or even that people considered the chief to be the ideal spokesperson in dealings with the outside world. Far from it. For one, communities were rife with gender and generational disputes, expressed in and fed by dark undercurrents of jealousy and witchcraft accusations. Also, practically every Sekhukhune community was torn apart by – often violent – succession disputes.

The fourth assumption, that of rural–urban difference, was also at variance with the multi-layered local reality. Indeed, many rural people interviewed cherished traditional leadership and customary law. And yes, Sekhukhune residents (particularly the migrants) felt that Bopedi was governed by other rules, a different pace and even a different normative order than *makgowenę* – the world of the whites. But this did not preclude most Bapedi from holding the same democratic and materialist aspirations as the rest of the population: support for traditional leadership was not exclusive, but combined with wide backing of democratic governance or any other institutional arrangement that could ensure realization of the ANC's promise – 'a better life for all'.

The constitutive effects of cultural rights legislation

There were thus two sets of givens concerning the legal position of traditional authority and customary law. On the one hand, there were the official, codified versions of culture, custom and chieftaincy: laws departing from notions of chiefly sovereignty, communal coherence and rural–urban difference. On the other hand, there were the permanently shifting dynamics of local law, the fluctuating and contested character of ideas on chiefly functions and authority and the ongoing debates on what local custom and culture were, and what they should be. The question arises, of course, as to how these two sets are interlinked, what all these official laws mean and do locally. To express it in another way: What are the constitutive effects of cultural rights legislation?

I discuss this issue from two angles: the legitimacy of traditional leadership and the debates on customary law. But before turning to a brief description of the outcomes of this approach, it is necessary to put forward a caveat concerning the impossibility of neatly measuring the impact of the 'legal' on the 'local'. As law is hardly an independent variable, I prefer to take a *constitutive* approach to the question of 'how law matters'. Such an approach sees law 'as the way of organizing the world into categories and concepts which, while providing spaces and opportunities, also constrains behaviour and serves to legitimate authority'.[11] As such, it recognizes that law cannot be separated from wider social forces. In Sekhukhune, for instance, the formal, legal affirmation went hand-in-hand with political statements on the importance of chieftaincy, NGOs singling out traditional leaders as their main counterparts in development programmes, companies like Coca-Cola and Douglas Colliery sponsoring royal coronations, and the ANC executive telling local cadres that the time had come to make peace with the chiefs.

Nevertheless, the law did matter. A first perspective through which this became clear was that of the legitimacy of both individual traditional leaders and the institution of traditional leadership. In Sekhukhune, we not only looked at who supported traditional leaders (more the elderly than youngsters, more lower-educated and lower-income Bapedi than the higher educated, and rich and – surprisingly – more women than men) and how these people supported chiefs – in a dynamic, limited, issue-related and not exclusive way. A large part of our investigation also concerned the why of popular support for traditional leadership. Here it turned out that people generally quoted four equally important sources of legitimacy: tradition, chiefly performance, lack of alternatives and ... government support. There were thus just as many people who supported chiefs because 'they are the eyes and ears of the government' as there were people who gave reasons like: '*bogoši* is our culture as black people and should therefore be protected and promoted'; 'at least they are doing some good things for us'; and 'who else is there to rule us?'

This government recognition as an important source of chiefly legitimacy contrasts sharply with all the literature that considers traditional leaders as alternatives to the state system, their powers rooted purely in an alternative, traditional morality. Nevertheless, it should also not be overestimated. Case material from three different villages – the tiny under-developed Hoepakranz, the apartheid artefact Ga-Masha and the fast-developing Mamone – demonstrated how government recognition was far from the only source of legitimacy. Strikingly, the more 'developed' the community concerned, the more support for chieftaincy was legitimated in terms of 'tradition'. Development, it appears, does not so much reduce support for chieftaincy as it alters the character of this support.

A second prism through which to look at the local constitutive effects of cultural rights legislation was that of customary law. Local everyday law, as stated above, is far from the coherent, ascertainable system that national discourse would have it. It is negotiated, within local power relations, by actors who can draw on a wide variety of resources. One of these resources is official customary law as recognized by the state: the constitutional recognition of chiefs, the still-applicable Black Authorities Act and Black Administration Act, and the thousands of ensuing regulations. Far from local, living law and state law being two distinct systems, state law was often pulled in as a resource, even if it always had to be validated and reappropriated locally. And it was especially there where there was widespread legal uncertainty, such as with the overlapping and contradictory official land legislation, that state law sided with the more powerful, those with privileged access to information.

One particularly telling example was the role that official, codified customary law played in local succession disputes. Even though the formal rule here was that the oldest son of one of the chief's wives – the *mmasetšaba* – would always inherit the throne, reality proved to be otherwise: in the majority of cases, chiefs were succeeded by someone else, often someone who was better equipped for the function. It would seem as though the Sekhukhune system of succession contained a built-in vagueness and uncertainty that allowed the best candidate out of a limited pool not only to ascend to chieftaincy, but also to argue this claim in terms of customary law.[12] The state appointment of traditional leaders thwarted this subtle local system. By rigidly applying the principle of the eldest son, state anthropologists often helped highly unpopular candidates to the throne and sowed the seeds of heated succession disputes.

State law categorizes, demarcates subjects, defines powers and

draws lines. And once they are singled out and defined in law, categories like 'a traditional leader', 'a tribal resolution' and 'a customary marriage' can have important local consequences, if not causatively then at least by structuring both 'thought and action'.

Categories have consequences

It is time to return to the three main questions that this article has briefly addressed: what was the relation between the legal and socio-political position of traditional leadership and customary law in post-apartheid South Africa, why was this so, and what does this teach us about the relation between law, politics and culture in the post-modern world? A first striking finding is how the reappraisal of traditional leadership in South Africa was not confined to policy documents and parliamentary plush, but also took place on the dusty plains of Sekhukhuneland. A second noteworthy outcome is the role played by state law in this reappraisal, in many different ways and in conjunction with a multitude of other resources. State law and its categorizations impacted on how Bapedi constituted themselves and their relations with the wider world, on local political formations and on who could claim access to resources. It strengthened political positions, rendered some scenarios less logical than others and thus functioned as a resource in the negotiations on the local order and people's place in it. For all the local creativity in accepting, rejecting or redefining legal categorizations, the law did matter.

How, then, can we extend these findings to wider studies of the relation between law, power, culture and modernity? The most important implication is that they (once again) refute two of the central ideas to which lawyers and social scientists debating cultural rights cling with surprising doggedness. The first is 'the myth of the mirror': the notion that within a given nation there exists such a thing as an amalgam of coherent cultures, separate coloured blotches neatly shimmering on a painter's palette, ready to receive state recognition. However, reality shows a murky and smudged picture of bleeding lines and uncertain textures. Drawing certain features of 'culture' and 'custom' out of this blend for neat classification in legal categories is in essence a political act, certain to privilege some voices, visions and versions while silencing others. Second, it belies the equally tenacious belief that there are, in countries like South Africa, isolated and traditional communities with systems of socio-political and legal order free from interactions with the outside world, and draws attention to the dialectic, mutually constitutive dialogue between polities.

These lessons also contain the seeds of some alternative approaches to the legal recognition of culture. They demonstrate the importance of the 'power to define' culture and custom, and thus of granting this power of definition to the people concerned instead of to their leaders. Similarly, they show the need to drop the notion that customary law and human rights, tradition and modernity, chiefly rule and democracy, would somehow be antithetical. Finally, they show how the law can act as a weapon of not only the mighty but also the weak, and how knowledge of the law can empower the marginalized in their struggle for a better life.

Notes

[1] Barbara Oomen, 2005, *Chiefs in South Africa. Law, Power and Culture in the post-Apartheid era*. Oxford/New York: James Currey/Palgrave.

[2] The term 'culturalism' was coined by Appadurai, who defined it as the conscious mobilization of cultural differences in the service of a larger national or transnational politics; see A. Appadurai. 1996. *Modernity at Large: Cultural Dimensions of Globalization*. Minneapolis: University of Minnesota Press. The term 'rights to roots' is used in: B. De Sousa Santos, 'State, Law and Community in the World System: An Introduction.' *Social & Legal Studies* 1 (1992): 131–42.

[3] Three seminal works are: M. Chanock,1985, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge: Cambridge University Press; Mahmood Mamdani, 1996, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton Studies in Culture/Power/History, Princeton: Princeton University Press; and Kristin Mann and Richard Roberts, eds, 1991, *Law in Colonial Africa*. Portsmouth, NH/Oxford: Heinemann Educational Books/James Currey.

[4] Quoted in Arend Lijphart, 1995, 'Self-Determination Versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems.' In Will Kymlicka (ed.), *The Rights of Minority Cultures*. Oxford: Oxford University Press, pp. 275–87.

[5] South African Press Agency, 2001, 'Address by Deputy President Jacob Zuma to the Opening Ceremony of the National Khoisan Consultative Conference', www.sapa.com

[6] Cf. an article in the official ANC bulletin, which stated that 'there can be no compromise with our perspective of a unitary, democratic South Africa where there shall be no bantustans' ANC. 'The Bantustan Question: A New Approach?' *Sechaba* 24, no. 4 (1990): 13–14. The quote 'In the new South Africa, chiefs will melt away like ice in the sun' comes from Eddy Maloka, 1996, 'Populism and the Politics of Chieftaincy and Nation-Building in the New South Africa', *Journal of Contemporary African Studies*, 14, 2: 173–96.

[7] M. Mamdani. 1996. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton/Cape Town/Oxford: Princeton University Press/David Philip/James Currey.

[8] K. Mamaila. 2000. 'Chiefs Happy at Steps Taken to Resolve Municipality Dispute', *The Star*. Johannesburg, 17 May: 1.

[9] Department of Constitutional Development, 2000, 'A Draft Discussion Document Towards a White Paper on Traditional Leadership and Institutions.' Pretoria: Government Printer.

[10] N = 607, of which 52 % female and 48 % male; 5% under 20, 28% 20–30, 22% 30–40, 19% 40–50, 1% 50–60 and 12% 60 +; 20% no education, 21% up to standard 6, 42% standards 6–10, 7% matric, 7% technicon, 3% university; only 27% formally employed. This is more or less representative of the Sekhukhune *adult* population as a whole, and based on Probability Proportionate to Size samples in the three fieldwork areas (N= 367) and other Sekhukhune traditional authority areas (N=240). The interviews were conducted by Tsepo Phasha, Patson Phala and myself or by two of us, usually in Sepedi, in personal, face-to-face interviews based on a Sepedi questionnaire with 45 closed and open-ended questions, which would typically take 1–2 hours and have been translated into English by the interviewers. The data used derive from uni-, bi- and multivariate analysis in SPSS.

[11] B.G. Garth and A. Sarat. 1998. 'Studying How Law Matters: An Introduction.' In B. Garth and A. Sarat (eds), *How Does Law Matter?* 259. Evanstown, IL: Northwestern University Press, p. 239.

[12] Cf. John L. Comaroff. 'Rules and Rulers: Political Processes in a Tswana Chiefdom', *Man* 13, no. 1 (1978): 1–20.