

Fort Hare,  
Alice, C.P.  
1645-37

Dear Dr Schapera,

I am returning to you under separate cover the MSS on Tswana Law and Custom which you sent me for perusal and comment. I am sorry that I have kept it so long, but pressure of duties prevented me from reading it as rapidly as I ought to have done. Since our return from East Africa we have been absorbed not only in College duties, but in a more detailed study of the numerous memoranda on African education in those northern territories which we did not have time to read while there and which we must digest in order to prepare our Report. During the last few weeks we have been engaged in making comments on the instalments of the preliminary draft of the report which are being circulated for this purpose. We have been warned by our Chairman that it may be necessary for the whole Commission to come together again to consider the final draft before it is presented to the Secretary of State for the Colonies. For Dr Kerr and myself that would mean a trip to London with resultant complications as far as our College work is concerned, so we are trying to wriggle out of that part of it. In the circumstance I have written to the International Institute intimating that it will not be possible for me to go to the field in June as I had hoped. Whether we have to go overseas or not in June, I feel I ought to postpone my fieldwork until November by which time the work arising out of the Commission will, I hope, have been completed. I hope you will concur with me in the line I am taking up in this matter.

With regard to MSS, I need hardly say that I read it with a great deal of interest and profit, but I naturally cannot offer comments on all parts of it from the Barolong point of view as I have not yet got anything like a complete view of that culture, and in any case for the reasons outlined above I have not read it as closely as I ought to have done. There are however one or two points on which I should like to touch. The general tenor of the draft bears out what I was able to note of Barolong Law and Custom during my brief stay among them.

1. Re the use of the term "kgotla", the Barolong use it rather loosely both for what the Bakgatla call "kgoro" and the Bangwato "motse" (p.7) and also for the large section of the tribe described on p.11. The term "motse" is used much for the town as a whole or for outlying villages with a fair concentration of population. Both the large divisions of the tribe and the wards are arranged in order of seniority and are named after their principal headman or an ancestor or his. The large divisions which are under the headship of close relatives of the Paramount Chief Lotlamoreng number 8 or 9, while the wards number between 40 and 50.
2. Regarding your discussion of the importance of precedent in Tswana Law on p.18ff, my impression is that one of the obvious results of the absence of writing among these people is that precedents are not closely followed. Even today when records are kept of the Trials at the Paramount Chief's court, I found among the Barolong who by no means among the least educated of the Bantu, it could by no means be said that these records were used for the purpose of holding the Court to its past decisions. The 'right to distinguish' one case from another, a practice not unknown in modern courts seemed to me to rather freely used. On the other hand the influence of the Court, on cases settled out of court, as it were, must not be underestimated. Settlements out of court must, broadly speaking, be such as, according to the best knowledge of



those concerned, the Court would approve. Otherwise/ an appeal may be lodged. The fear of the possibility of an appeal being lodged exercises considerable influence on the mechanisms for the enforcement of law outside the Court. This is what is implied in "recognised tribal usage".

3. On p.32 wouldn't you say that Tswana Law today embraces all the observances which are recognised by the tribes at the present time and approved expressly or impliedly by the Administration.

4. Re Installation of a Chief (p.46) one of my informants, a man who has seen the reigns of Leshomo, Tswana, Monthsiwa and their successors, told me that it was usual before installing the new Chief to send him out on a military expedition in order that he should have first-hand experience of war and its horrors. This, it was said, served the useful purpose of making him reluctant to declare war (go aba ntwana) unnecessarily in his future reign. Whether this was so among the other tribes I cannot say.

5. p.72 Among the Barolong a Chief or headman relies considerably for advice upon his maternal relatives who as a rule support him in disputes with his paternal kin. Nowadays when the chief usually has a private secretary it is common for him to select one of his maternal relatives for this office. When Lotlamoreng whose reign has never been free from tribal disputes minor and grave, succeeded to the Chieftainship, he removed Sebopiwa Molema, a paternal relative, and replaced him with Stephen Phatlu, a maternal relative.

6. Re administration of tribe, foreign sections of tribes have caused no end of trouble to Lotlamoreng by claiming that they owe allegiance to their original Paramount Chiefs, although from the territorial point of view they would appear to be under his jurisdiction. There is a Rapulana section of the Barolong at Rietfontein, 10 miles from the Chief Rathsidi Stad who refuse to recognise him as their Paramount. A section of Bathlware refused to plough for Lotlamoreng on the ground that that was a duty they owed to their Paramount Chief somewhere in the Kuruman Reserve. That particular case aroused so much resentment among the Rathsidi that their headman had to be asked by the Administration to leave the Reserve, but he claims that he is in the right according to Tswana Law and points out that Monthsiwa in whose time he first settled in that area never claimed such rights over him.

7. Re regimental organisation it would appear that among the Barolong an initiation "school" could be held at the request of any member of the tribe, after a good season when there would be plenty of food for all the necessary ceremonies. But for the request to be granted there must be a sufficient number of young men eligible for initiation to make the holding of the "school" worth while.

Initiation ceremonies have not been held among the Thsidi Barolong since about 1910, but it is reported that they continue to be held among the Tlou Barolong in the Setlagole, Ganyesa and Morokweng Reserves. But regimental organisation still obtains among the Thsidi, the young people being informed by the Chief of the regiment to which they belong. These regiments are now used mainly as a labour force. The regiments of the girls had the same names as those of the boys initiated about the same time.

8. I am inclined to disagree with the view expressed on p.158 that the Barolong bogadi had to be paid before the marriage was consummated. I made repeated inquiries on that point and the answer was invariably that the bogadi payment was not insisted upon before the consummation unless it appeared that the boy's parents did not intend at all to pay. Otherwise it was left to them to take the steps necessary to give them power over the children of the union. Again the go ralala may follow the mokwele and does not necessarily depend upon the payment of bogadi except among Christians who in any case object to the go ralala even after bogadi.



Barolong bogadi must be even, not only the number 7 being objected to. In Barolong theory, furthermore, bogadi is not recoverable in cases of dissolution of marriage, especially if the marriage has resulted in offspring. In fact, as one informant put it, if the woman has had one miscarriage, the bogadi is not recoverable. I am not yet satisfied with my information on this point but I could not find cases where bogadi had been returned. Lokwela or its equivalent is recoverable depending upon who it is at fault in the breach of promise, but the Tshidi insist that "bogadi ga bo boee".

These are the few points I noted in my hurried reading of your MSS. I am looking forward to getting a copy of the book when it is published. It will be of great value to students of Native Law.

Yours sincerely,



p. 72. Among the Barotung a chief <sup>considerably</sup> relies for advice upon his mother's relatives who as a rule take his side in tribal disputes with his paternal kin. Nowadays when the chief usually has a private secretary, it is common for him to select one of his maternal relatives for this office. When Lt. Manning succeeded to the Chieftainship he removed Sabopwa Isolana from this office & installed Stephen Phelua, a brother of his first wife who belonged to the Phelua family behind his own mother belonged.

Page 2 p. 18-19

By the way, a number of the members of the Council in the  
law, & that it would be well to find out who that one of  
the most serious results of the absence of writing among these people  
is that precedent is not clearly followed with in principle of a  
detail. When they were to make up half of the work of the  
Barotung Council, I found among the Barotung that it  
will be necessary to find that these results were used for the  
purpose of killing the land title past decisions. The usual custom  
to be in respect of what happened in a particular case for the purpose  
of inferring that it had not been done & so to the same degree  
with the land title & to hold the usual land title decision in that  
particular case. It is in regard to the cases, the right to distinguish  
which is a custom of precedent as well as to the custom of precedent, cannot  
to be to be rather fully used. So in regard to the flexibility in all things  
in the country, although it may be necessary to have some of the  
the other hand the custom the custom of the land, in some cases  
not of custom, it is, and it is to be understood, that the custom of land  
to be in a land title, and it is to be understood, that the custom of land  
an effort may be made. The fact of the possibility of an effort may  
be made to be in a land title, and it is to be understood, that the custom of land  
to be in a land title, and it is to be understood, that the custom of land



Chapter 1. p. 7.

Among the Barolong the term "kgotla" is used much more for what the Bakgatla call "kgoro" & the Bangwato "mitso"

The term "kgotla" is used very loosely both for the ward as described on p. 7 and the large section described on p. 11.

Not only are the large divisions arranged in order of seniority on the basis of relationship to the headman <sup>but via the smallest ones</sup> is the chief of the tribe as a whole. The large divisions are about 8 or 9 & the smaller number are 40. The large divisions are those under the heading of close relatives of the Paramount Chief, his classificatory <sup>paternal</sup> uncles or brothers, the smaller not necessarily so

Chapter 2. pp 18-19.

1. Regarding your discussion of the importance of precedent in Tswana law, I think it would be well to point out also that one of the most obvious results of the absence of writing among these people is that precedents are not <sup>too</sup> closely followed either in principle or in detail. Even today when the records are kept of the trials at the Paramount Chief's court, I found among the Barolong that it could by no means be said that these records were used for the purpose of holding the Court to its past decisions. The record seemed to be an account of what happened in a particular case for the purpose of informing those who had not been present as to the ~~case~~ decision on the point at issue & to hold the ~~same~~ court to its decision in that particular case, but in regard to other cases, the "right to distinguish" which is sometimes at present in aid in <sup>even</sup> trouble, to modern judges, seemed to me to be rather freely used. In my view this flexibility is not always a disadvantage, although it may on occasion lead to an exercise of justice.
2. On the other hand the ~~under~~ influence of the Court, on cases settled out of court, as it were, must not be underestimated. Settlements of cases must <sup>according to the best knowledge of those concerned</sup> be such as broadly speaking such as the Court could approve. Otherwise an appeal may be lodged. The fear of the possibility of an appeal being lodged exercises considerable influence on the mechanism for the enforcement of law outside the Court. This is what is implied in "required tribal usage".

as mentioned by you on p. 32



p. 32. Wouldn't you say that Tswana law today embraces all the observances which are recognized by the tribes at the present time & approved by the Administration.

### Chapter 45

p. 37.

If a chief died <sup>childless or</sup> without issue, he was succeeded by his brother, but the latter was not necessarily succeeded by his own eldest son. He might marry a wife, his elder deceased brother's widow or someone to whom he was betrothed prior to his death. The eldest male child of such a union was the rightful heir after his uncle. Thus among the Bathoedi Trading, Tawana the elder brother of Tawana died childless. During the minority of Tawana, his uncle acted as regent. In due course succeeded to the chieftainship and had several sons. Then he married a wife for his deceased elder brother Tawana and Khotswana was the eldest son of this wife. At the death of Tawana he was succeeded by Khotswana but by Marumuloa, his eldest son by his own principal wife. [The present Paramount chief Khotamose is legally the son of Khotswana's <sup>eldest</sup> son, but Khotamose was born 9 or 10 years after the death of his father.]

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p. 46. Installation of Chief

According to one of my best informants among the Bathoedi, a man who has been laid through the reigns of Khotswana, Tawana & Khotswana and their successors it was usual before installing the heir of the chieftainship to send him out on a military expedition in order that he should acquire experience of war. ~~and~~ This according to my informant, served the useful purpose of teaching him to be reluctant to declare war (go aba ntwa) unnecessarily in his future reign. It doubt, however, if this was actually a rule. It may have been done by Khotswana, because he was not fond of war himself.



Unit of Administration

The Household - *kolop*

The Ward - *Kyoth*

The Village - *mathe* - also subdivided into wards - usually under common headman.

The District - *Kyoth* ? - no system of Chief's representatives in various districts, but headman to whom land is allotted may have someone to act for him in his absence.

The Tribe - *horap*.

Re Administration of Tribes - Foreign Section of Tribes - often continues to owe allegiance to former chief  
e.g. *Thlun* call in *Thlun* chief to deal with *Buthung*  
*Repulone* call in *Repulone* chief.  
[Other sections refuse to pledge for *Thlun* or *Repulone*.]

Section - Chief deals directly with sectional heads not necessarily through ~~any particular~~ the headman of senior section.

Regimental Organisation

Initiation Ceremonies could be held at the request of any man who desired it especially after a good season. But for the request to be granted, there must be a sufficient body of young men in the tribe eligible for initiation to make holding of "school" worth a while.

p. 113 Initiation Ceremonies have not been held among the *Thaidi* Band for many years. The last was held about 1910, but it is reported that they continue to be held among the *Rathlon* section. But regimental organisation still obtains among the *Rathlon*, and is utilised for the <sup>purpose of</sup> ~~the~~ performance of public duties, segments was being used mainly as a labour force. Name of girls' regiment is generally the name of the boys initiated about the same time.

p. 158. The *Borlay bogadi* did not have to be paid before the marriage was consummated. This rule in this respect is flexible, especially because the girl's parents know that on top as the *Bogadi* received unpaid the children of the marriage belong to them. Es valde follows <sup>notable, that children's debts will be paid.</sup>

p. 164. *Borlay bogadi* must be even, not only the odd number being objected to. Otherwise your decision fits *Borlay* too too.

p. 172 *Bogadi* is not recoverable in *Borlay* theory, especially <sup>of</sup> the narrow, has resulted in appropriation or even in a single misappropriation (as one put it) Payment of *Bogadi* still very much alive.