

NATAL RACIAL POLICY AND THE INSTITUTIONS OF TRADITIONAL AFRICAN

SOCIETY : 1845 TO 1910

David Welsh, B.A. (Hons.) (Cape Town) and B.A. (Hons.) (Oxon).

A thesis presented to the University of Cape Town for the degree of
Doctor of Philosophy

1969.

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PREFACE

This thesis is concerned with a particular aspect of Natal's history as a British possession. I hope that it will fill some of the gaps inevitably left by general historical works or those dealing specifically with Natal. In many cases of colonial annexation the demarcated borders of colonies were relatively arbitrary. Natal was no exception, but I have focussed solely on events occurring within its borders as they were defined by the British Government. The most important enlargement of Natal's territory occurred in 1897 with the incorporation of Zululand. I have, however, deliberately excluded an account of the system of administration imposed on Zululand because this would make this study too unwieldy. The affairs of Zululand and Natal were at all times inextricably intertwined, and I have attempted to show how this affected 'native' policy in Natal.

I owe a great debt of thanks to my former teacher and colleague, Dr. H. J. Simons, who first made me interested in nineteenth century Natal. My warmest thanks are due also to Professor Monica Wilson who has supervised the preparation of this thesis. I am grateful to Mr. Colin Webb of the University of Natal for many helpful discussions. All students of Natal history will be indebted to him for producing A Guide to the Official Records of the Colony of Natal (Pietermaritzburg, 1965) which I found indispensable. Mr. Leo Marquard has also helped me by making many cogent criticisms of an earlier draft of this thesis. Grants from the Staff Research Committee of the University of Cape Town enabled me to make several journeys to Natal for research purposes. I must acknowledge the helpfulness of Dr. B. J. T. Leverton and the staff of the Natal Archives, and the staffs of the following libraries: Killie Campbell Museum, Natal Society Library, South African Public Library, and the Jagger Library of the University of Cape Town. I express thanks to Miss B. Benson and Miss M. Dunlop for undertaking the arduous task of typing the thesis.

Last, but not least, a special word of thanks is due to my wife, Anne, who, in the time it has taken me to produce this thesis, has produced two infants! She found time, however, to point out many infelicities of style and weaknesses in arguments.

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Abbreviations used in the Text and Footnotes

ABMC	American Board Mission Collection.
Bird	John Bird (ed), <u>The Annals of Natal.</u>
BBNA	Blue Book on Native Affairs.
BPP	British Parliamentary Papers.
GH	Government House Series, Natal Archives.
<u>Ink.</u>	<u>Inkanyiso Yase Natal.</u>
JSC	James Stuart Collection.
<u>LAD</u>	<u>Legislative Assembly Debates.</u>
<u>LCD</u>	<u>Legislative Council Debates.</u>
<u>NGG</u>	<u>Natal Government Gazette.</u>
<u>NMC</u>	<u>Proceedings of the Natal Missionary Conference.</u>
<u>NM</u>	<u>Natal Mercury.</u>
<u>NW</u>	<u>Natal Witness.</u>
Pmb.	Pietermaritzburg.
<u>SD</u>	<u>Selected Documents presented to the Legislative Council, Natal, 1857-74.</u>
SNA	Secretary for Native Affairs Series, Natal Archives.
SP	<u>Sessional Papers</u> of the Legislative Council or the Legislative Assembly of Natal.
TSC	Theophilus Shepstone Collection.

1852-3 Commission

Proceedings and Report of the Commission appointed to Inquire into Past and Present State of the Kafirs in the District of Natal ... 1852-3.

1881-2 Commission

Report and Evidence of the Natal Native Commission, 1881-2.

1883 Commission

Report and Proceedings of the Government Commission on Native Laws and Customs, 1883.

1903-5 Commission

Report and Evidence of the South African Native Affairs Commission, 1903-5.

1906-7 Commission

Report and Evidence of the Natal Native Affairs Commission, 1906-7.

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Introduction

The African and the white populations of Natal were culturally different groups, and in the multi-racial society that developed, these differences assumed great significance. The whites did not understand the culture of the Africans who surrounded them, and they believed implicitly in the superiority of their own culture. Initially, at any rate, they believed also that Africans could be moulded in accordance with what they considered to be a higher and more desirable civilisation.

The white group was by no means homogeneous. Officials, colonists and missionaries constituted the three main categories into which white Natalians could be divided, and within each of these categories there occurred major differences of opinion over the conduct of 'native policy'. The inter-play between these categories and within each of them form much of the substance of the thesis which is primarily concerned with the making of 'native' policy. The African population was a dominated group, or, more accurately, series of groups. They did not participate in the making of policy, but their reactions or anticipated reactions to policies were important, and had to be borne in mind by the Natal administration. Where evidence is available African reactions to 'native policy' are described. African society, of course, did not remain static under the impact of colonial rule. A theme of the thesis is to show how far-reaching social changes began with the very act of annexation, and how these changes affected the making of policy. The narrative will shed some light upon the origins and functions of racial prejudice in a colour-caste society.

Much of the writer's interest in nineteenth and early twentieth century Natal affairs derives from his belief that the segregationist policies of post-Union South African governments owed much to the system of African administration which was created in Natal. The architect of

that system, Theophilus Shepstone, was being quoted with approval, even veneration, as late as the 1930's¹. The writer is a political scientist who has ventured into the field of history in the belief that the present can be understood only in the light of the past. Quoting Burckhardt's definition of history as 'the record of what one age finds worthy of note in another', E. H. Carr asserts that 'the past is intelligible to us only in the light of the present; and we can fully understand the present only in the light of the past'.² This thesis does not attempt to trace the continuities in nineteenth and twentieth century native policies, but certain contributions to policies after 1910 by colonial Natal are indicated in the conclusion.

The sixty five years covered by the thesis, 1845 to 1910, can be conveniently broken down into two periods. From 1845 to 1876 is the era of Theophilus Shepstone. When the narrative reaches 1876 the writer attempts an assessment of Shepstone, and an analysis of the economic background to the events and processes that are described, before proceeding to outline the policy of Shepstone's successors. The aim in the second part of the thesis is to account for the survival of the Shepstonian system even into times when policy was made by men who, in earlier decades, had been scornful critics of it.

To understand the evolution of policy mention must be made of the period prior to the British occupation and annexation of Natal in the 1840's. The Voortrekkers and most of the English colonists who came to Natal in the 1830's and 1840's believed that the territory contained only very few Africans who could legitimately claim to be aboriginal inhabitants. Numerous witnesses lent credence to this view.

H. F. Fynn, for example, had travelled after 1824 from the Tongati River to within a few miles of the Mzimvubu River (a distance of some 230 miles) and saw not a single group of Africans with the exception of one, about thirty strong, living near the Bluff at Port Natal: 'There were neither kraals, huts, cattle or corn. Occasionally I saw a few stragglers -

mere living skeletons - obtaining a precarious existence on roots and shellfish'.³ In 1838 estimates of the African population of Natal varied from 5,000 to 11,000.⁴ In October 1839 Mpande revolted against the Zulu king, Dingane, and crossed the Tsekela into Natalia 'with fully half of the Zulu population'. Delegorgue estimated the number at 17,000.⁵ By 1841 the African population of Natal was estimated at between 20,000 and 30,000, and by 1843, when the British Commissioner, Henry Cloete, commenced his investigations into land claims, at between 80,000 and 100,000.⁶

The belief that the large majority of Africans in Natal were 'refugees' with no legitimate claim to land rights profoundly affected the final land settlement, and, indeed, became an important element in the colonists' 'social charter'. As late as 1880 the Natal Witness disputed the suggestion that Africans had any right to consider Natal as 'their country': 'They are here as immigrants on sufferance, and are not citizens'⁷ Commissioner Cloete accepted this belief, saying that

'a distinction should be made between those who were originally found in the country, who continued to occupy lands as their own, and have thus a claim to those lands, and such other Kafirs who are but late deserters from the Zulu country, and have fled into this colony within the last two or three years ... and who are now settled down on any spot which they happened to have found unoccupied'⁸

The former category amounted only to a few thousand people. This distinction, as Lieutenant-Governor Scott was to say in 1864,

'was one of the great objections which have so long been urged against the permanent appropriation to the Natives of the lands which have been set apart for their use: Mr. Cloete is given as the great authority that a mere fraction of the Natives now in the Colony have any real claim to land'⁹

The researches of Fynn, Theophilus Shepstone, the Reverend Lewis Grout and, much later, the Reverend A. T. Bryant showed that the premise upon which Cloete had based his argument was wrong. By collecting oral evidence from Africans who were caught up in the Mfecane, Shepstone was able to show that at the end of the eighteenth century both Natal

and Zululand were 'thickly inhabited by numerous Native Tribes closely located together' He estimated that there were 94 distinct tribes and indicated their distribution on a map which the Commission published.¹⁰ Bryant said that before Shaka 'full fifty separate clans, with 100,000 members' had occupied Natal.¹¹ But the rise of the militarist Zulu Kingdom after 1812 devastated the region. Groups fleeing from Shaka scythed their way through the land; and military forays by Shaka and his tributary peoples subjugated, destroyed or dispersed the population: 'Natal was transformed from a thickly settled and universally cultivated peaceful country, to a wilderness, in which the remnants of its inhabitants were almost universally killing or being killed'.¹²

The fate of the Natal tribes varied. Those who lived in the Tukela valley on the coast below Tukela and Tongati Rivers decided that their best course of action was subservience. Shaka permitted them to become tributary peoples and to retain their tribal organisation. They even strengthened their numbers by absorbing refugees from other tribes that had been destroyed. Thousands whose tribes had been scattered crossed the Tukela into the Zulu heartland and were incorporated into the Kingdom. Others took refuge in Pondoland, south of Natal, but other individuals and fragments of tribes elected to remain in Natal, concealing themselves in forest and broken country. In 1836 Gardiner spoke of a remnant of a much larger group who were situated in a rocky defile near the mouth of the Mkomasi River. It consisted of nine men and their wives and children. Further inland on the Mkomasi were Chief Fodo's people whose villages, one of which contained about 3,000 people, are also mentioned by Gardiner.

'They describe themselves as having been formerly a powerful nation, the only remains of which at present consist of 25 villages - ten here, ten more on this side [i.e. south] of the Uqani [Ugeni River], and five on the other, all under the control of Foortu [Fodo], and may probably amount to between 7,000 and 8,000 souls'.¹³

Mention must be made of those Africans who settled around Port Natal. The Tuli people had long since lived on the Bluff. In 1824

Fynn found a remnant who had survived the Zulu invasions.¹⁴ According to him the first refugees from the Zulu came to seek protection at the new settlement in 1827-8, and were permitted by Shaka to remain there.¹⁵ The flow of refugees continued, and by 1834 the number of Africans at Port Natal was estimated at nearly six thousand.¹⁶

It is highly likely that there were more than 11,000 Africans in Natal when the Beers arrived in 1837.¹⁷ At this time, according to Shepstone, 'all the broken and bushy country, as well as all the forest country, was, as a rule, occupied by natives in larger or smaller parties according to the circumstances of each case, and all the open country not ...'¹⁸

The large majority of the Africans who flocked into Natal in 1839 and afterwards were not alien refugees, as Cloete supposed: 'they were the aboriginal inhabitants of the country, embracing the first opportunity that had offered itself to them, of occupying their ancient homes, without being subject to Zulu rule, and in all probability amounted to more than 100,000'.¹⁹

In classifying the African groups resident in Natal in 1864 Shepstone found that 43 out of the original 94 aboriginal Natal tribes had 'retained their original tribal organisation'; nine were 'mixed tribes, that is, collections of various dispersed tribes....', mostly drawn from among the original 94; and seven had entered Natal between 1812 and 1843. A further six tribes were ones that entered Natal during its first five years as a British colony, or whose chiefs entered during that period having been preceded by their people.²⁰

It should be emphasised that the accounts of population movements in Natal between 1812 and 1843 compiled by Shepstone, Lewis Grout, Fynn and Bryant were based upon different sources but in all essential details they confirmed each other.²¹

Note on terminology

'Tribe' : The term 'tribe' may reasonably be applied to societies that possess, inter alia, the following characteristics: they are sovereign political entities, small in scale, economically self-sufficient and non-literate. On being incorporated into a colonial society tribes lost these characteristics: the Natal Government was at pains to emphasise that tribes were not sovereign; the very fact of incorporation meant involvement in a wider scale society; economic self-sufficiency declined in the course of time; and many Africans became literate and were converted to Christianity. For this reason, then, eschewing the term 'tribe' would be the correct course as the defining attributes were no longer present. The term 'local group' would be more accurate. In Natal, however, officials, colonists, missionaries and Africans themselves continued to use the term 'tribe'. To avoid confusion the term has therefore been retained, but the reader should bear in mind these objections to it.²² The term 'tribalism' has been avoided altogether, except where it is unavoidable as in a quotation from a source. 'Traditionalism', instead, is used.

'Customary law' : A distinction should be made between the law enforced in traditional, pre-colonial African tribes, and the version of that law recognised by colonial administrations. While the former might be called 'pure' traditional law, some of it was not recognised because the colonial administration considered it to be immoral. Moreover, tribal law was often mis-stated by European administrators, and also changes instigated by the administration were grafted on to the body of tribal law. What emerged, then, was an amalgam of traditional law and these extraneous factors. 'Customary law' is the term used in the text to describe this amalgam, but it is fully realised that the word 'customary', in view of these changes, is misleading and, indeed, incorrect. The choice was forced upon the writer because the alternative - 'Native law',

'Bantu law' or 'African law' - are each open to even greater objections.

Civilisation : As the narrative shows, many whites spoke, with an explicit assumption of their own cultural superiority, of the desirability of 'civilising' Africans. Where possible the writer has avoided this value-loaded term for which he has substituted the term 'change'.

One of the pitfalls in studies of culture contact and culture change is the unconscious use of value judgments.²³ The writer is aware of this danger and has attempted to avoid it.

Location : The term 'location' was used in Natal to describe those lands that had been specially set aside for African occupation. In the twentieth century, however, the word 'reserve' has replaced 'location' almost entirely, and the latter word is often used to describe urban African townships or settlements. To avoid confusion the writer has used the word 'reserve' as far as possible. It has the additional advantage of being universally understood, while 'location' seems to have been used in this sense only in Southern Africa.

II

The annexation of Natal and the creation of the Shepstonian system

The circumstances leading to the annexation of Natal by the British Government had a considerable effect upon the system of African administration which was established in Natal. It is necessary, therefore, to describe briefly the main events preceding the establishment of colonial rule.

The British Government had consistently refused to annex the settlement of English residents that had arisen at Port Natal in 1824; nor would they permit those residents to declare their settlement independent and free from the interference of the British Parliament.¹ Policy was firmly against expansion in Southern Africa. But the arrival of the Voortrekkers in Natal in 1837 introduced a new factor into the situation, causing concern to both the British Government and the Government of the Cape Colony. Not only did they regard the Trekkers as British subjects, but they feared the repercussions of Boer dealings with African tribes, in particular with the Zulu. It was recognised that events in Natal might also have adverse effects on the tribes on the Cape frontier. In May 1838 the Governor of the Cape Colony, Sir George Napier, advocated the military occupation of Port Natal 'in order to protect the natives of that part of South Africa from extermination or slavery by the Boers who are already there and commencing a war with Dingaan....'² The Secretary of State for Colonies, Lord Glenelg, reluctantly agreed to the despatch of troops but stipulated that this did not signify any intention of annexing the territory.³ Apart from intervening between the Africans and the Boers, the occupation was intended to represent an assertion of British sovereignty, and a means of cutting off the supply of arms and ammunition to the Boers. In each respect the exercise was a failure⁴, and the troops were subsequently withdrawn.

But in June 1840, after receiving several disturbing accounts of Natal affairs, Lord Russell, the Colonial Secretary, authorised Napier to resume the occupation of Port Natal. Russell was not opposed in principle to the extension of empire in South Africa, and he was aware of Natal's commercial prospects.⁵ Napier pressed for annexation, saying that although the African population had not been badly treated by the Trekkers, 'the security they at present enjoy under the temporary dominion of the emigrants is less perfect than it would be under an established government....'⁶ Russell replied favourably, but emphasised that the British Government was 'not prepared to expend large funds to conquer the territory ~~from~~^{for} the Emigrant farmers'.⁷ However much humanitarian and commercial interest Russell showed in Natal he was not prepared to be stampeded into an annexation that might prove too costly and dangerous when compared with the advantages that could accrue.

Actions of the Trekkers strengthened the case for annexation; in December 1840, a party of Trekkers attacked Chief Ncaphayi, whose people lived just south of the Natal border, killing many people, seizing large numbers of cattle and carrying off seventeen child 'apprentices'. The attack caused Faku, chief of the nearby Epondo people to ask for protection from the Cape Government.⁸ Further anxiety was caused by the Volkeraad's resolution on 2 August 1841 to remove by persuasion or by force, the entire African population of Natal, save those who were there when the Trekkers arrived (and whom the Trekkers presumably regarded as their source of labour) to the region between Etamvuna and Uzimvubu Rivers.⁹ In December Napier announced by proclamation his intention to resume the military occupation of Port Natal.¹⁰ The Colonial Secretary, Lord Stanley, however, poured cold water on Napier's hopes of annexation and instructed him to withdraw the troops from Port Natal. Instead, he ordered Napier to try to reassert British sovereignty by issuing a proclamation demanding the allegiance to the Crown of all emigrants from the Cape.¹¹

Events, however, overtook Stanley: the occupying force met with military resistance and even a defeat at the hands of the Boers. In view of these developments Napier took the initiative into his own hands and allowed the military detachment to remain in Natal in contravention of Stanley's instructions. In a long despatch justifying his actions Napier reviewed the history of the British involvement in Natal and argued cogently that continued occupation would be the only way of achieving the stated aims of the British Government. The consequence of past irresolute policies, he said, was the 'massacre of the native tribes, the course of the emigrants having always been traced in blood, much of which might have been saved had the hand of Government directed and controlled an emigration which it was impossible to prevent'. It was intolerable to the British Government that slavery should exist in the vicinity of British territory where the slave holders were British subjects. In Natalia, Napier continued,

'it is in vain to ~~discover~~^{disguise} the truth that many of the natives are slaves in everything but the name. It is notorious that their services are compulsory, and that they are subject to the caprice and ill-treatment of their masters, perhaps even in a greater degree than in slave colonies, where the arm of the law affords the servant a certain degree of protection. If the authority of the British Government is withdrawn from Natal, slavery will be there established.¹²

At last convinced of the necessity for a continuing British presence in Natal, Stanley approved Napier's actions.¹³ This proved to be the turning point in British embroilment in Natal. Stanley now recognised the cogency of the arguments against the possibility of persuading the Trekkers to return voluntarily to the Cape Colony, and in December 1842 he sanctioned the annexation of Natal. Other factors contributed to Stanley's decision. First, there was a possibility that the Boers might establish friendly relations with foreign powers such as France or the Netherlands who might then use Natal as a port from which to disrupt British lines of communication with India.¹⁴ British occupation of Natal eliminated this possibility and, furthermore, provided Britain

with a tighter grip over the interior of Southern Africa whose white inhabitants would look naturally to Port Natal as a harbour.¹⁵ A more compelling factor seems to have been the recognition that a British withdrawal after Congella would have been construed by the Boers as a sign of weakness and thus have encouraged further demonstrations of intransigence in Natal and elsewhere.

Stanley suggested that a form of Colonial government might be established at Port Natal 'distinct from, if not independent of, the Government of the Colony of the Cape of Good Hope'. Pending further decisions on the form of government Napier was authorised to despatch to Natal an official Commissioner who would make known to the Boers the terms of the new dispensation and start investigating the thorny question of land allocations. The Commissioner was instructed to emphasise to all that three conditions were to be maintained:-

1. That there shall not be in the eye of the law any distinction of colour, origin, race, creed; but that the protection of the law, in letter and in substance, shall be extended impartially to all alike.
2. That no aggression shall be sanctioned upon the natives residing beyond the limits of the colony, under any plea whatever, by any private person or any body of men, unless acting under the immediate authority and orders of the Government.
3. That slavery in any shape or under any modification is absolutely unlawful, as in every other portion of Her Majesty's dominions'.

Stanley made it clear also that the new British colony would not be able to rely upon generous financial support from Britain. Only the expenses of military protection would be defrayed.¹⁶ This financial stringency had a considerable impact in shaping the system of African administration that was subsequently established.

On receipt of Stanley's despatch Napier announced by proclamation that Natal was to become a British colony, and he appointed Henry Cloete as Her Majesty's Commissioner. Formal annexation as a district of the Cape did not take place until Letters Patent were issued on 31 May 1844,

and these were given effect by a Cape Proclamation dated 21 August 1845. The District was bounded by the Tukela and Mzimvubu Rivers, the Drakensberg range and the Mzimvubu River.¹⁷ Effective administration did not begin until late 1845 when the key official appointments were made. Another proclamation provided that Roman-Dutch Law was to be the legal code of the District. Earlier, in December 1841, Napier had advanced as an argument against Natal's being made a dependency of the Cape the very fact that the Cape's legal system, based upon Roman-Dutch law, would have to be extended and applied to Natal:

'It would thus follow that all the Kafirs, Zulus, and other natives living within the territory thus annexed, would by that very annexure become amenable to laws, of the principles of which they can form no conception; they would be rendered liable to be convicted of, and punished for, the commission of crimes which in their eyes are not considered as such; and all the difficulty and oppression of applying to a barbarous and uncivilised community the laws which govern civilised men, would spring and the annexure to this colony of a tract of country, one of the main reasons of annexing which was to prevent the oppression of the natives by H.M.'s subjects.'¹⁸

The proclamation annexing Natal had specifically excluded Natal from the purview of the laws, customs or usages in force at the Cape, although the Cape legislature was vested with legislative power over Natal. But Roman-Dutch law was established to the exclusion of all other legal systems. Napier's point had apparently been overlooked: within a few years it would become a major issue.

In the confused period between the time of Britain's stated intention of annexing Natal and her actual assumption of rule, the African population rose steadily as displaced people returned to their homes. In August 1841 the Volksraad had resolved to remove, by force should persuasion be insufficient, the large majority of the African population of Natal who, according to the Volksraad, 'had no right or claim to any part of the country, they having only come amongst us after the emigrants had come hither....'¹⁹ They were to be located in the coastal strip between the Mzimvubu and Mzimvubu Rivers. The removal scheme, however, was not

implemented. In September 1843 the Volksraad again resolved to remove from Natal all Africans 'except such Kafirs as may engage themselves for hire as labourers amongst the people'²⁰ This scheme was quashed by Major J. C. Smith, British Commandant in Natal, who told the Volksraad that it was both unreasonable and cruel, and also that it was a violation of the proclamation of 12 May 1843 which announced the British Government's intention of annexing Natal.²¹ But Smith was fully aware that the difficulty of settling the land issue would become greater if the influx of Africans continued.²² Commissioner Cloete, who believed firmly that Africans should be culturally assimilated to whites as soon as possible, disagreed with the Volksraad's scheme mainly for the reason that it would retard change:

'[b]y huddling together so cast a population as 40 or 50 thousand people on one location, it is evident that they will fall back to their natural and lawless habits; this would soon lead to their having chiefs or leaders of their own, whose influence over such numbers might become dangerous to the colony. While the difficulties of the missionary or the Government to improve their habits and customs will be increased tenfold. Their moral improvement and civilisation will be retarded by a century'

Cloete distinguished between 'aboriginal' and 'refugee' Africans (see p. 3). The former category should be allowed to remain on the land which they occupied because their right to it was 'incontestible'. For the latter category, the 'intruders', he proposed the establishment of 'six or more locations, keeping them if possible, a little way removed from the contaminating influence of the chief town and the port'.²³

Proposals for settling the African land question and establishing a system of African administration took on a more concrete form with the setting up in March 1846 of a Locations Commission which consisted of the Surveyor-General Dr. W. Stanger, the Diplomatic Agent to the Native Tribes residing within the District Theophilus Shepstone, and an American missionary the Reverend Newton Adams. Later, Lieutenant Chas. J. Gibbs and another American missionary the Reverend D. Lindley, were added to the Commission. The Commissioners were instructed to demarcate African

reserves 'in such a manner as will best prevent any collision between their interests and those of the emigrant farmers' 24

The Report of the Commission, which was completed in March 1847, provided the basis for many aspects of the system of administration and it is therefore necessary to consider it at some length. It took a harsh view of Africans:

'Their universal character, as formed by their education, habits, and associations, is at once superstitious and warlike; their estimate of the value of human life is very low; war and bloodshed are engagements with which their circumstances have rendered them familiar from their childhood, and from which they can be restrained only by the strong arm of power'

The establishment of firm control was essential:

'The natives' own laws are superseded; [Roman Dutch law was the only recognised system] the restraints which they furnished are removed. The government of their own chiefs is at an end; and, although it is a fact that British rule and law have been substituted in their stead, it is not less true that they are almost as inoperative as if they had not been proclaimed, from a want of the necessary representatives and agents to carry them out. Thus, in point of fact, 100,000 natives are at this moment living within a district of Her Majesty's dominions without any law whatsoever actively and efficiently operating among them. The danger of such a state of things scarcely needs our pointing out'

Chiefs 'are being disregarded, as gradually, by the operation of our laws, it is discovered they possess no constitutional authority'

The Commission recommended the adoption of the location system, suggesting that there ought to be ten such locations. In each location there was to be a superintendent or resident agent of the Government, assisted by one or more officials according to the size of the location and African police forces each under a European Officer. Industrial training schools were to be established in each location, and location superintendents were to provide agricultural education. The Commission's recommendations for the administration of law are of importance: it suggested that the location superintendent's judicial authority

'be sufficient to enable him to punish summarily minor criminal offences, and decide upon civil disputes to a certain amount, after which there should be a right of appeal to the diplomatic agent, who should have the power to dispose of them as much as

possible to the principles of British law, at the same adapting his decisions to the usages and customs of the native law, where such accommodation can be effected without violating the stern requirements of justice. The trial of these cases would be greatly facilitated, and rendered much more satisfactory to the natives themselves, were the principal chiefs and councillors in the locations summoned to assist as a sort of jury In administering the government of [the] location [the superintendent] should conform as much to their own law as is compatible with the principles of ours, until by degrees the whole may with advantage be brought under our code; but we are of opinion that it would be productive of no good result suddenly to abrogate the laws and usages they have practised from time immemorial, except such as are connected with their ideas of witchcraft and which affect the lives of the accused'.

The Commission further suggested that efforts for the 'improvement' of Africans depended greatly upon raising the status of African women, and it suggested that customary family law be reformed 'so as to render marriage and divorce a matter of much more serious importance than at present'. But although 'polygamy and bartering for women prevail universally in their worst form in the district', total abrogation of family law would be inoperative for some time to come.²⁵

While the Colonial Secretary, Earl Grey, looked to the 'improvement and civilisation' of Africans as the main objects of colonial administration, he stipulated that any plans in this regard must not involve the British Exchequer in large expenditure. He accepted in principle the Commission's arguments for recognising customary law and using chiefs in administration:

'it is obvious that those who have hitherto been under a rule of despotic severity cannot without extreme danger be emancipated from all control. The only mode of meeting this difficulty ... is that of abstaining from any sudden or violent interference with the authority exercised over these people by their own chiefs'.

He directed that the inhabitants of Natal be informed that annexation had not entailed the abrogation of customary law (except where the law was repugnant to the general principles of humanity and decency recognised throughout the whole civilised world) or the power of chiefs. Grey looked to the progressive assimilation of customary law to European law, urging that every opportunity be taken to frame new laws 'whenever, in

particular instances, a native law or custom has produced results which are felt to be oppressive by the people themselves, or when the want of some plain rule has been experienced' But, he warned, with some insight into the sociology of law, 'it is useless to make an improvement of the laws precede improvements in the capacity of those for whom they are made, to understand them',²⁶

In March 1848 Royal Instructions were issued incorporating these principles. The 28th Clause of the Instructions stated that

'in assuming the sovereignty [of the District of Natal] we have not interfered with or abrogated any law, custom, or usage prevailing among the inhabitants, previously to the assertion of sovereignty over the said district, except so far as the same may be repugnant to the general principles of humanity, recognised throughout the whole civilised world; and that we have not interfered with or abrogated the powers which the laws, customs, and usages of the inhabitants, vested in the said chiefs, or in any other persons in authority among them, but that in all transactions between themselves, and in all crimes committed by any of them against the person, or property of any of them, the said natives are subject to the conditions already stated to administer justice towards each other as they had been used to do in former times'.

The Instructions reserved the power to amend customary law, and to introduce a different judicial system among Africans.²⁷ The arrival of the Royal Instructions in Natal in August 1848 sparked off a serious dispute between Henry Cloete, the former Commissioner who was now the Recorder, and Shepstone. Cloete stated the case for legal identity. He argued that of the approximate number of 100,000 Africans in the District there were 'at least 60,000 or 70,000 who have no acknowledged chief whatever, but look to the white man for their safety, and at once yield a willing and ready obedience to his laws and commands' Cloete claimed to discern 'an obedience to the laws, and a deference to the constituted authorities which could hardly have been anticipated from the habits of the people, and the circumstances under which they were driven into this country'. He thought that any modification of the existing system would delay the 'improvement' of Africans, and he argued that whites would have reason to believe that Africans had greater rights and privileges

than other inhabitants. Furthermore, he said that chiefs, on being recognised, would 'set up their own authority in direct opposition to that of the Government', and the prestige of the Government would consequently be destroyed. Cloete concluded that the Royal Instructions should be applied only 'to such localities and chiefs where no amalgamation with the European inhabitants and their habits and usages has yet taken place, and where they are really native chiefs, recognised as such by any considerable number of natives'²⁸

In his comments on the Royal Instructions Shepstone acknowledged that ever since assuming the office of Diplomatic Agent he had, with the approval of Lieutenant-Governor West, administered customary law through the chiefs where they existed, and directly where they did not. Customary law, he believed, was 'in the main just and admirably calculated to rule men in the condition of the natives' Chiefs, said Shepstone, acknowledged that their hereditary prerogatives had been transferred to the Crown and regarded themselves as 'mere hereditary deputies exercising those prerogatives in a modified form: the people also take this view, but wish the power of the chiefs more curtailed than it is'. But he said that the Instructions had gone too far in ordering a proclamation stating that the British Government 'had not interfered with or abrogated the powers which the laws, customs or usages, vested in the chiefs or in any other person in authority among them'. Shepstone believed that this would be a retrograde step because it would restore to chiefs their former 'absolute and independent' powers, and deprive Africans of the much-appreciated boon of a 'wholesome restraint upon the unbridled wills of their chiefs'²⁹

In view of these criticisms the Natal Executive Council decided not to enact an ordinance based upon the Royal Instructions.³⁰ Another factor had been Sir Harry Smith's arrival in Natal in February 1848. He personally took over the reins of Government and dismissed the Locations Commission, setting up in its stead the Land Commission which was to take

a far less sympathetic view of African land claims than its predecessor.³¹ The Executive Council was aware of the possibility that the Land Commission might recommend a different native policy, and this too was a reason for not giving legislative expression to the Royal Instructions.³²

In June 1849 a remarkable outburst in open court by Recorder Cloete caused the Government to change its mind. In the course of his address to the jury in the trial of a soldier for petty theft (a case in no way connected with the question of customary law) he denounced Shepstone's usurpation of judicial powers. The Diplomatic Agent, according to Cloete, upon hearing of the murder by Africans of a suspected witch, had made an on the spot investigation and 'became at once clothed with all the powers and authorities, not only of the Crown Prosecutor, a judge and jury, but of a legislator, and established a law by which a fine of 100 cows was to be deemed the proper and fitting punishment for the crime of murder' This, argued Cloete, was a contravention of Ordinance 12 of 1845 which established Roman-Dutch Law in the District, and other Ordinances dealing with procedures. He considered that it was a 'spurious philanthropy' to consider it cruel to bring Africans under Roman-Dutch law. Moreover, it should be 'our duty and boast to point out to them on every occasion, the excellence of our laws and usages, and to expose their laws and usages to the abhorrence and disgust which they merit'³³ Part of Cloete's annoyance stemmed from previous witchcraft cases where punishments of death imposed by Cloete's Court had been commuted by Proclamation. For example, early in 1847 Lieutenant-Governor West commuted death sentences imposed upon two Africans for killing a man whom they believed to be bewitching them. West said that he doubted if the convicted persons sufficiently understood the obligations imposed upon them by the law of the District. He issued a stern warning that the killing of alleged witches would in future be severely dealt with.³⁴ On subsequent occasions, however, death sentences for the same offence were also commuted. Cloete believed that executive intervention of this kind undermined the authority of his court.

Shepstone, who had been invited to attend the hearing by Cloete, was taken aback, and subsequently threatened to resign unless he were vindicated. He anticipated that when Cloete's remarks became known to Africans 'a struggle must ensue to maintain the authority of the Government over them, at least, in so far as that authority is vested in me'.³⁵ The Executive Council proceeded to administer Cloete a sharp rebuke, saying that he had chosen a dangerous time to launch his tirade. Africans, 'some of them refractory', were being placed in reserves and taxation proposals had just been announced. The Council considered that in a community where whites were outnumbered 50 : 1 by Africans it was of vital importance that the whites, especially the executive and judicial arms of government, should not display any outward signs of disunity.

'a more effectual blow could not be aimed at the influence and utility of the Government of the Diplomatic Agent and of whatever is useful in the power of the chiefs, and thus at the peace of the district, than by telling the natives ... that neither the Government, the chiefs, nor the agent have any legal right to punish offences otherwise than by means of this Court'

The Council decided that it had no alternative but to give immediate legal effect to the Royal Instructions 'which would exclude the interference of the Colonial Courts with what had been done under the native law and re-instate the Executive and its agent, Mr. Shepstone'³⁶ It was argued that Africans were

'as little prepared to distinguish between the executive and the judicial functions of the governing power, as to derive benefit from laws unsuited to their wants and capacities; and which ... would be inoperative until the means of enforcing them can be devised. Under these circumstances, the abrogation of the power of the chiefs, and of the native laws, by a premature assertion of the jurisdiction of the colonial courts would ... be productive of a dangerous state of anarchy'.

On 21 June 1849 Lieutenant-Governor West proclaimed the Royal Instructions, and two days later Ordinance 3 of 1849 was enacted. The Ordinance provided that the Lieutenant-Governor

'shall hold and enjoy, over all the chiefs and natives in this District, all the power and authority which, according to the

laws, customs, and usages of the natives, are held and enjoyed by any supreme or paramount native chief, with full power to appoint and remove the subordinate chiefs, or other authorities among them' (Clause 3).

The Lieutenant-Governor was empowered to establish a system for the administration of customary law. Acting with the advice of the Executive Council, he could hear appeals in all cases between Africans tried under customary law. Retrospective and prospective recognition was given to customary law in hearing civil and criminal cases among Africans (Clause 5). (The retrospective recognition was obviously intended as a ratification of Shepstone's actions that had given Cloete offence.) Crimes which were 'repugnant to the general principles of humanity, recognised throughout the whole civilised world' could be subject to prosecution in the Colonial Courts only, and only at the instance of the Crown prosecutor (Clause 7).

In his comments on the Ordinance William Porter, the Attorney General of the Cape, found that it was repugnant to the Royal Instructions at several points. The instructions had merely authorised the recognition of customary law and the power of chiefs, subject to certain limitations. But in its attempt to integrate the provisions of the Instructions into the judicial and administrative framework of the District, the Ordinance had exceeded the intended scope of the Instructions. For example, the Lieutenant-Governor had been elevated to the position of Supreme Chief not by native law but by the provisions of Section four of the Ordinance; he was empowered to remove from office all subordinate chiefs but he was not bound to do so by means of native law. Porter considered that while these might be useful provisions, they were nevertheless provisions 'which seem to change more or less extensively the effect of the 28th section of the Instructions'. Another misinterpretation of the Royal Instructions was contained in the seventh clause of the Ordinance which provided that 'all crimes which may be deemed repugnant to the general principles of humanity as recognised throughout the whole civilised world'

were to be tried in the ordinary Colonial Courts, and not according to customary law. The Instructions had said only that where there existed a native law, custom or usage 'repugnant to the general principles of humanity recognised throughout the whole civilised world' it was to be abrogated. The different effect of the Ordinance was obvious: as Porter argued, there was nothing in the Instructions to prohibit these offences from being tried by customary law, and the customary law in regard to those crimes was neither proved nor alleged to be repugnant to those principles.³⁸

The Colonial Secretary, Earl Grey, accepted the validity of Porter's criticisms, and pointed out another error of consequence in the wording of the Ordinance. Section One provided that Ordinance 12 of 1845 and all other laws and ordinances were repealed 'in so far only as the same are at variance with, or repugnant to, Her Majesty's said instruction and to any provision of this Ordinance'. Unless 'or' were substituted for 'and' it would follow that no former enactment would have been repealed unless it contravened both the Instructions and the Ordinance, and this was clearly not intended. Although Grey considered the Ordinance to be in need of considerable amendment, he thought it wiser to recommend the passing of an Order-in-Council confirming the Ordinance as it stood, but giving the legislative authority of Natal 'the largest possible powers of amendment'.³⁹

The task of constructing the system of African administration in Natal lay nearly exclusively in the hands of the Diplomatic Agent, Theophilus Shepstone. The remarkable way in which he persuaded and cajoled Africans into reserves from the late 1840's onwards has been described in several accounts.⁴⁰ By 1852 Shepstone estimated that some two-thirds of the African population had been provided for by land appropriation.⁴¹ Shepstone had dominated the Locations Commission of 1847 which looked to the gradual 'improvement' of Africans. Even earlier

he had pointed to the 'worthy project of Christianising and civilising 100,000 degraded human beings' and stressed the undesirability of delay. He expressed the hope that financial considerations would not cause this 'grand experiment' to fail. Shepstone believed that the Africans of Natal were different from those on the Eastern frontier of the Cape. The Zulu power had instilled into Natal Africans 'notions of most implicit obedience to their rulers' of which the administration could take advantage. But he warned that the advantage would be lost unless administrative controls were rapidly reimposed.⁴² In January 1847 Chief Fodo, a minor chief in Southern Natal, had threatened to attack neighbouring tribes. Shepstone, construing this as a serious threat to the peace, restrained Fodo by force, and confiscated 500 head of cattle and 200 goats. Fodo was deposed as chief and replaced by Fungwana who was believed to be a reliable person, 'well-disposed towards the Government ... possessed of a quiet disposition and sober judgment'.⁴³ Shepstone considered this early fracas to be an important incident:

'As this involved a claim to act independently of the Central Government, it was evident that all future control of chiefs rested on the line of conduct pursued by it, in this first instance of contumacy, it was therefore determined, after exhausting every peaceable means, to use force This incident happening within six months after the establishment of the Government, produced a very great effect upon the minds of the Native population, they saw in it what might have taken years to show them so clearly by other means, that the Government intended to be supreme in its own territory, and that all independent action on the part of Chiefs and Tribes would be prohibited and punished'.⁴⁴

The Fodo episode showed clearly what qualities were expected of chiefs who were absorbed into the bureaucratic system. It showed also a characteristic aspect of Shepstone's methods: a refusal to tolerate the slightest affront to the prestige of the Government.

The Trekker Government of Natalia had tried to eliminate chieftainship and, according to Shepstone, on several occasions they had inflicted severe corporal punishment on chiefs. The Africans responded by concealing their chiefs and putting forward commoners to the Trekkers

'while the real ones managed their tribes with the additional influence over them, which the idea of personal persecution always gives'.⁴⁵ Chieftainship was a vital part of the administrative structure devised by Shepstone. In the absence of sufficient personnel to rule directly through magistrates he considered it wisest to harness to the administration an institution with which Africans were familiar. But, as a result of the disruption of the tribes, he found that 'a very large proportion' of the African population were without any hereditary chiefs. He reported in 1848 that he had temporarily attached fragments of tribes and other scattered groups to the most important chiefs in different neighbourhoods. But, he said, this arrangement was not working satisfactorily for the reason that in nearly all disputes chiefs had either declined to assume jurisdiction or they had given unfair judgments because one of the parties was not a real member of their tribe. He estimated that one-third or at most one-half of the African population were without chiefs.⁴⁶ Administrative necessity led to improvisation: where hereditary chiefs could not be found commoners were appointed to the office.

Both categories of chiefs were required to maintain law and order among their people, but they were carefully circumscribed in their freedom of action. Thus:

'it is necessary for [chiefs] to understand that in all things, the Government must be supreme; that smelling out people and punishments on account of witchcraft must cease, that no human life must be taken nor stealing be practised whether from each other or from people beyond; that assembling in arms must cease, except on the order of the proper Government officer; the dance of the first fruits must not be celebrated by any chief except on special permission; in short, that everything affecting life and property and the peace of the country which the chiefs have hitherto done on their own responsibility, must now be done on the authority of the Government appointed over them' ⁴⁷

The restriction imposed upon holding the first fruits festival was considered necessary because part of the festival involved the parade of armed warriors and the strengthening of the chief and the army by means of medicines; the ritual emphasised the solidarity and strength

of the tribe, and the authority of the chief. These activities were incompatible with the subordinate status of tribes in a colonial system in which the right to deploy force was possessed by the government only. To make holding the festival a prerogative of the Supreme Chief impressed upon chiefs and their people where real sovereignty now lay. Shepstone hoped, however, that the festival could be used by the Government for its own purposes. He proposed that magistrates should attend and explain to the people the duties that were expected of them, and promulgate new laws.⁴⁸ Chiefs were forbidden to communicate with chiefs beyond the borders of the District and to raise tributes from their people: 'they can by law have no income from their people'.⁴⁹ To impress upon them the supremacy of the Government they were required to make a personal visit to Pietermaritzburg 'to do homage to the Lieutenant-Governor'⁵⁰ The schemes advocated by the Locations Commission in 1847 for more intensive administration and industrial and agricultural training could not be implemented because the British Government had determined, even prior to annexation, that Natal was to be governed at minimal expense. Many years later Shepstone remarked bitterly that this financial parsimony had caused his administrative task in Natal to become 'the Egyptian task of being called upon to make bricks without straw'.⁵¹ The appointment of a magistrate in each of the four reserves that had been demarcated by 1850, without any staff and only one of whom had a reliable interpreter, was, in Shepstone's view, a poor substitute for the recommendations of 1847.⁵² Even under this limited administrative capacity the intention was that the magistrates should act as superintendents, dealing exclusively with Africans, and into whose hands the powers of chiefs would gradually fall. These 'native magistrates' would try African cases on appeal from chiefs' courts. Unfortunately for Shepstone's plans, the system was changed shortly afterwards as it was believed that the native magistrates would become exclusive advocates of African interests and clash with the ordinary resident magistrates. They were

therefore made resident magistrates and given jurisdiction over both whites and Africans, which, according to Shepstone, severed them from contact with Africans. Shepstone's views on this change are worth quoting as an indication of his views at that time:

'The consequence [of abolishing native magistracies] is that instead of a Native population having an officer residing among them, whose attention would be constantly directed to their improvement, advising and guiding them, acquiring their confidence and gaining by his intelligence and devotion to their interests, an influence over them which might control their very thoughts, the whole of the native populations are left to their own devices and thoughts Had the original plan never been changed, there is no doubt that as the hereditary Chiefs died out, the people would have petitioned to be ruled, even in detail by the White Superintendent, instead of asking for the appointment of another Chief, and in this way the whole of the valuable machinery of Native Government would have gradually fallen into the hands of the Officers of Government and been managed by civilised intelligence'. 53

The Colonial Secretary, Grey, was impressed with Shepstone's apparent influence among Africans and with his energy. He approved Shepstone's system, but he suggested that some African communities might be permitted to choose their own 'chiefs' and that in the reserves a type of rudimentary municipal government 'adapted to their usage' might be introduced, with Chiefs acting as 'Municipal Officers'.⁵⁴ These suggestions were not acted upon, although much later communities of African Christians in mission reserves were permitted to elect their own chiefs. (see p. 308)

A recurrent theme in Natal's system of African administration was a belief in the efficacy of 'divide and rule' as a technique of control. As Shepstone said 'tribal distinctions that obtain among them are highly useful in managing them in detail, and those are sufficiently preserved by their tribal heads'⁵⁵ 'Combination' (the term repeatedly used) of the African population in a rebellion against the whites, and possibly in alliance with the Zulu power to the north of Natal, was a frightening prospect, but divisions among the people would prevent this occurring: 'the cohesive power of one acknowledged ruling head, supreme over all

subordinate authorities, is wanting amongst them. They form a republic of petty clans, without a federal head; and must therefore exist in a state of political weakness⁵⁶

Taxation of Africans was an important element in the system of administration. It was designed to achieve the threefold aim of raising revenue, forcing Africans out into the labour market, and effecting social change among them. Shepstone considered a hut tax would be the most efficient form of taxation:

'While their present customs prevail, this would not only be the simplest to collect, but I think the most just to impose; it embraces every advantage of both a property and an income tax, and has the further recommendation of directly discouraging polygamy, that great incentive to the exclusive acquirement of cattle, as the most desirable description of property' 57

Grey was pleased with the idea of taxing Africans and expressed the hope that the funds collected would 'supply all that is necessary for their improvement', without incurring any expense to the British Treasury.⁵⁸

The position of customary law vis-a-vis the ordinary law of the District remained unclear in the early days, despite the provision of Ordinance 3 of 1849. Customary law and the judicial powers of chiefs was recognised in the reserves in cases involving Africans, and in civil cases between Africans outside the reserves. Criminal cases involving Africans outside the reserves were heard under Roman-Dutch Law. In 1853 Lieutenant-Governor Benjamin C. Pine, who prided himself on his legal expertise, drew up a memorandum purporting to clarify the issue. He cited the case of an African who had been killed by another African whom he was attempting to arrest in accordance with the order of a magistrate, acting, it was alleged, in accordance with customary law. Roman-Dutch Law procedure would have required a warrant for the arrest but as the proceedings were being conducted under customary law no such document was produced. It was argued that as the man to be arrested was not shown a warrant his resistance was lawful, and the killing of the man arresting him justifiable homicide. This, according to Pine,

was 'so at variance with sound legal principle as well as so mischievous in its tendency' as to warrant a memorandum pointing out its fallacy. Pine stated categorically that customary law was part and parcel of the legal system of the District, and where it was employed in a given situation, Roman-Dutch Law and its procedures were excluded. Resistance to any customary law procedure, as had occurred in the case cited by Pine, was illegal 'not only in the eye of the Tribunals administering Native Law, but also in the eye of all Courts in the District'⁵⁹

In a circular to magistrates enclosing Pine's minute, Shepstone directed that in cases clearly within the jurisdiction of customary law it was unnecessary 'to superadd any of the forms or usages required only by the general law, with a view to strengthen [sic] the position or authority of the Magistrates ... on the contrary such a course is rather calculated to produce the opposite effect'.⁶⁰ In the same year an instruction had been given that no attorney was allowed to appear in cases heard under customary law by magistrates.⁶¹ Magistrates were authorised also to summon chiefs in their areas to render assistance in cases heard under customary law 'in the capacity of Jurors or Council men'.⁶²

With typically bureaucratic aversion to close public scrutiny, Shepstone soon acquired a not wholly unjustified reputation for secretiveness. In 1851, for example, the editor of the Natal Witness, David Dale Buchanan, who agreed with Shepstone on most policy matters, applied for permission to have a reporter cover African cases and discussions which took place in the Diplomatic Agent's office. The application was refused. Only the reporting of civil suits was permitted. Shepstone felt that the numerous 'executive and political matters' transacted before him were of too delicate a nature to be recounted to the press. The Natal Witness, however, complained of this attitude:

'The interests involved in the government and administration of justice among the Natives, are of no insignificant magnitude. This class of subjects forms by far the largest and most powerful in the settlement. Their transition state

requires to be judiciously watched, in its progress and development. The safety and welfare of the colonists are intimately connected with the proper management and control of the native population. It is not reasonable, therefore, that a veil should be systematically thrown over proceedings which may, and probably will, become of the greatest interest and moment to the colonists generally'.⁶³

Although Shepstone dominated the making of policy from the outset and his administrative genius and zeal were admired in the Colonial Office in whitehall, his system had its official critics. Lieutenant-Governor Pine (April 1850 - March 1855) attempted to impose his own system of African administration on the District, and, from Shepstone's point of view, he was a formidable opponent because his views largely coincided with those of a majority of the colonists.⁶⁴ Pine recommended 'an entire change' in the existing system. The 'enormous and unwieldy' reserves ought to be broken up into smaller ones, and a form of individual land tenure introduced.⁶⁵ He considered that the advantage offered to a scheme for 'civilising' Africans by their earlier state of dislocation had been lost by allotting to them lands in which they could consolidate their social structures.

'What is the condition of the natives within this district, and what steps have they made towards civilisation? Mr. Shepstone admits ... that they have made no such advance, and such I believe to be the case. The power of the chiefs has increased and along with it their tyranny. The belief in witchcraft is unshaken, and it is used as an engine of grinding oppression by the chiefs. Polygamy has rather gained strength instead of having been checked. The wives of a man are practically his slaves'

Chieftainship, according to Pine, was the great barrier in the way of Africans emerging from their traditional society, and he advocated that it gradually be abolished.⁶⁶

The Colonial Secretary, Earl Grey, was inclined to agree with many of Pine's criticisms. Policy, he said, ought to be aimed at 'the amalgamation of the different races'; in accordance with this, the whole population ought to be brought under the same system of laws and the same authorities as soon as police forces and municipal organisations could be

established. Only where there existed no machinery for the enforcement of the ordinary law, should customary law, administered by chiefs, be allowed to continue. He recommended that Shepstone no longer be termed 'Diplomatic Agent' because the word 'diplomatic' suggested relations between independent sovereign powers, and the tribes of the District could no longer be considered as such.⁶⁷ In another despatch Grey repeated that Shepstone's administrative methods had been a necessary expedient at first, but he warned that long-term goals must not be lost sight of:

'The error into which I think Mr. Shepstone has fallen has been the natural one of becoming unduly partial to a system which he very ably administered, but which ... ought always to have been considered as merely provisional, and requiring to be superseded by a better as soon as possible'.

He agreed with Fine that the locations ought to be reduced in size and that individual tenure should be introduced. The power of chiefs ought to be broken down 'but not until it can be replaced by another authority capable of enforcing order, and without lowering the social position of the chiefs'.⁶⁸

Shepstone replied to the criticisms by saying that the progressive erosion of the reserves would be a great source of irritation to the African population. He lamented the failure to adopt the scheme recommended by the 1847 Locations Commission and doubted whether, in the present circumstances, it could now be successfully implemented. He suggested that the large majority of the African population of Natal be removed to the south, between the Mkomasi and Mbasvuma Rivers. He propounded a similar scheme three years later in 1854; both proved abortive.⁶⁹ Shepstone received a measure of support from Sir John Pakington, Earl Grey's successor at the Colonial Office. Fine had attempted to dispose of the Ualazi reserve (near Durban) and had in fact succeeded in removing Chief Umnini and his people from their ancestral lands on the Bluff. Shepstone had opposed this vigorously. In his comments on Fine's action Pakington implicitly rebuked him and urged him

to maintain the 'rigid good faith' of the British Government in his dealings with Africans. He praised Shepstone's opposition and dismissed mine's accusation of factiousness as unjust.⁷⁰

Further severe official criticisms of the Shepstonian system occurred in 1854 and 1855. In March 1854 Owen, a Commissioner of the British Government, expressed critical views on Natal policy, saying that

'The greater part of these natives are living in large ill-chosen, and inefficiently controlled locations, following all their savage customs and superstitions, and they have made little or no progress in civilisation or Christianity, since they were taken under the protection of the British Government, nor do I see a possibility of any improvement taking place among them so long as the present system is pursued. ... no confidence can be placed in these savages; by indulging them too much they become dangerous'.⁷¹

In the following year, Sir George Grey, Governor of the Cape, reported in similar vein, arguing that the size of the reserves and the separation of Whites and Africans prevented any change taking place among the latter. He urged that they be induced to acquire 'habits of industry, which the present immense extent of their locations has hitherto done much to prevent, as it encourages them to lead an idle, vagabond, pastoral life, and prevents their mixing with the white population as employers and employees'⁷² Grey recommended in addition that a sum of £5,000 be spent annually 'for purposes connected with the religious and moral instruction, or with the social well-being of the Kaffirs'⁷³

Shepstone reacted angrily when Grey's criticisms of his system and allegations that he was ambitious and selfish were made public in 1858. His defence rested, as always, on two props: that the system had brought peace to Natal, while in the rest of South Africa there was 'tumult'; that he had never been given funds to implement schemes of 'improvement', although since 1849 the proceeds of the hut-tax had contributed £10,000 annually to the Treasury.⁷⁴ He warned that the Africans would never understand the reasons why the locations were being broken up and to them 'every act will appear arbitrary and oppressive and point to their ultimate deprivation altogether' Their confidence in Shepstone would be

urged in apologetic, almost supplicating terms'.⁷⁹ Translated into

colonial contexts these presuppositions foredoomed most schemes which aimed at imposing western culture on non-western societies. Such schemes, it was reasoned, were expensive, dangerous, and in view of the tenacity with which indigenous peoples would cling to their cultures, unlikely to succeed.

For the Natal Government all this meant that African administration had to cost as little as possible; and the plans of the 1847 Locations Commission, modest in scope though they were, could not be carried out. Throughout his career Shepstone lamented this, although his conservative ideas made him oppose any schemes for 'social engineering'. Repeatedly he defended his policy against criticism that it was unprogressive by saying that it had nevertheless secured peace. This struck a responsive chord in Whitehall where 'dangerous experiments' in native policy were seen as the causes of wars, domestic disturbances and revolts which meant great expense for the British Exchequer. Thus in 1858 the Colonial Secretary, Sir E. Bulwer-Lytton, refused to recommend that the Crown assent to a bill passed by the Natal Legislative Council, providing for an annual census and registration of Africans. He said:

'I am convinced that the opinion of all leading statesmen in England is so fairly pronounced (whatever be the party in power) that I would enjoin you to recommend most earnestly to the European settlers the necessity of adopting and adhering to a system of abstinence from all measures that tend to irritate the Native chiefs and tribes, as such irritation can only serve to unite those, who are now divided amongst themselves, in the bonds of common interest. The dangers of all needless interference with the rooted habits of Barbarian races were not decidedly repugnant to Humanity and morals are so great and conciliation is so wise and so easy a method of obtaining submission and docility from those whom we keep in check by our superior intelligence rather than our physical force'. 80

These sentiments might very well have been expressed by Shepstone himself. As it happened, Bulwer-Lytton's observations set the seal of the British Government's approval on Shepstone's system. It was inexpensive, it promised peace; and, so it was hoped, cautious change was not incompatible with it.

Shepstone had soon realised that policy in Natal must ultimately depend on force: the colonists were greatly outnumbered by Africans; the garrison was only small, and immediately to the north lay the militarist Zulu kingdom. Colonial rule was weakly legitimated, even though most Africans in Natal were probably grateful to the British Government for providing them with the opportunity of returning to their traditional lands. As succeeding chapters will show, Shepstone firmly believed that the extent of change that could be achieved among Africans was inversely proportional to the amount of force that could be deployed by the Natal Government.

The creation of a system of legal dualism and the use of chiefs in the administration distinguished Natal's policy from that adopted in the Cape after 1854 by Sir George Grey.⁸¹ The situation in the Cape differed in important respects from that in Natal: the Cape's white population was much larger and more entrenched than that of Natal; the Cape's economy in the 1850's was booming while Natal's struggled; the seat of government in the Cape was remote from the eastern districts where the African population was concentrated. The cultural gap between white and non-white in Natal was far wider than that in the Cape where a substantial 'Coloured' population occupied an intermediary position between whites and blacks.⁸² Cultural discontinuities were not as sharp as in Natal but formed, rather, a continuum. The tribes within the Cape's borders had, by the time of Grey's arrival, been militarily crushed and dispersed, and much of their land had been expropriated. Among the Cape tribes were the Xhosa, a conglomerate of scattered remnants who were loyal to the Cape Government. They were without chiefs of importance and proved to be amenable to westernisation. Their role as a leaven in the process of change was important. A further significant difference between Natal and the Cape was that missionary and educational endeavour had had a much longer history among Africans in the Cape. The soil had been tilled, but in Natal it remained virgin.

These differences in economic, social and political background in the two colonies were important, but the differing views of Shepstone and Grey on native policy were decisive. Grey came to the Cape as a travelled and experienced man. By contrast all Shepstone's official experience had been on the Cape frontier and in Natal, and it is reasonable to assume that his intellectual horizons were narrower than Grey's. Unlike Shepstone, Grey believed firmly in the creation of a multi-racial society based upon potentially equal rights for all. Traditionalism, according to his lights, was an incubus which Africans must slough off if they were to be 'civilised'. It followed that chiefs must give way to magistrates and that customary law should not be recognised. To hasten change, Grey insisted that whites and Africans should not remain separated but should live interspersed with each other. Grey energetically encouraged further agencies of change such as schools, hospitals and roads. All this cost money, but Grey could take advantage of the Cape Treasury's healthy state, and, by means of what Colonial Office officials called 'terrorism', he was able to extract large sums from a reluctant and sceptical British Treasury (£40,000 per annum for three years was approved).⁸³ In contrast to Natal a considerably higher degree of administrative intensity existed in the Cape. Compared with four in Natal, there were eleven magistrates among the Cape tribes in 1856. Moreover, most of the Cape magistrates were men of outstanding calibre.

Grey's native policy received the general approbation of colonists, missionaries and humanitarians. Shepstone, as the next chapter will show, enjoyed no such support. Throughout his career he was to fight a dogged battle to preserve his system.

III

Colonists, missionaries and the Shepstonian system

The aim of this chapter is to set the scene for the narrative that follows. In so far as generalisations are possible an attempt is made to describe the attitudes and the interests, as they saw them, of the different groups who constituted an upper caste in the multi-racial society of Natal.

To a majority of the white colonists of Natal the 'native problem' and the labour problem were synonymous. For the entire period with which this thesis is concerned colonists complained that there was an acute, even chronic, shortage of labour. For the early days of Natal's existence as a British possession there are no statistics available on the number of Africans in the employ of whites, nor any quantitative estimate of the labour shortage. Indeed, some disputed that there was in fact any shortage. In July 1851, for example, the Natal Witness asserted that there was a 'legitimate supply' of African labour.

'Statistics would show that few families are entirely destitute of native servants. Were the Government to appoint a commission to report upon this subject, it would be shown that a far greater amount of this commodity is thrown onto the market than is generally supposed. But it is contended that this labour is - defective - uncertain - insufficient'. 1

G. R. Leppercorne, who had been magistrate for the Impafana Location from 1850 to 1852, said in 1853 that 'any amount of native labour may be procured at 5/- per month by rational treatment of the natives'. Africans, he said, were already performing all kinds of labour:

'in what quarter of the globe would male adults be found performing the offices of nurses to infants and children, or as laundresses of female apparel. These docile achievements are certainly not very congruous with their own manly habits, nor compatible with the character given them of blood-thirsty savages'. 2

necessity for the introduction of Coolies from India'. By 1864, according to magistrates' returns, at least 10,000 Africans were in service at any one time, and if the average length of their periods of service was six months, 20,000 annually engaged themselves in hired labour.⁷

Colonist opinion on the related issues of labour and African administration was given an opportunity to crystallise by the appointment in 1852 of a Commission of Inquiry, charged with the task of investigating 'the past and present state of the Kaffirs in the District of Natal'. In informing the Colonial Secretary of the membership of the Commission, Pine said that he had tried to embrace all principal interest groups among whites in the District, including officials, newly-arrived immigrants from Britain, 'old' English colonists and Dutch-speaking whites.⁸ Missionaries were inexplicably excluded. The 'balance', for which Pine had hoped, was upset by the subsequent addition to the Commission of several more farmers, who swamped the official representation. The Commission's Report reflected this heavy bias in favour of the land-owning colonist interest. The Commission took no evidence from Africans.

The Report is worth quoting at length for two reasons: it stated in blunt language colonist objections to Shepstone's policy of tolerance for African traditionalism, and it became something of a legendary document or a holy writ in colonist politics. Although Shepstone was a member of the Commission he did not sign the Report and took pains to dissociate himself from its conclusions. The Commission's general comments on the 'African character' reflect the prevailing 'image'⁹ of Africans:

'When not effectually restrained and directed by the strong arm of power, the true and universal character of the Kaffirs, as framed by their education, habits, and associations, is at once superstitious and warlike. Their estimate of the value of human life is very low; plunder and bloodshed are engagements with which their circumstances have rendered them familiar from their childhood; they are crafty and cunning; at once indolent and excitable; averse to labour; but bloodthirsty and cruel when their passions are inflamed. They pretend to no individual opinion of their own, but show the most servile compliance to the rule of a despotic chief when it is

characterised by vigour and efficiency. Cupidity is another strongly developed feature in the Kafir character; their general habits, like those of other savages, debased and sensual to the last degree; possessing but a confused, indistinct idea of a future state, and of the existence of a Supreme Being, they cherish a belief in the most degrading system of witchcraft'. 10

The Commission attacked the size of the reserves which enabled Africans 'to follow idle, wandering, and pastoral lives or habits, instead of settling down to fixed industrial pursuits'. It was assumed that polygyny and the subordinate status of African women enabled the men to live a life of ease:

'The Kafirs are now much more insubordinate and impatient of control; they are rapidly becoming rich and independent, in a great degree owing to the polygamy and female slavery which prevails. They are better organised and consolidated, increasing in numbers by immigration, and more clearly aware of their real strength. If the wealth of the Kafirs, above referred to, proceeded from the regular honest industry of the male population, the Commissioners would hail it as a certain sign of their improvement, but so long as it is drawn from the forced labour of females, it has no such signification, it is an index merely of the increasing numbers and exertions of the women, and can unfortunately only be taken as evidence of the increasing means of sensual indulgence available to the males'. 11

The Commission was equally hostile to chieftainship:

'The reconstruction of these hereditary powers appears to the Commissioners to be altogether a most impolitic, dangerous, and indefensible act. The unfortunate practical effect has been to reconstruct chieftainship in its integrity at the head of fully organised tribes within the District, with all their attendant dangers and evils, instead of leaving the Kafir population disunited, and placed as it ought to be under the sole control and guidance of the white authorities as the only supreme chiefs. In the opinion of the Commissioners the above serious mistake should be rectified forthwith, so as to destroy the greater power and independence of the Kafir chiefs'

The fear of an African uprising in the early months of 1851 had caused great alarm among the colonists. They feared that chieftainship was a focal point around which disaffection might rally. The Commission concluded that 'the alleged disunion and tribal jealousy existing among the Kafirs within the district, is not a source of safety to be depended upon by the white inhabitants'. It was claimed that this 'tribal jealousy' was disappearing as a result of intermarriage between members of the

different African groups in Natal.¹² The Commission alluded to other alleged evils for which they held chiefs responsible: they demanded services from their people for their subsistence and aggrandisement, and often the demands were large and unreasonable; they 'ate up' the property of offending members of the tribe; they summoned people from colonists' farms or private lands without the owner's permission; they increased the size of their tribes. The Commission recommended that hereditary chieftainship be abolished. In lieu of the power and claims that flowed from their hereditary rights chiefs should receive delegated power from the Government, while a salary should replace all fines, tributes, fees and services formerly received from their subjects.¹³

The narrow distinction between the Commissioners' ostensible concern for African morality and 'improvement' and their own economic interests is illustrated by another recommendation:

'All Kafirs should be ordered to go decently clothed. This measure would at once tend to increase the number of labourers, because many would be obliged to work to procure the means of buying clothing, it would also add to the general revenue of the colony through customs duties'.¹⁴

African traditionalism and the extent of the reserves went hand in hand: the more land Africans possessed the more readily could they continue to practise their traditional economy and the less likely it was that they would enter the service of colonists. Implicit in the colonists' demands was a belief that Africans had no right to continue in their traditional ways. As Lieutenant-Governor Scott said of the colonists on a subsequent occasion:

'It seems impossible for a body of white men to live in proximity to the coloured races without a conviction that as the dominant people, they have a right to command the services of the less civilised'¹⁵

No doubt other factors besides the economic and political ones conditioned the colonists' view of traditionalism. The Zulu autocracy lay close by to the north of Natal: stories of Zulu atrocities, the memory of Dingane's killing of Retief and his party, and the possibility of an invasion

coloured the colonist view of traditional African society. It was easy to assume, in these circumstances, that all African chiefs must be like Shaka or Dingane, and that ruthlessness, caprice and duplicity must be rooted in the African character. Moreover, the whites of Natal were either early Victorian Englishmen or Calvinist Boers: to all of them polygynous marriages and other features of traditional African kinship systems seemed genuinely shocking. General missionary opinion (Colenso excepted) fortified this view. English-speaking colonists were aware of the concern developing in England over the status of women. To them it was unquestionable that African women were exploited drudges or slaves, and that marriages were forced sales, but they ignored the fact that Zulu women had property rights which women in Victorian England lacked (see pp. 186-9). The cultural gap between the races created misunderstanding. Shepstone commented:

'What is known by the great majority of the white inhabitants about the habits, customs and modes of thought peculiar to the population by which they are surrounded is gathered from experience of the habits of servants living under white masters. This gives but a very imperfect idea of what the tribal condition of these people is and nothing whatever of their domestic life - without adequate knowledge on these two important points it is impossible to judge correctly what may or may not be suitable action either in makers of legislation and Government or of every day life'.¹⁶

Shepstone soon became the bête noire of the colonists. To them he was responsible for a system which conflicted radically with their interests, and criticism was accordingly heaped upon him. De Kiewiet is misleading in saying that he was 'essentially at one with the colonists' and that he was 'never unpopular with them'.¹⁷ In 1858 Shepstone wrote:

'The official position which I have held over the Natives ever since the establishment of British authority in Natal is naturally and almost necessarily an unpopular one. I am looked upon as a sort of protector of the Coloured races, and am in consequence forced into an attitude of antagonism towards a huge section of the Colonists who hold ultra views as regards the treatment and rights of blacks in general and who cannot view them in any other light than as servants or labourers to minister to the convenience and profit of the whites'¹⁸

But if Shepstone was critical of the colonists' ignorance of African

culture and social institutions, he was, like the colonists, no believer in racial equality. In 1850 he rebuked one of the magistrates, Ringler Thompson, after receiving reports that he was instilling into the minds of Africans 'ideas of equality with the whites'. He wrote to Thompson:

'I think it impossible you could have acted as represented, knowing as you do, that equality in every respect does not exist between the two classes, and if it did it would be highly inexpedient and dangerous to inculcate it'. 19

Shepstone ostensibly shared the colonist view that the cultural assimilation of Africans to whites was desirable, but he insisted on a gradualist approach and questioned the efficacy of laws to achieve radical social change. The passage quoted below is a succinct statement of his views, couched in terms reminiscent of Burke's views on political change and de Tocqueville's description of the persistence of the 'manners of the people'.

'Being barbarous they [Africans] are as usual superstitious. The only remedy for superstition is knowledge. It is to a knowledge of the law and relation of things that European civilisation is now moving and until this deficiency in the Natives is remedied I am persuaded that no legislation nor reform will reach them. No great political or other improvement however plausible or attractive it may appear can be productive of lasting benefit unless it is preceded by a change in the views and opinions of the people it is to affect. Politicians are apt to over-rate their power: - the Legislature and Magistrates may for a moment palliate an evil they can never work a cure, the symptoms of the disease they can touch while the disease itself baffles their efforts. It may be removed by time and enlightened views and opinions but it cannot be diminished by violence, over-action on one side produces reaction on the other - new animosities are kindled, old ones embittered, and aggravated, simply, because rulers cannot be brought to understand that in dealing with a people like these they have to do with an organisation so subtle, so extremely complex, and withal so obscure as to make it highly probable that whatever they alter in it they will alter wrongly, whilst their efforts to protect or strengthen any particular parts may be very hazardous. Every passion excites its opposite, cruelty today produces sympathy tomorrow The Legislative Council and the Magistrates may perhaps mitigate the evils attending polygamy but it is in my opinion impossible to abolish it altogether without great danger and injustice'. 20

Shepstone's insight into the structure of traditional African societies was matched by only very few whites in Natal. He knew that chiefs were not typically dictators but that their powers were circumscribed

by various checks and balances:²¹ he knew that traditional marriage was not the purchase and enslavement of women;²² and he argued that customary law embodied every concept of right and justice embodied in more developed legal systems.²³ On being asked by the 1852-3 Commission whether he thought 'any savage as long as he is not brought under a civilised law can be made a Christian of?' [sic], he replied that a man could be a Christian under any law.²⁴

Although a great majority of colonists were opposed to the policy of tolerance for the institutions of African society, there was a minority who questioned their sincerity. According to the Natal Witness in June 1862, 'there is not, and never has been a single popular effort put forth by the colonists for the normal social or educational improvement of the natives'.²⁵ In October 1860 the paper published a letter purporting to come from an African woman who signed her name as 'Mrs. Canthater':

'Did you ever hear that something should be done by the government and the legislators to provide "Native Labour", - and if so, do you see how "native labour" is to be provided, unless our husbands and children are to abandon us, and go and work for others away from their homes? when half-a-dozen of us have only one husband amongst us, we should prefer not to be interfered with by the kind planters, politicians and legislators, who find so much relief to their overburdened sympathetic hearts, and if they will just find some other sponge to absorb their tears, than the never-failing yell about the evils of polygamy, we shall be much obliged'.²⁶

The establishment of a Legislative Council in Natal under the Charter of 1856 provided a forum in which colonist representatives could attack the Shepstonian system. The British Government clearly intended that the control of African affairs should be firmly kept in the hands of the officials, and that the elected members of the Legislative Council should not have control over the annual disbursement of the sum of £5,000 which was reserved for 'native purposes'. The elected members complained in a resolution passed in 1858 that the separation of African affairs in the administrative system introduced 'double government and divided action' and they advocated measures that would 'separate the Kafir and

his family from the evils of tribal association²⁷ They argued also that a clause (Section VIII) in the Charter forbidding the enactment of legislation which imposed 'disabilities or restrictions' on Non-Europeans was 'unsuited to the circumstances of Natal', and that it was inconsistent with the clause of the Royal Instructions of 1848 which had recognised customary law, because customary law in fact provided in many points for 'disabilities and restrictions' which did not apply to 'civilised' persons of European birth.²⁸ But the demands in the Legislative Council resolution were refused by the British Government.²⁹

An early attempt by the elected members of the Legislative Council to legislate for Africans proved to Lieutenant-Governor Scott and Shepstone that they were too rash to be entrusted with power over the African population. This was the Bill 'To Secure the better Protection and Peace of the Colony' of 1857. The Bill provided that Africans were to be forbidden to possess arms, gunpowder, and horses (chiefs and five of their councillors were to be allowed one gelding each), and forbidden to assemble in large numbers. Shepstone acknowledged that it might be wise to restrict the possession of arms and gunpowder, but he said that it was foolish to tamper with assemblies or to interfere with the right to own horses. Shepstone interpreted the proposed restriction as applying to every kind of assembly, including weddings, dances and beer-drinks. It would, he said, affect the whole fabric of African social life. Not only would the enforcement of such legislation require a military establishment which the Colony could never afford, but it was also 'harsh' and 'unjust'. He warned that Africans were 'keen observers of political events' and those who were literate followed Legislative Council debates in the press, and that intentions of the kind embodied in the legislation would be bitterly resented.³⁰ Assent to the Bill was refused by the Lieutenant-Governor.

The African land issue continued to irritate the colonists. Lieutenant-Governor Scott conceded in 1858 that the reserves demarcated

by that time were 'large tracts of country broken and rugged in their features, and offering natural fastnesses, which would prove dangerous in the possession of a turbulent body of men'. Moreover, the siting of the reserves necessarily brought Africans together in large numbers, exacerbated the administrative problem of control, and made it more difficult to change them. But Scott declined to change the existing system, saying that this would be a breach of faith.³¹ In an attempt to put African lands beyond the reach of the colonists' designs, the Natal authorities proposed in 1861 to create a trust in which ownership and control of land would vest in 'tribal titles'. Scott acknowledged the force of the argument that individual titles would facilitate the 'civilisation' of Africans, but he said that because most Africans still lived under traditional conditions this would be 'more or less impracticable' and, moreover, the land they occupied was 'unsuited to minute division'.³²

The proposals sparked off a storm of protest among the colonists. A Select Committee of the Legislative Council condemned tribal titles out of hand, arguing that they would serve to bolster up traditionalism:

'the proposed tribal tenures will increase the dangers to which the Colony is exposed, by perpetuating the organisation of the coloured population, and creating an unity of interest, in all probability resulting in unity of action; and ... instead of reducing it, would tend still further to build up the power of the chiefs, and increase the distinctions of race' ³³

In the following year another Select Committee of the Legislative Council attempted to strengthen the force of the argument that tribal titles to land perpetuated traditionalism by demonstrating that evil practices were inherent in the tribal system:

'Those most conversant with Kaffir life and Kaffir usages, such as missionaries and others who have lived among the natives, are deeply impressed with the conviction that the Kaffir tribal system is intimately associated with all those evils which characterise Kaffir social life, including polygamy, the bartering of wives for cattle, the drudgery of women, witchcraft, and lastly the practice of wizard doctors All those social evils are inseparably linked with tribal influences, and cannot be combatted with such hope of success until we have broken down the tribal system'. ³⁴

Scott and Shepstone resisted these pressures, and also the attempt to have Scott recalled.³⁵ Finally in 1864 the Natal Native Trust came into existence.³⁶

The main elements of the colonist case against Shepstonism have been described; further developments in the conflict will become apparent in succeeding chapters. In view of the policies of a later generation of colonists, it must be stressed here that in the 1850's and 1860's the colonists ostensibly advocated cultural assimilation: in the rhetoric of the times the races must be 'amalgamated'; 'distinctions of race' must be minimised; whites and Africans must live interspersed with one another. The tribal system was an obstacle to those aspirations. But protestations of a desire for cultural assimilation did not imply civic equality for Africans. Indeed, as their critics pointed out, all the colonist rhetoric about 'civilising' and 'improving' Africans did not really mean assimilation in the sense of eliminating cultural differences between white and black; rather, they wished to entrench a new difference: that between a class of masters and a class of servile labourers. Racialist views were widespread among the colonists and most would have agreed with an editorial comment in the Natal Mercury in 1856: 'We believe in the divinely purposed supremacy of the white over the black race; and all history interprets and illustrates this belief'³⁷ Scott said of the Legislative Council proposals for African administration:

'The native population are to be scattered throughout the Colony, and located on the farms of the white colonist The Kaffir is to be forced into a greater dependent position than at present; and to be made still more subservient to the requirements of the white colonist'.³⁸

In an account of relations between colonists and native peoples

Fanon said:

'Native society is not simply described as a society lacking in values. It is not enough for the colonist to affirm that those values have disappeared from or still better never existed in, the colonial world. The native is declared insensible to ethics; he represents not only the

absence of values, but also the negation of values. He is ... the enemy of values, and in this sense he is the absolute evil. He is the corrosive element, destroying all that comes near him' 39

Fanon's language may be emotive, even exaggerated, but his description (based upon observations in Algeria) would not be a wholly inaccurate account of Natal colonist racial attitudes. Not only were African customs an affront to their Victorian outlook but they thwarted their economic interests as well. John Bird wrote in 1869 of the Natal colonists:

'When, the calculation of the cost and profit having been made, the hope of success, even of great success, had taken root in the thought of the immigrant, and when this hope was dashed by the difficulty of inducing an idle race to labour, it was natural that a feeling akin to aversion should arise in any mind not wholly stoical or very philosophic'. 40

De Kiewiet has pointed out

'how closely the language in which the colonists objected to the indolence and improvidence of the natives resembled the language of the opponents in England during the eighteenth century of the "barbarous" methods and "immoral" laziness of the small English farmer whose lands they desired to enclose'. 41

Similar arguments were deployed in America to justify dispossession of Indian land:

'Among the most mischievous and fatal [of the causes which prevented the Indians from learning the benefits of civilisation] were their possession of too great an extent of country held in common, and the right to large money annuities; the one giving them ample scope for their indulgence in their unsettled and vagrant habits and preventing their acquiring a knowledge of individuality in property and the advantage of settled homes; the other fostering idleness and want of thrift, and giving them means of gratifying their depraved tastes and appetites'. 42

Fears were expressed by the Natal colonists that the presence of so large and 'barbarous' a population surrounding them would have a debilitating and morally corrosive effect upon the colonists. Would not their children suffer through being cared for by African servants? Was there not the danger of 'going native'? Ever-present in the colonists' minds were the examples (to say nothing of the numerous offspring) of

some of the earliest Englishmen to settle in Natal, Fynn, Ogle, Cane and Dunn who, in Bryant's primly disapproving words, 'indulged in amorous liaisons with Native belles and left a yellow progeny to perpetuate their name'.⁴³ That there were real causes for anxiety, from the colonists' point of view, can be seen in Bleek's warning to intending immigrants in 1856:

'no one should emigrate to Natal who would find it difficult to deny himself the enjoyments of civilisation and who would not be satisfied with a semi-wild, simple farm life. It is not necessary to deny oneself intelligent company altogether, because many of the English colonists belong to the educated class, but many of them do not see a white face for nine months. I strongly advise that the emigrant should come here as a married man. For several reasons I consider that absolutely essential, particularly as there is a shortage of young ladies here'.⁴⁴

The missionaries constituted the other important section of the white community. By virtue of their occupation they could not avoid being drawn into the debate on the conduct of native policy. By the early 1850's missionary work in Natal was securely established after the tribulations missionaries had experienced earlier in their dealings with Dingane, the Zulu King.⁴⁵ The largest society was controlled by the American Board of Commissioners for Foreign Missions. The American Board had had missionaries in Natal and Zululand since 1835. In 1851 it possessed eleven mission stations (with churches at nine of them) and six out-stations in Natal. It had fourteen missionaries, one of whom was a physician, one male and sixteen female assistant missionaries and three African helpers. Other societies contributed to the burgeoning of missionary activity: by 1850 these included the Berlin Society (one station), the Hermannsburg Mission (one station), the Norwegian Missionary Society (one station), and the Wesleyan Missionary Society (two stations). In the same year the Roman Catholic Church established the Natal vicariate, whose work commenced two years later when Bishop Allard and a priest

arrived in Durban.⁴⁶ A notable contribution to missionary endeavour was the settlement at Edendale (near Pietermaritzburg) run by a Wesleyan clergyman, James Allison. Allison had been forced to leave Swaziland and he came to Natal with a group of Swazi Christians who formed the nucleus of the community. Allison (who broke away from the Wesleyan Missionary Society after a financial dispute) purchased the site at Edendale which comprised 6,000 acres of fertile and well-watered land. He divided the land into allotments which were sold to members of the community. When Colenso visited Edendale in February 1854 there were about 420 Christians and 160 pagans 'who were allowed to purchase allotments, and live among the rest, but were required, of course, to abandon their grosser native habits'.⁴⁷

The moralistic fervour which was whipped up against the Shepstonian system owed much to the fact that the colonists' protests were supported by many, but not all, of the missionaries in Natal. The community of interest between missionaries and colonists in condemning traditionalism was a paradox in South Africa where so often 'missionaries of various Societies have frequently animadverted with extreme severity upon the hostile attitude of colonists, both Dutch and (at a later stage) English, towards natives and native missions'⁴⁸ If the colonists welcomed missionary support (which often took the form of providing factual information about alleged abuses) in their attacks on Shepstone's tolerant attitude towards customary marriages, they were critical of the missionaries in other respects. Thus in 1861, for example, a Select Committee of the Legislative Council remarked that missionaries were characterised by a 'misguided and false philanthropy'.⁴⁹ But even if their motives were different, missionary and colonist hostility to African traditionalism overlapped in important respects. A writer in the Natal Witness in 1863 spoke of the 'alliance between the missionary and the labour-needing colonists to alleviate the sufferings of the native woman', and suggested that both were interested in the abolition of a custom 'which

small number of adherents at his station.⁵³ The Wesleyan missionary, the Reverend W. C. Holden, wrote in similar vein:

'the success of Christian missions is most seriously retarded by the operation of those laws and usages which prevail among the Kaffirs. Polygamy and witchcraft are so directly opposed to Christian institutions, that these two evils alone have placed the Kaffirs in a position of the greatest hostility to the Gospel; and the most systematic persecution is arranged, consolidated and practised; so that at this moment this vast mass of heathens stand boldly confronting the only instrumentality which is brought into operation for their improvement'. 54

The missionaries were divided among themselves as to how to overcome these obstacles. Some favoured a root-and-branch assault on traditionalism by legislative action. The Rev. T. L. Döhne, of the Berlin Mission, for example, recommended to the 1852-3 Commission that lobolo be abolished:

'The abolition of that sinful, and thus unlawful, trade, would put a most efficient check upon the Kafir's unrestrained desire for cattle, make the females free and available for service, and every kind of improvement, civil and moral, exercising also an influence upon males, to bring them out for work, as the existence of that trade is a certain cause of keeping many at home'. 55

Most missionaries would have agreed with the Commission's opinion that

'so long as Kafirs live in large communities, where their own customs and usages operate with the greatest vigour, and where the power and influence of the chiefs are felt with the greatest intensity, so long will missionary exertion be comparatively ineffectual, and just in proportion as the Government can arrange to lessen the size of these communities, to break up the nationality and clanship thereby engendered, and to bring a youthful Kafir population in the capacity of free servants into daily personal contact with the civilised inhabitants, will be the success of the missionary'. 56

If most missionaries were agreed that traditionalism was pervaded with evil and that it obstructed their work, nevertheless they were seriously divided when it came to deciding upon what tactics to adopt in combatting it. In the matter of polygyny, for example, some believed that the Government could take more vigorous steps to abolish it, but others thought that 'stringent measures might provoke a rebellion' (see Chap. 5).⁵⁷

A concern to see that Africans were treated justly in land and related issues deterred some missionaries from making common cause with the colonists. Daniel Lindley (who had been a member of the 1847 Locations

Commission), for example, waxed angry at the Report of the 1852-3

Commission:

'Over the great Kafir Commission you may safely write Ilium fuit. No ingens equus was required for the overthrow of what was for a time the glory of Governor Pine. The Commission contained a goodly number of long-eared animals,⁵⁸ whose generic name I need not mention - they did the work'.

In 1864 Bishop Gray reported that the Anglican clergy of Natal were generally agreed that whites and Africans should not be separated by the maintenance of the reserves, but they insisted that Africans ought to be given some security so that they should not be deprived of all land rights.⁵⁹ This was to identify only partially with colonist demands. As succeeding chapters will show, the resemblance between missionary and colonist views was largely superficial. The colonists opposed the Shepstonian system because it enabled Africans to continue living as farmers, largely independent of white employers. But the changes resulting from missionary endeavour produced a literate and Christianised class of Africans, who manifested a different kind of independence which the colonists disliked even more than the independence of the traditionalist.

The arrival of Colenso in 1854 as the first Church of England Bishop of Natal introduced an entirely new factor into missionary policy. In his ten week 'tour of visitation' in 1854 he spent much of the time travelling around Natal, speaking to missionaries and to Africans. Colenso was anxious to see whether traditional African religious concepts could be synthesised with those of Christianity, and, in particular whether the African concept of a Supreme Being, Unkulunkulu ('the Great Great One'), conveyed the same meaning as 'God' to a Christian. A conversation with some African converts at the Reverend J. Allison's station at Edendale seems to have influenced Colenso's approach to mission work. The converts agreed that polygyny and witchcraft were the two great obstacles to the spread of the Gospel among Africans, and that they must be abolished. They warned Colenso, however, that

'in order to commence a mission, do not promulgate laws about such things, but begin to teach. For a missionary must be like an experienced hunter. He must not show himself, and frighten the game away: but he must get around them, and so catch them'. 60

In a lecture ten years later Colenso urged that the missionary should approach his task cautiously and gently: 'If he goes to work differently with violence and laying down the law authoritatively, he may perhaps get one convert to upset his kraal and put all his family into confusion; but that will drive away all others'. And, citing the evidence of witch-burning in Western Europe, Colenso asked: 'How is it possible to teach the Zulus to cast off their superstitious belief in witchcraft, if they are required to believe that all the stories of sorcery and demonology which they find in the Bible ... are infallibly and divinely true? I, for one, cannot do this'.⁶¹ Colenso believed that the missionary societies in South Africa were wrong in that 'they do not sufficiently concentrate their forces, but seek to cover a large extent of territory, planting a number of separate stations, each of which is meant to influence its own little circle of heathens'. He argued that it would be more effective and cheaper to establish, in the first instance, 'one strong central institution ... under the immediate eye of the Bishop himself'.⁶²

The establishment of large mission stations had been facilitated by the intervention of Sir George Grey who agreed to grant land in title to the American Board Mission in 1855. The success of the experiment at Edendale commended the idea of mission communities to the authorities. The Board had felt that they lacked adequate legal control over the ground upon which their stations were built.

'On deposit of the survey fees, grants were to be made of five hundred acres - henceforth called "glebes" - for each of the twelve stations; and at each station a further area of from six to eight thousand acres (supposing that quantity to be available) was to be marked out as a reserve for the use of the Zulus and held in trust for them by a Board consisting of the Secretary of Native Affairs and the Chairman, Secretary and Treasurer of the Mission; the land

not to be alienable except with the concurrence of the Lieutenant-Governor. Within each of those areas allotments were to be made from time to time to Zulus who might wish to have individual titles' 63

By 1895 the Mission Reserves totalled approximately 150,000 acres in extent. 64

According to the Reverend G. H. Eason (who spent a year in Natal in 1859) mission stations provided 'a convenient refuge' for men and their families who belonged to no tribe, or for those who had displeased their chief. 65 The Wesleyan Missionary Report for 1856 gave an example from its Kwangubeni Station:

'The Native chief of the clan among whom the Station has been established, died recently, after a protracted illness, and a Witch Doctor, who was consulted on the occasion, indicated certain Natives, heads of families, as having caused his death. Upon being accused, these persons with their families fled to the Station for protection, and found an asylum there what a blessing is the Station - a city of refuge for the endangered and oppressed!' 66

The object of mission stations was to create a magnet 'with a view of inducing heathen natives to attend their schools and Sunday services'. 67

Those who settled on the stations were encouraged to become peasant farmers; they were taught the use of the plough, encouraged to buy wagons, to build European-type cottages, and to learn various handicrafts. Experiments were also made in growing cash crops.

The most important agency of social change introduced by the missionaries was the school. In 1835 Captain Allan Gardiner established a school for Africans in Durban, having been forced to abandon the mission he had established at Dingane's great place. In the same year the American missionaries Adams, Champion and Aldin Grout also established schools. Adams reported in 1837 that his school was flourishing and all his pupils, children and adults, were making good progress in English and Zulu. 68 It is evident that many African parents resisted their children being taught. Adams had to induce boys to work for him, agreeing that after a period of labour each should receive one or more head of cattle. The boys were accommodated in the mission and given daily

instruction. Gifts of clothes, porridge or potatoes and books were also used by the early missionaries as rewards for attendance at school.⁶⁹

Shepstone considered it wise to foster African education as a counterpoise to the baneful results of contact with whites. He believed that

'the advance of barbarians in such knowledge as is acquired by daily contact with a civilised population, unaccompanied by any moral guidance or training is calculated to engraft new and vicious ideas and propensities in proportion to that advance, and, that where a barbarian population preponderates so greatly over the civilised portion ... it necessarily becomes an element of positive danger to the state itself, and, further, it is notorious that a considerable advance has been made in this dangerous direction'.⁷⁰

The 1852-3 Commission urged that industrial schools be established in every African village, and that provision be made for the compulsory attendance for three years of African children between seven and twelve years of age. Compulsory education was to be applied to children in the locations first and then to those on white-owned farms and elsewhere. The Commission recommended also that African youths be apprenticed to white farmers and tradesmen.⁷¹

Only in 1856 did the administration act to give financial support to the missions for African education. In terms of Ordinance 2 of that year any mission engaged in educational work would be eligible to receive a grant the size of which was to be proportional to its own expenditure. The total expenditure was not to exceed one fifteenth of the estimated total revenue derived from Africans in any one year. By 1856 the African population of Natal contributed over £10,000 annually by direct taxation and considerable amount indirectly by customs due. The cost of the entire magistracy of the colony, including the pay of African police and the officials of the Native Affairs Department then amounted to £5,500 per annum. The contribution to African education would amount to £2,000 per annum. The acting Lieutenant-Governor, Colonel H. Cooper, regretted that more could not be spent.⁷² Apart from aiding missions the Ordinance

permitted the government to establish and maintain schools for Africans. Until 1857, however, the government did not establish a single school.⁷³

By 1865 there were thirty four schools for Africans with a total enrolment of 1,683 pupils, costing the government £2,009 annually.⁷⁴

The ordinary public schools (established primarily for white children) also admitted Africans, although only few availed themselves of the opportunity. In 1857 Verulam public school was reported as having forty two pupils of whom twenty nine were white and the remaining thirteen African.⁷⁵

By the late 1860's the missionaries began to realise that more effort would have to be devoted to the education of girls as 'semi-educated women had not proved to be the best wives for the Native leaders trained by the Missionaries'.⁷⁶ In 1869 the American Board Mission established a girls' seminary at Inanda:

'This was the first African girls' school in the country, its object being to train students to be Christian wives and mothers. It never had a primary department as such, although in the early days it admitted girls to Standard IV and had a special course for run-away kraal girls escaping from polygamous marriages'.⁷⁷

The grants given to mission schools by the government remained at little over £2,000 per annum until 1875, decreasing to £1,466 in 1870.⁷⁸ When new taxation measures were being mooted in 1866 Shepstone told the Legislative Council that 'they were bound, not merely in a moral point of view, but politically' to devote a considerable proportion of any increased taxation to African education. He repeated his warning given in 1852 that willy-nilly Africans were being 'educated' by their contact with whites and 'no one would deny that they were apt scholars as far as the vices of the whites were concerned'⁷⁹ His plea fell upon deaf ears.

The effect of the missions in promoting social change among Africans was considerable. A small but growing class of Africans were given an elementary education and embraced the Christian faith. In 1861 the

American Board Mission started to produce a religious newspaper in Zulu. This was Ikwezi, which survived until 1868. Its successor, Ubagu, survived from 1877 to 1883.⁸⁰ The rise of this class of evolues, known as the kholwa (literally 'believers'), had momentous consequences for racial policy as succeeding chapters will show. It opened up a cleavage within African society between kholwa and traditionalists. In 1864 Shepstone remarked that 'the semi-civilised class [of Africans] is looked upon by the mass of the native population as degraded and degenerate'⁸¹ But the kholwa looked with equal distaste upon the traditionalist. On the mission stations Africans rapidly acquired new skills and new values, and their horizons widened. In the reserves, however, stagnation prevailed.

The Franchise and Exemption Laws

The qualifications laid down for the electoral franchise in Natal had a significant effect on the development of policy towards African traditionalism. This chapter traces the early history of the franchise and the considerations that led to the system ultimately adopted.

Pressure from colonists for the introduction of a representative form of government in Natal mounted in the early 1850's. In February 1852 a petition signed by 231 colonists asking for representation was handed to Pine. Pine was sympathetic to the idea, and suggested to the Colonial Secretary that a Lower House might be established which would consist of elected members and 'two or three magistrates or other persons possessing an intimate knowledge of the natives, who should be appointed by the Government to represent the interests of those people, and to oppose any oppressive legislation regarding them'. He recommended that, in order to qualify, voters must possess immovable property to the value of £50 or rent such property at £10 a year; Africans who possessed the required property qualifications and who professed the Christian religion could also become voters. This scheme, said Pine, 'may in process of time help to induce these people to acquire property in land, and to become converts to Christianity'.¹

In replying to Pine, the Colonial Secretary, the Duke of Newcastle, said that the large African population in the District was 'the immediate difficulty' obstructing the introduction of representative government. He did not consider this to be 'a permanent or even a durable obstacle ...', but it appeared to him that no such institutions could be established 'until the mode in which the native population of Natal is to be governed is ascertained, and the relations to be established between them and the European inhabitants placed on some general and regular footing'.² It

had been laid down as a condition of annexation that there was to be no distinction of colour, origin, race or creed in the eye of the law (see p. 11), but the circumstances of Natal had soon pointed to the practical desirability of making legal and administrative differentiations between whites and Africans on grounds of culture. As Shepstone put it:

'Whilst humanity, and especially the injunctions of our religion, compel us to recognise in the native the capability of being elevated to perfect equality, social and political, with the white man, yet it is as untrue as it would be unwise to say, that the native is now in this position, or that he is in his present state capable of enjoying or even understanding the civil and political rights of the white man. Her Majesty's Government has most wisely recognised and acted upon those principles by providing a form of Government for the natives of this district, which while adapted to their present condition, is capable of being modified as to advance their progress towards a higher and better civilisation'.³

It is of some importance to note that, explicit in this statement of official policy, civil and political rights were made dependent upon cultural considerations: adherence to traditional culture was assumed to disqualify Africans from enjoying civil and political equality with whites.

In the electoral system for the new Legislative Council created in 1856 in terms of the Royal Charter, no racial qualifications were required of voters. Pine's suggested property qualifications (quoted above) were adopted, and Africans could, in theory, become voters or members of the Legislative Council. Voters had, in addition, to be males and over the age of twenty one years.⁴ The Natal Witness said that Africans could probably outvote whites in all electoral divisions, except, possibly those in the towns, but it believed that the qualifications would prevent an African majority for some time to come. The editor commented: 'It is generally believed that the natives are by no means indifferent politicians, and that they usually contrive to ascertain the particulars of public events, which they discuss among themselves with avidity'.⁵

The colonist representatives in the Legislative Council (twelve out

of a total of sixteen members, the remaining four being officials) were soon agitating against the provisions of the constitution which effectively kept African affairs out of their hands. Controversy arose over the £5,000 reserve which had been inserted into the constitution at the instance of Sir George Grey, who observed that

'the native population is so numerous, could render itself so formidable and contributes, even at present so considerable a part of the revenue, whilst in the proposed legislative body it would in no manner be directly represented that I think an amount of not less than £5,000 per annum should be reserved, to be necessarily applied for purposes connected with the religious and moral instruction or with the social well-being of the Kaffirs'⁶

The arguments of the colonist members on the Legislative Council contained a serious contradiction: on the one hand they made scathing criticism of the Shepstonian system for its failure to 'civilise' Africans, while on the other hand, they rested many of their demands on the claim that Africans were 'barbarous'. As was noted above (see p. 39), both Scott and Shepstone had cast grave doubt on the colonists' real aspirations which were masked by protestations of wishing to 'uplift' Africans. But the colonists justified their opposition to the Charter's prohibition of discriminatory legislation on the grounds that such legislation was necessary in the circumstances of Natal: 'it is impossible to restrain a vagrant barbarian, or govern him so as to secure his own personal improvement and the peace of the Colony by the same laws'⁷ Similarly, they expressed dissatisfaction at the non-racial franchise which meant that 'the wholly barbarous, or lately semi-civilised African in Natal is by law entitled to political privileges and powers, which history and experience prove cannot be safely entrusted to the long civilised inhabitants of Europe and Asia'. It was argued that Africans were neither entitled to nor qualified to exercise these privileges and powers.⁸ The colonists wished to obtain economic and political power over the African population and they justified their claim to do so by alleging that Africans were 'barbarous' and that colonist control of African

administration would 'uplift' them much more rapidly than could be done under the existing methods. But, critics asked, how genuine were their desires to 'civilise' Africans and how would they view the rise of a 'civilised' class? 'Civilisation', no doubt, meant different things to different white groups: missionaries would mean by it Christianity, the abandonment of traditionalism, and education; the colonists meant mainly the elimination of those obstacles that inhibited the flow of Africans into the labour market.

Press comment at the time gives some insight into prevailing attitudes. Christian Africans were seriously criticised by many colonists: according to a correspondent in the Natal Witness in 1857, 'they are most distrusted, and deserve the distrust with which they are regarded The missionaries seem hitherto to have too unguardedly taught them that all men are equal in the sight of God'.⁹ 'Very few people', it was suggested, really believed in 'civilising' Africans.¹⁰ In 1858, the Natal Mercury expressed concern at land grants being given to Africans, especially around mission stations, because Africans could then qualify as voters and in no time would swamp the whites:

'The natives of Natal are acute judges of their own worldly interests, and when once the notion of property, and the power it gives, gets into their heads, a motive for its acquisition will be supplied, altogether apart from mental or moral cultivation; a motive which would extensively operate to augment the electoral roll, while it would but faintly and feebly indicate the progress of fitness for the exercise of the right'.

At Edendale (the mission community) there were said to be at least 100 to 120 potential African voters. The editor demanded that 'for the sake of peace, liberty, civilisation and religion, we demand that they shall undergo a protracted training and testing - an apprenticeship to Christian civilisation - before they are admitted within the pale of constitutional arrangement'. This 'apprenticeship' should consist in seven years probation, possession of the elements of English education, and 'certification' from 'two respectable colonists', one of whom should

be a magistrate or a clergyman.¹¹ This editorial evoked a caustic retort from the Natal Witness: 'Alas, Alas! that our natives should be qualifying for electors, and that the wicked niggers should throw off the power of their chiefs, their customs, prejudices, and heathenism, and yield to the pernicious influences of Christian missionaries, and the constituted authorities'¹² In the following year the Natal Witness made a scathing attack on the claim of colonist members of the Legislative Council that they wished to promote the 'civilisation' and 'improvement' of Africans:

'It is only political claptrap When it was mooted that possibly the natives might be so far improved and civilised as to exercise their right to vote, the press raised a hue and cry against the impending evil. When a public meeting was convened in Durban ... the Mayor of that town opposed a resolution on the subject of education, alleging as a reason, that if the proposed plan were adopted, the natives would be educated and vote at elections!' ¹³

In 1861 Shepstone criticised the Legislative Council for its opposition to his scheme for tribal titles to land. He said that the grant of individual titles to Africans, as demanded by the Legislative Council, would 'emancipate them entirely and at once from all those tribal responsibilities and restraints which at present exercise so effectual a control over them [this] would be a reckless experiment, accompanied with very serious danger ...' and, moreover, 'to suddenly clothe them with all the privileges of the electoral franchise would, in their present social state, entirely revolutionise the country and transfer the legislating power to the hands of the coloured population, whose votes would, in comparison with the whites, be at least as six to one'.¹⁴ A Select Committee of the Legislative Council, however, dismissed Shepstone's argument, saying that 'the only real qualifications for exercising political privileges must be sought in the knowledge and intelligence of the individual'.¹⁵

In 1862 another Select Committee pressed for changes to be made in the electoral franchise qualifications. They considered that, 'with

scarcely any exception', the great mass of the African population was 'utterly unprepared' for the exercise of the franchise. 'To exclude ... the native races generally from the exercise of franchise would ... be objected to by no one, if due provision were made for the exceptional cases now existing, few in number at present, but it is to be hoped, increasing year by year, of natives possessed of intelligence and assured loyalty enough to be entrusted with the privileges of electors'. The Committee considered that educational qualifications would be insufficient; an elementary education which might qualify an Englishman would, in the case of Africans, be a 'superficial mask covering the substantial ignorance and barbarism which Her Majesty's Instructions [those issued in March 1848] declare to unfit them from the duties of civilised life'. Property qualifications were thought to be equally inadequate. The Committee concluded that they could see no reason why the Legislative Council should not adopt the wording of the Royal Instructions and declare the Africans to be 'unfit for the duties of civilised life' until they were 'duly capacitated to understand such duties'. The exclusion ought to be made immediately, to shut out those who were unfit, while exceptions should be made as soon as it was found that there were Africans who might 'reasonably be required to render ready obedience to the laws in force',¹⁶

Despite the growing concern among colonists about the African franchise, there was some doubt as to whether or not the Charter of 1856 did in fact entitle qualified Africans to be enfranchised. In a debate in the Legislative Council in 1860 Shepstone defended the £5,000 reserve by saying that Sir George Grey had wished to compensate Africans for being 'in no way directly represented' in the Council by reserving this sum 'so that an obvious guarantee might be afforded to the natives'. An elected member, Henderson, referring to Shepstone's argument, said that while the £5,000 reserve could not be controlled by the elected members Africans had no right to the franchise. Shepstone immediately rose to

deny that he had said Africans had no right to the franchise, whereas he in fact said they had no practical right.¹⁷ A serious division of opinion over the same issue occurred in 1863 when the Natal Executive Council was considering the African franchise. Both the Chief Justice and the Attorney General of Natal denied that Africans could exercise franchise rights under the Charter. The Chief Justice argued that Africans could not be enfranchised so long as they were under customary law in terms of Ordinance 3 of 1849, and while they were under that law no other law could apply to them unless it were made specially applicable. Moreover, while the Charter did not specifically exclude Africans, it did not apply to them because it did not purport to interfere with the Royal Instructions of 1848 and Ordinance 3 of 1849.

The Lieutenant-Governor, the Colonial Secretary, the Treasurer and the Secretary for Native Affairs disagreed with this point of view. Lieutenant-Governor Scott said that the Chief Justice's argument had force only if the Charter, which conferred the franchise, were opposed to any part of recognised customary law, but he denied that this was so because 'the electoral franchise is merely unknown to Native laws and customs, just as the possession of the soil is unknown by Native laws or usage'. Moreover, Scott pointed out, there were in force many general laws that applied to Africans without express stipulation. Ordinance 3 of 1849 had provided for the prosecution of Africans in the ordinary Colonial courts for all crimes repugnant to the general principles of humanity. While this provision had been construed as giving only a concurrent jurisdiction to the Crown Prosecutor, and not excluding such crimes from the operation of customary law, in practice all of the more serious crimes committed by Africans were prosecuted in the Supreme Court. Minor crimes committed by Africans were prosecuted in the resident magistrates' courts. In any case, civil or criminal, involving a white and an African, Roman-Dutch Law applied. (Scott evidently overlooked the special case of the Cattle-Stealing Ordinance. See pp. 142-5).

Customary law confined almost exclusively to disputes of a minor nature or civil suits between Africans.¹⁸ The Colonial Secretary, the Duke of Newcastle, agreed with Scott's argument, saying that there was no ground on which the Royal Instructions of 1848 could be understood as disqualifying Africans from the franchise as they had not prescribed any rule relating to the franchise.¹⁹

The controversy in the Executive Council focussed attention on the link between African civic rights and customary law, and forced the authorities to consider some of the social changes that were affecting African society. Scott noted that the individual African could not exempt himself from customary law 'but he can place himself in such a social position in the Colony as to be practically, in the actual duties of life, very little under its operation'. He cited cases of Africans who owned land, houses, wagons and oxen, and those who had become traders: 'these natives are not polygamists and they conform to the ordinary habits and customs of civilised life', but they remained officially under customary law. He could not conceive that they would be 'barred by any law from claiming such rights or privileges as their improved social position confers'. He quoted the case of an African who owned land and a house in Pietermaritzburg, payed rates and was entitled to a vote in the borough elections. To disqualify him from this vote 'it would be necessary to maintain the extreme, and I think, untenable argument that he has no right to become an inhabitant of the Borough'²⁰ He believed that it was unjust to deny such a man the vote, and anomalous that he should still be under customary law. It was implicit in Scott's argument that the political and legal problems presented by this class of African were amenable to a single solution.

Attention had been drawn to the legal and social difficulties of the class of Africans who were emerging or had emerged from traditionalism. According to the Natal Witness

'the natives who are acquiring property, living in houses, and abandoning polygamy, are objects of the envy and malice of the anti-civilisation Kafirs, and ... they are exposed to insults and wrongs that must generate discords as a first means of counteraction, the advanced natives seem to desire an emancipation from the operation of native law. When it is known how this law is administered by magistrates, no wonder need be excited at the desire. The administration of native law by men [i.e. magistrates] who can know nothing about it, with proceedings carried on in a language of which they are ignorant, with the weary dilatoriness of interpretation, makes the system farcical in the extreme: and the least that can be conceded is that those who are leaving native systems of life, should be at liberty to choose a new forum'. 21

In March 1863 the Natal Witness contained a report of 'a meeting of civilised natives' at Edendale. The main spokesman, Johanes, said:

'We are here met to attempt to decide a question which I will endeavour to put as clearly as I can. We have left the race of our forefathers; we have left the black race and have clung to the white. We imitate them in everything we can. We feel we are in the midst of a civilised people, and that when we became converts to their faith we belonged to them. It was as a stone thrown into the water, impossible to return We have all been well received - not as dogs, but as people. We have been protected since, and are happy. One thing alone detracts from our security. The law by which our cases are decided is only fit to be eaten by vultures. Who will say Kafir law is good, when we see thousands flying every day from it to the refuge of the wings of the Englishman? The question for us to decide is - whether we will have Kafir or English law? We have left the black race - it is impossible to return. We are under the wing of the Queen, let us ask her for her law Let us represent this evil to our superiors. Let us tell them we have left the black race, and belong to them. Will they send us back to barbarity? They may send our bodies, but, our spirits they cannot send'.

Another spokesman, Petrus, said: 'Let us ask the Queen whose people we are? Whether we are still savages, or belong to the white man. Let us ask what law we are under?' The newspaper report of the meeting remarked that 'the arguments on both sides were well and clearly expressed, and all tended to prove the superiority of English over Kafir law' The meeting closed with a unanimous protestation of loyalty to the Queen and gratitude to the English in Natal.²²

The entry of Africans into the business field created the possibility of legal confusion: if both parties to a business contract were Africans

any dispute over that contract would have to be resolved according to customary law, because customary law operated to the total exclusion of Roman-Dutch law in civil suits between Africans. Shepstone noted that there had been a change in a traditional trading practice: if X bought a cow from Y and the cow died before one complete year had elapsed, the contract was annulled and the purchasing price was restored; but, by the early 1860's, Africans were adopting the European practice that purchase was irrevocable after delivery and payment. As Africans increased their transactions with whites the traditional practice died out, and they adopted the European rule among themselves. Shepstone cited the case of a group of Africans who had formed a company and purchased a sugar mill and machinery: it was probable, he said, that they would have to employ white workers to manage the concern for them.²³ These examples of change pointed to the need for legal reform. In an editorial on this new class, the 'School' or 'Mission Kaffirs' as they were called by colonists, the Natal Witness reported that they were 'entering into new business engagements; and they desire that disputes between them, arising in their commercial transactions, should be dealt with in the same way that cases of a similar character are settled among white colonists'. The editorial cited another situation in which the operation of customary law pressed hard upon Africans:

'A Kaffir man and woman abandon their polygamic and other institutions, and marry and deport themselves as civilised persons. They have a family, and accumulate property, as in [an] instance before us, to the value of £1,000. The husband dies. The brother of the deceased comes in, and first takes away the children from their mother, possesses himself of his brother's property, and the widow being left destitute, may get her living how she can'.²⁴

Social changes among Africans were pressing against the sides of the water-tight compartments which the established system of legal segregation had created. Customary law was no longer an adequate system for those Africans who had emerged from traditionalism, and if law was to mirror social relations, a change in the legal system was necessary.

Scott considered that it would be a 'positive evil' if the parliamentary franchise were extended en masse to Africans of whom only a small number constituted the emergent class described above: the vote was 'foreign to their customs and usages, and so long as they remain in the exceptional position of being subject to Native Laws, it is not ... unjust to disqualify them from the exercise of such a political power'. As yet, however, he said, not a single African who may have been qualified had applied for registration as a voter.²⁵ The Colonial Secretary, the Duke of Newcastle, agreed with Scott, saying that it would be undesirable to extend the franchise 'largely' among Africans and 'very advisable to admit them to it in moderate numbers as soon as they are fit to be admitted: but it is clear that this ought not to be deferred till they are all fit to share in political power'.²⁶

Closely related to Scott's franchise proposals was a scheme to provide a statutory method whereby 'civilised' Africans could exempt themselves from the operation of customary law. Scott warned against any 'violent and injudicious measures' to abrogate customary law completely, saying that the suppression of traditional customs 'cannot be sudden, and of an extensive character in as much as they cannot go beyond what may be suitable for the least advanced portion of the natives'. His proposal for an exemption system would 'insure that careful consideration was given to each applicant' which would prevent letters of exemption being granted to Africans 'in an imprudent manner'.²⁷

Two bills relating to the franchise and exemption from customary law, respectively, were submitted to the Legislative Council in May 1864. The preamble to the bill 'disqualifying certain Natives from exercising the Electoral franchise' stated that the acquisition of land by Africans would qualify many of them for the franchise and that it was deemed inexpedient that persons still under the operation of customary law should 'so largely and generally exercise the vote'; however, Africans who advanced to a higher degree of civilisation could obtain exemption

from the operation of customary law. Africans who were exempted, who had been resident in the colony for at least twelve years, or occasionally resident for periods equivalent in the aggregate to a residence of twelve years, who had a crime free record, and who complied with the ordinary property qualifications would be entitled to the electoral franchise.²⁸

The provisions of the franchise bill were much amended in the Legislative Council; so much so that Scott declined to assent to it and reserved it for the Queen's pleasure. In a covering despatch he said that he could not accept the statements inserted into the preamble that 'the Natives are in fact aliens in laws, customs and usages to the civilised subjects of the Crown' and that 'many are, moreover, aliens, being refugees from neighbouring Native Tribes, but so intermixed with Colonial-born Natives as to render it in most cases impossible to distinguish the alien from the British-born native inhabitant'. This, said Scott, was 'a re-iteration of the popular, and oft-repeated assertions made in respect to the natives, but which the Executive branch of the government does not accept'. Nor could Scott accept other insertions in the preamble stating that the main reason for giving documentary titles to land was that of inducing the said natives to adopt more civilised habits' and the 'drawing them away from their own barbarous customs' and to 'otherwise ... encourage them in acquiring immovable property by purchase'. He claimed that these were objects connected with the tribal land legislation but were 'secondary, incidental and not the primary grounds for granting documentary titles'. Scott objected also to a clause which required of the would-be African voter a further twelve years 'probation' period after he had been exempted from the operation of customary law. He said he was not prepared to object very strongly to the principle of a period of probation but he considered the period of twelve years to be unreasonably long. Scott next outlined how he anticipated the franchise and exemption laws would inter-act:

'If a Native has thrown off polygamy, which he must do before he could become exempted, and has otherwise raised himself to a higher social position, so as to enable him to receive letters of exemption, I cannot but consider he has earned the right to participate in the election of any person who would be his, as well as that of other colonists' representatives in the Council appointed to make laws for their common government. I do not consider that for many years to come any great number of Natives would seek for exemption, because to expect this would be to suppose the abandonment by them of their deeply rooted custom of polygamy. The Natives who might seem exemption would be those who have become Christians and who have, from Missionary teaching, conformed to the higher civilised practices of the whites'. 29

The amendments proposed by the Legislative Council aimed at making it virtually impossible for an African to become enfranchised. The intending African voter had to pay £3 into the Treasury; obtain a receipt from the resident magistrate; apply in writing to the field cornet to have his name placed on the voters' list, forwarding (a) a sworn statement giving the date upon which his letters of exemption were granted, the places of abode he had occupied, and the business he had carried since being exempted; and (b) a certificate of good character signed by three voters, two of whom were to be justices of the peace, resident magistrates or field cornets. The certificate would have to state that the signatories had known the applicant for at least two years as a loyal and well-disposed subject of the Crown. The field cornet was to forward the documents to the resident magistrate who transmitted them to the Secretary for Native Affairs who was to ensure that the application was advertised in the Government Gazette sometime during the month of May. Objections to the application were to be heard by the resident magistrate who was empowered to reject the application. If the resident magistrate did not reject the application he was to forward a report, all the objections and the supporting documents to the Secretary for Native Affairs who transmitted them to the Lieutenant-Governor who, 'should no objections have been made', could, 'if he thinks it advisable' direct that the applicants name be placed on the electoral roll. Scott

noted that any non-compliance with these formalities and any objection would be fatal to an application. He described the proposed procedure as an 'intricate ordeal' which, if white voters were required to undergo, would greatly diminish the number of voters.

If Scott considered these proposals unjust, he was by no means anxious to see many Africans enfranchised:

'If this scheme of exemption was likely to throw a large number of Native voters on the colony, so as to really influence any election, I should be among the first to oppose it, but this, owing to the deeply rooted and exceptional domestic institutions prevailing among the Natives, cannot be so for generations to come, and certainly not before the Colony will have become densely peopled by white inhabitants. There is, therefore, in my opinion, neither any present or future need to dread an excessive Native element in the election of members of the Legislative branch of the Government; and I see no necessity for any illiberal or exceptional barrier, such as that framed in the Bill by the Legislative Council, being opposed to a Native becoming a voter. So long as he may remain subject to his own special laws, usages and customs, his exclusion from the Electoral Franchise is not unjust, but when he takes himself out of this exceptional position, I cannot but consider he should, at once, be placed in the same status as all other colonists'.³⁰

In his reply to Scott's despatch the Colonial Secretary, Edward Cardwell, agreed that it was unlikely that African proprietors of land would obtain 'any dangerous influence' in elections but he thought it right to provide against any such possibility. He considered the provisions of the law, as it had been passed by the Legislative Council to be 'unnecessarily minute', and doubted if it could have been the Legislative's intention that the raising of any objection to African's application for enfranchisement should be fatal to the application. He recommended that the franchise qualifications for Africans should be:

(a) twelve years residence in the Colony; (b) seven years exemption from customary law; (c) a certificate signed by three European voters testifying to the applicant's loyalty, the certificate to be endorsed by a justice of the peace, a resident magistrate or a field cornet who was to declare that he had no reason to doubt the truth of the information contained in the applicant's certificate and that the voters who signed

it were 'credible persons'; and (d) the ordinary property qualifications under the Charter of 1856. The final decision as to the enfranchisement of each applicant was to lie in the Lieutenant-Governor's discretion.³¹

This version of the franchise bill was resubmitted to the Legislative Council in May 1865 and subsequently was placed upon the Statute Book as Law 11 of 1865. Its passage through the Council was easy: as the Attorney General said, '[t]his bill ... notwithstanding that it is oppressive on the natives, had met all the objections raised last year by the House'. To which David Dale Buchanan retorted that 'he could not agree that one class in this country should pass a law pressing on the natives because it met the objections made by this House'. Only Buchanan and J. S. Boshof voted against the bill at its second reading. The latter 'did not think the Kaffirs at all fit to vote, and objected to the very idea of a native occupying a seat in this House'. Charles Barter probably spoke for a wide segment of colonist opinion when he said that '[h]e rejoiced to see the day when the natives could have all restrictions removed from them, and that they would be enfranchised; but he was glad the Council had in their wisdom postponed this day to a very distant period'.³²

The exemption bill passed through the Legislative Council even though the elective members' support for it was only luke-warm.³³ They wished the provisions to go much further and they would have supported legislation in terms of which all Africans marrying according to Christian rites would automatically be exempted from customary law.³⁴ The Colonial Secretary, Cardwell, objected to the drafting of the Law and returned it to Natal requesting that the Legislative Council amend the wording of several clauses. He considered that clause 23 of the Law would cause hardship and requested that it be changed. The clause prohibited any exempted African male, whether married, unmarried or a widow, or the widow of an exempted man from ever marrying again according to customary law.

Cardwell pointed out that a pagan widow or widower would, in the absence of legislative provision for civil or Christian marriages for Africans, be prevented from contracting any marriage at all.³⁵

When the exemption bill was resubmitted to the Legislative Council in mid-1865, one of the elected members, Wathen, announced amendments that he intended to propose 'so as to liberate any Christian Kaffir girl from the operation of native law when wishing to marry a Christian Kaffir, so as to prevent her guardian stepping in, and declaring that he would not allow the marriage of the girl until a certain number of cattle were paid, as was at present law'. J. N. Boshof suggested that all African girls be included in the amendment, to which the proposer agreed.³⁶

The amendment provided that any unmarried African woman could, on her own initiative, petition the Lieutenant-Governor for exemption. To her petition she would have to attach 'the name of a person of European descent willing to accept the office of guardian to such unmarried native female'. The application was then to be dealt with under the procedure to be employed in other applications.³⁷ The Natal Witness proclaimed

Wathen's amendments enthusiastically, saying that the 'provisions ... lay the axe at the root of the system of polygamy, and will break down this stronghold of iniquity'.³⁸ The Legislative Council agreed to the amendments, despite Shepstone's request that the new clauses be expunged. Shepstone urged this, 'as he was afraid of these clauses doing more harm than good, and [they] would create considerable confusion. He thoroughly concurred in the object sought but wished to obtain the same end by degrees'. He added that he hoped the question of Christian marriage by Africans (see pp. 114-5) would be settled soon.³⁹ But the bill

passed through all stages of the legislative process with the amendments, only two elective members voting with the official members for striking out the new clauses.⁴⁰ Lieutenant-Governor Maclean, however, refused to assent to the bill, and returned it to the Legislative Council for reconsideration and amendment. Seeing that the Government was adamant,

Critics of the franchise law tempered their comments with the hope that it might be a useful factor in promoting change among Africans. Thus in 1864 the Natal Witness said of the franchise bill that it had 'the appearance of class legislation with a vengeance' But, the editor continued,

'One benefit to the natives seems to be contemplated. There will be an inducement held out to those natives, - and they are a daily increasing number, who wish to rise in the scale of society, and take their place among the civilised members of the community. This will create a wholesome impetus, and operate as an inducement to effort in the right direction among the Kaffirs. As an appeal to their pride, ambition, and sense of manliness, the effect will be considerable'. 44

The number of Africans who wished 'to rise in the scale of society' was indeed growing, but at the same time the colonists' determination to prevent this rise was hardening. The link between the exemption and franchise laws heightened their perception of the fact that the more educated and culturally assimilated an African was the more likely he would be to express an interest in obtaining civic rights. The colonists demanded that the caste barriers be strengthened and insulated against forces that eroded it. Race, and not culture, was the qualification for admission to the upper caste. They wished to destroy the tribal system but they feared the consequences, especially where African emancipation from traditionalism was accompanied by education, new values and wider social horizons. The implications of this ambivalent view of change were reflected in a Legislative Council debate on the labour question in 1873. A Select Committee had advocated the establishment of schools in the reserves as a stimulus to the labour supply. The chairman explained what this meant:

'I will not detain this House by making a long claptrap speech about the mission of the white man in civilising our native population. In this resolution, I propose to use civilisation, and morality, and Christianity, as a means to get labour. If these causes are at the same time advanced, so much the better for them By erecting these Schools, I don't wish for one minute to ask this Council to supply a superior standard of education for our natives. I think it would be highly objectionable

if our natives were either able to criticise the Pentateuch, or to point out the contradictions and fallacies of the leading articles in any of our newspapers'. 45

Change was to be on the colonists' terms, and this implied that it must not endanger the racial hierarchy.

University of Cape Town

Attempts to reform traditional African marriage

Officially it was the 'steady aim' of the Natal Government to abolish polygyny and lobolo.¹ For much of the period which this thesis spans the treatment of traditional marriage was a controversial matter. Some of the colonist objections have been cited above (see p. 38).

This chapter describes how the Government pursued its 'steady aim'.

Marriage among the northern Nguni was strictly regulated.

Stringent rules of clan exogamy were enforced. Shaka, the Zulu King, introduced a further rule that no one could marry except with his permission. Shortly after puberty youths, male and female, were grouped into amabutho (regiments or age-groups). Every year at the Mkosi, or feast of the first fruits, the King would announce which amabutho could marry. The system was designed to make the army both mobile and subservient: it was obviously easier to mobilise an army of unmarried males who were gathered together in units. The tribes of Natal who came under Zulu sway were compelled to adopt the custom, but, according to the Reverend Lewis Grout, by 1862 it was no longer strictly enforced (nor was it strictly enforced in Zululand during the reign of Mpande).²

'As a general thing in Natal, the young man thinks himself at liberty to marry as soon as he can find cattle enough to pay for a wife. The idea of looking to his chief for permission to be "of age", and meddle with matrimony [sic], if it come at all into his mind, comes more from respect to an old national usage than from any sense of dependence upon the will of his king'.³

The custom was 'completely broken up' when the Zulu were conquered in 1879 and was never revived subsequently.⁴

Although it was the ideal of every African man to be a polygynist, it is unlikely that at any time more than fifty per cent of husbands among the northern Nguni had more than one wife. Bryant claimed that

few commoners possessed more than one wife, while chiefs never had more than a dozen wives.⁵ A man's ability to achieve the polygynous ideal was limited mainly by three factors: the availability of marriageable women, the availability of cultivable land, and control of cattle. Sonnabend has shown that a difference of seven years in the marriage ages of the sexes gives twenty per cent of the men the possibility of an additional wife.⁶ Early evidence on marriage ages among the northern Nguni is conflicting. Bryant estimated that before Shaka's time men and women married nearer to their thirtieth than to their twentieth year while under Shaka it was nearer forty than thirty.⁷ Shepstone said of the Natal tribes before Dingiswayo and Shaka that women often remained single up to the age of twenty five.⁸ James Stuart indicated that under the matrimonial system introduced by Shaka women often married as late as forty or forty five. Some proportion at least of the nubile women married men who were older. After the King's announcement at the Ekosi

'there would be no delay in the girls marrying off, either to members of some specified regiment or regiments directed to marry, or to the amadoda - that is, elderly men, who, having received permission in previous years, had already married and settled down. Women were not obliged to marry only members of any particular regiment The youngest men allowed to marry naturally secured the largest number of girls, many of whom had specially waited for them, and the remaining ones were either disposed of to propertied men of social standing, or ran off to some head-ringed man [i.e. a man who belonged to a regiment which had been authorised to marry] they had previously become acquainted with and still entertained a fancy for'.⁹

A surplus of marriageable women was partly created by the lower survival rate of men. It is probably that the Mfecane had resulted in a distinct alteration of sex ratios, many more men than women being killed.¹⁰ Missionary evidence in the 1860's suggested that after nearly a generation of peace 'the number of men, who were wont to be cut off by war, is fast coming on to equal that of the other sex'.¹¹ The lobolo custom also placed younger men at a disadvantage compared with older men. An unmarried man was usually dependent upon his father to provide the

lobolo for his first wife. According to Shepstone lobolo in the early 1800's seldom exceeded five head of cattle.¹² The wealthier a man the more easily he could lobola a wife: 'Lobolo ... is the device that harmonises the distribution of women with the claims of rank and wealth'.¹³

Traditional marriage was deemed objectionable by many colonists on moral grounds. They condemned it because it was polygynous, because the lobolo contract was thought to be a purchase of women, and because the wives of a man were considered to be his slaves. It was believed that women were forced unwillingly into marriage, and that the ukungena¹⁴ relationship was, similarly, often forced upon an unwilling widow. But polygyny was also thought to be detrimental to the colonists' interests because supposedly it locked up the labour supply which the reserves might potentially yield: it was assumed that the existence of polygyny enabled African menfolk to sit idly in the sun while the women did most of the work.¹⁵ To illustrate these views a few representative statements of colonist opinion are quoted. In 1856 colonists of Durban and vicinity presented to Lieutenant-Governor Scott a memorial, demanding that strong measures be taken against 'barbarism':

'The attack should be directed against the weakest part of the system [i.e. the traditional social system], or that which affords the strongest point on which to rest the assailing work. The key-stone of the social fabric should be sought for. We conceive that, in the system of polygamy we have such a key-stone it disorganises the family relation; - and this lies at the basis of the whole fabric of society. This evil destroys all love between man and wife - it encourages war as a means of procuring cattle to pay for the panders to their lust and idleness; and by a fearful destruction of life, brings about an inequality of the sexes, which alone can supply the whole of them with the chief object of the Kaffir's desire. Polygamy thus renders them unquiet subjects of Government, and useless for the purposes of industry - bad citizens, and disinclined to labour'.¹⁶

In 1863 another public meeting adopted a memorial:

'That ... the system of polygamy as maintained among the Kaffirs of the Colony, is associated with customs that are peculiarly odious; that are revolting alike to the good sense and the Christian feeling of the entire European population of this settlement, and loudly call for the early

adoption of judicious measures by the Government to restrain and prohibit them. That ... the system ... is essentially a system of slavery, involving as it does the bartering of women for cattle, and their subjection for life to a state of degrading bondage; ... that it is a system which operates most prejudicially to the interests of civilisation, hinders the free play of elevating influences, and fetters the healthy development of the industrial resources of the Colony; that it ministers only to the sloth and cupidity of the old polygamists, ... that the continuance of the system is calculated to exert a very injurious effect on the moral sentiment and character of the European settlers in this Colony, because it is an evil which, although at present only tolerated, as it becomes by familiarity less repulsive, will be sure gradually to acquire power, and to spread its pernicious influence at length throughout the community'

The memorial referred to

'cases [that] have occurred, the injustice and cruelty of which are ... peculiarly revolting ... forcibly illustrating the urgent need of judicious interference on the part of the Government to suppress the evil; as, for example, where young Kaffir women are forcibly sold by their male relations into loathsome concubinage with polygamists, and, on endeavouring to escape from so intolerable a condition, are subjected to the most inhuman tortures'. 17

The Reverend Daniel Lindley informed the meeting that after twenty-five years of peace in Natal equality of the sexes had been restored, and the lobolo rate had doubled. In consequence, he claimed, young men could only afford to lobola a wife after a long time, while the older men could 'outbid' (the word, with its inaccurate commercial connotation, was used by Lindley) them. He said that the hearts of young girls were 'altogether revolted' at this. The Reverend W. Fosselt said that since 1847 he had known between thirty and forty cases of young women over fifteen years of age running away from old polygamists. 18

Reviewing the heated discussion of polygyny at meetings and in the press, the Natal Witness caustically imputed hypocritical motives to the colonists: 'It has become part of our colonial political clap-trap, and cant, to connect polygamy with slavery. And to get labour, the evils of polygamy have suddenly awakened the pious hostility of men whose zeal and policy would lead to slavery without polygamy'. 19

Polygyny and lobolo had been recognised in terms of Ordinance 3 of

1849, but as has been noted, the official aim of policy was that they should gradually be eliminated. Shepstone's views on the question must be outlined in some detail as he was the dominant force in shaping policy.

In 1864 he wrote:

'Polygamy is an ancient institution among the native Tribes; they say they were created with it, and it is still practised among them; it is a system with which of necessity, all their laws, customs, habits, and ideas are bound up, it is one which time only can abrogate, because both men and women would equally oppose any violent attempt to destroy it, and morality would suffer more from the effects of such violence, than leaving it to the gradual extirpation which natural causes and judicious indirect measures will most probably soon bring about'. 20

Shepstone retained these views all his life. In 1881 he made several comments to the Cape Government Commission on Native Laws and Custom which give further insight into his attitude. On being asked by the Commission about the political feasibility of abolishing polygyny, he replied that there would be

'a great political danger, because there must be great and severe coercion applied to change even the form of the custom. I believe that no extent of coercion would do more than change the form, and the effect of such a change would be much more demoralising to the people than the custom itself. Of all institutions among them, that of polygamy is the one which they cling to with the greatest tenacity'.

To the question as to whether or not the effect of legal sanction (as under Ordinance 3 of 1849) was to give polygyny 'strength and prominence', he said that he did not think that legislation affecting polygyny necessarily sanctioned it, because the aim of the legislation might be its abolition, while recognising the existence. Why then, pressed the Commission, did not legal policy ignore the practice, as the law ignored concubinage? The question, replied Shepstone, did not take into account

'the interests of the women concerned. If a man marries more women than one, each considers herself as much a wife as the first If there is any intention on the part of Government to interfere with polygamy in such a way as to ignore all but the first wife, that course would, in my opinion, be unjust and do harm, because you would be sacrificing to your ideas of right and wrong not only the feelings but the positions of thousands of women who are,

and believe that they have been honestly married. I cannot see how morality or civilisation can be served by turning wives into concubines, unless it be considered that concubinage is a more civilised, and, therefore, a preferable practice'.

He said also that he strongly disapproved of the missionary practice of forcing African converts to give up all (or all save the first married) of their wives because it was cruel and could not be reconciled with the unselfishness of the Christian religion.²¹

In 1848 Shepstone received letters from four missionaries reporting cases of women who were said to have been forced unwillingly into marriage. One of these cases was brought before him and 'it was established that the resistance of the girl was sufficient to nullify any contract made by the guardian in disposing of her seeing it is for his especial benefit - this position is in my opinion fully recognised by the provisions of Native Law'.²² Shepstone always considered that the claim of the missionaries and colonists that large numbers of forced marriages occurred was exaggerated. In a document on traditional marriage he wrote:

'In the course of [marriage] negotiations the inclination of the girl was always consulted and the father or guardian usually broke them off if she declined the suitor - this as a general rule is still done but instances occurred then as now in which the guardian would use force' ²³

If the power of a father to coerce his daughter, 'even to the extremity of putting her to death', had existed, the Natal Government had outlawed it, and 'whenever brought to the notice of the authorities, it has been punished; the effect of even this check has caused the natives frequently to complain that the women have been made their masters'.²⁴ Similarly, the Government had discountenanced the practice of ukungena by laying down that 'a widow may marry whom she pleases, without reference to her guardian' But Shepstone, unlike his opponents, saw the beneficial aspects of the custom whose object was

'to prevent a large establishment from being, necessarily, broken up, the women dispersed, and the children left without any persons to care for their wants on the death

of the head of the family. In the view of the Natives themselves, therefore, the custom was established to benefit the bereaved family'. 25

In general Shepstone showed considerable anthropological insight in his assessment of the status of women in traditional society. He agreed with the description of African society as 'male-dominated' but he denied that women were down-trodden or exploited. His answers to some of the questions put to him by the Cape Government Commission on Native Laws and Customs in 1881 are of interest:-

'630 [answer]... as a matter of fact I have observed that women, whether black or white, can always have their way if they are determined upon having it.

631. You think that they have their rights, and that they are recognised? - yes, and that they have the means of insisting upon their being recognised.

632. If a man beats a woman, what then? - He is entitled to punish her, but somehow he usually gets the worst of it. Public opinion is against cruelty to women.

633. Suppose he overworks her, has she redress? - She need not work, except of her own free will. I have often heard men talk of their wives, and complain that one wife is idle, and does not take care of the house, while he extols another as being in every way industrious and diligent and thrifty.

634. What remedy has the husband against the idle wife? - He has no remedy, though in extreme cases he might beat her.

635. If he beats her for conduct of that kind, would she not run off to her friends? - That would be her remedy.

636. If he ill-treats her, she goes back to her friends? - Yes; I have known cases where the woman has been detained by her friends, to the great inconvenience of her husband.

637. Suppose a wife would not return to her husband on account of his cruelty, would the dowry be returned? - Not the whole of it, he is liable to forfeit his cattle, or a portion of them, if his cruelty is held to have justified the wife refusing to return to him.

638. Is this payment of dowry, then, not one means of securing a fair treatment for the wife, because the husband knows that, unless he treats her properly, he may lose the cattle? - Yes'.

In outlining Shepstone's comments on the status of African women,

it should be noted that he recognised their right to own property independently of their husbands: 'A wife who by her industry produces corn enough to maintain her family; and with surplus to barter a cow, that cow with its increase is looked upon as her property separate from the estate of her husband'.²⁶

Shepstone's views were fiercely contested by most missionaries in Natal. The missionary bodies upheld the rule that polygynists were not to be admitted to church membership unless they put away all their wives, save one. This could give rise to painful situations, both for missionaries and for polygynous husbands and their wives.²⁷ Controversy was aroused by the unorthodox views of Bishop Colenso, who had not been long in Natal before he condemned the rule. He set out his views in a pamphlet which was published in 1855. Apart from evidence in the Old Testament which he construed as sanctioning polygyny, he pointed to the injustice that church requirements caused:

'in compelling a Kaffir husband to put away his wives, we are doing a positive "wrong", perhaps to the man himself, but certainly to the woman, whom he is compelled to divorce. We do wrong to the man's own moral principle - his sense of right and justice - his feelings as a husband and a man. He knows that they have lived and laboured for him, it may be, for years, - have borne him children - have shared the joys and sorrows of family life. For a Kaffir has a feeling of family and home. It is an outrageous slander upon the character of these poor natives, to say that they are void of affection - that their wives are merely their slaves, their children so many conveniences, for raising money by the labour of the one sex, and accumulating cattle by the sale of the other'.

The husband, said Colenso, was faced with the awful choice between a sense of duty to God and the dictates of his heart and mind which told him that he had no right to sacrifice his wives. And who would marry the wives? They had grown old in his service and their youth and comeliness had gone. Colenso warned missionaries that their impact on paganism would continue to be negligible unless they adopted a more flexible and tolerant outlook: '[Africans] are men, shrewd, intelligent,

inquiring: but they dread any closer contact with Christianity, which is to tear up at once their families, rend asunder the dearest ties which connect them with one another, and fill their whole tribe with anarchy and confusion'. Missionary endeavour would succeed only when missionaries gave assurances that they would not interfere with their married life. Colenso should not be construed, any more than Shepstone should, as approving of polygyny: his case for tolerance rested on the avoidance of the greater evils caused by intolerance. He suggested in his pamphlet that the death-blow could be given to polygyny by the imposition of a £10 tax on each marriage after the first, and an additional tax of 10/- or £1 on the hut of each additional wife.²⁸ Nor did Colenso deny that evils could occur under the traditional marriage system but, he said, 'it would be a gross exaggeration to represent the state of things as being universally, or even generally, such, as a collection of special instances might lead one to suppose'.²⁹

Colenso's pamphlet evoked a trenchant reply from the Reverend Lewis Grout who wrote under the pseudonym 'An American Missionary'; Colenso replied to this, and in turn was answered again by Grout. In his autobiography Grout acknowledged that the 'spirited discussion of no less than 250 octavo pages' had been conducted in a courteous and friendly fashion. Grout's case rested on his belief that Christians could have no truck with polygyny; and he denied that the hardships alleged by Colenso in fact occurred.

'Take the power of a tyrant from the Kaffir polygamist, and attempt to restore his wives to anything like the rank and privilege which every man, to be a Christian [italics in the original], must accord to a woman to whom he stands in the relation of a husband, and the whole foundation of the polygamic house is swept away, and the superstructure must fall to the ground. The instructions of Christ and the Apostles to husbands and wives can never be obeyed by men and women who stand in the relations which the essential nature of Kaffir polygamy inevitably imposes upon all who are involved in its iniquitous meshes'.

Grout quoted, with approval, another missionary as saying that 'the

Kaffir has no idea of any such thing as "injustice" or "wrong" in discontinuing the connection which he has formed with any woman. He feels at perfect liberty to dismiss any of his wives, if she does not please him in every respect³⁰ The pamphlet was reviewed in an American journal by an eminent theologian, the Reverend Dr. Woolsey, President of Yale College:

'As for the tracts themselves, we have no hesitation in saying that, while weak arguments are used on both sides, Mr. Grout makes out by far the stronger case. He represents the experience of tried missionaries, the well settled convictions of most of the societies which have come into contact with this question, and that party in the church of Christ which seeks to found pure churches among the heathen; such as will serve as centres of reform, and not be liable to be corrupted by heathenism creeping into them; while the new bishop of Natal expresses the views of a fresh and raw emigrant into a novel diocese, and the policy of the looser party, which would bring as many as possible into the church and purify the church afterwards; which like the Jesuits in China, would accommodate rules and discipline to heathen prejudices as far as may be, and make the yoke of Christ as little galling as possible'. 31

If the missionaries were, with few exceptions, intolerant of polygyny, they were divided among themselves on how the 'putting away' rule should be enforced, and how the 'evil' could most effectively be attacked. In 1861 Colenso distinguished four different rules regarding 'putting away' enforced by missionaries:-

- (a) Where the first-married wife was regarded as the only true wife, but Colenso pointed out, she might not have been the 'great-wife'; or she might be a ngena-ed woman; or she might be old and/or barren while the younger wives had produced children; or she might be a heathen while the truly loved second wife was a Christian.
- (b) Where the husband was directed to retain that wife who was feeblest of all and least able to provide for herself.
- (c) Where the husband was permitted to choose the wife he liked best and 'sacrifice the rest, as if they were so many cattle, of which he might select the primest and youngest'.

(d) Where, to avoid the injustices of any selection, the husband was required to put away all his wives.³²

In keeping with his views, Colenso recommended that the rule should be that 'to continue in a state of polygamy entered into before conversion is equally lawful for all; but to practise polygamy after conversion [i.e. to marry another wife or wives after conversion] is equally unlawful for all'.³³

Ways of attacking polygyny were discussed at an inter-denominational 'Evangelical Alliance' held in Durban in 1861, but the Special Committee of the Alliance deemed it 'beyond their province to determine the means by which the immediate mitigation, and the ultimate removal of the social evils in the condition of the native population may be effected' The Committee contented itself by disclaiming that they advocated any rash or dangerous measures. Individual missionaries, however, offered a few suggestions. One recommended that if the time had not come for 'direct aggressive legislation', much could be done to undermine polygyny if the courts no longer heard cases arising out of lobolo claims, and if girls were given an effective free choice in marriage. The Reverend Aldin Grout advocated measures aimed at gradual abolition, while the Reverend Josiah Tyler favoured more vigorous methods:

'It is possible they might, in a few quarters, make some show of resistance, though I am not apprehensive of such a movement. It appears to me that the disunion of the various tribes in Natal ... is at present a satisfactory ground of belief that no measure of government, characterised by firmness, justice, and humanity, will meet with generally combined or formidable resistance'.³⁴

As has been noted above (see p. 26) the Natal authorities had looked to the imposition of a hut tax as a way of simultaneously raising revenue, forcing Africans into the labour market, and indirectly curbing polygyny. A tax of seven shillings per hut had been imposed in 1849. In 1857 the Government contemplated further measures of this kind, primarily with a view to increasing the Africans' contribution to the Colonial Treasury.³⁵ But Scott intimated to the Legislative Council that the

primary object of the forthcoming legislation would be to curb polygyny:

'Our first aim [in native policy] should be the correction of some one marked defect in the habits of the native: and our corrective progress should be quiet and gradual. As the elements of education are taught, so should we strive to advance a barbarian in civilisation step by step With a view of initiating a policy of this character, I propose to submit, for your consideration, a law placing restriction on polygamy. Amongst the many objectionable customs of the Kafir, it is, perhaps, the most repugnant to our laws, and most obnoxious to civilisation. There are those who advocate its subversion at once, by a direct prohibition, I do not believe its overthrow can be so obtained'.

He warned the Council that polygyny was firmly entrenched in African society and that '[i]nstitutions of this kind cannot be overthrown easily, or by a single impulse'. The bill he proposed to submit 'admits the evil, but restricts the practice, by the imposition of a fine, in an increasing ratio, on every additional marriage'.³⁶

The 'Bill to discourage Polygamy' was published in April 1857. It provided for the registration of all traditional marriages before a magistrate, and for the payment of a fee upon each registration. One shilling was to be paid for every first marriage; for second marriages the payment was to be three shillings in every pound sterling of the lobolo given or to be given; and for every subsequent marriage, an additional three shillings in every pound sterling of the lobolo. In addition, the hut tax was to be raised from seven shillings to eleven shillings per hut.³⁷ The elected members of the Legislative Council, despite their professed desire to eliminate polygyny, rejected most of the bill, ostensibly because they feared 'lest the increased rate of taxation might irritate the native tribes'.³⁸ According to Shepstone the real reason for their objection lay elsewhere:

'It was ... the first session of the Council elected under the New Charter and the £5,000 Reserve Fund for Native purposes was at that time an object of especial hostility to the elective Members. The revenue [i.e. the ordinary Colonial Revenue] was not quite equal to the requirements of the New Constitution and it appeared to be a favourable opportunity to push the Government on the subject of finance and if possible, compel the

relinquishment of the Reserve Fund for General purposes; the increased scale of the hut tax was therefore rejected, as well as the other regulations which aimed not only at restricting polygamy, but at increasing the revenue'.³⁹

The law that was finally passed merely re-enacted the original hut tax and added a few grounds of exemption.

No further attempts to modify African marriage were made for another ten years. But the economic depression of the late 1860's, which resulted in what Lieutenant-Governor Keate called the 'present exhausted condition' of the Natal Treasury, caused the authorities to cast around once more for some means of raising further revenue from Africans.⁴⁰ Earlier, in 1863, a customs tariff had been imposed deliberately to derive import duties from articles consumed in large quantities by Africans.⁴¹ But in 1866 a bill to double the Hut Tax had been disallowed because it was believed that this would unite the African population in opposition to the Government. Chief Justice Harding had said in Executive Council that Natal's 'successful rule of the Natives is attributable chiefly to a cautious avoidance of any measure which seemed to be opposed to their interests and prejudices viewing them as one body'.⁴² Shepstone considered the proposal to double the hut tax to be both dangerous and unjust, but he agreed that it was desirable for Africans to contribute more to the Treasury. In 1867 he proposed a scheme which, according to him, would avoid the perils of raising the hut tax: African marriages, births, deaths and the 'promotion or translation of wives or children from one rank to another' were to be registered at magistrates' offices. Chiefs and headmen were to be held responsible for ensuring that the information registered was accurate, for which they would receive either a percentage of the registration for that would be levied, or a fixed salary. He suggested that two shillings or two shillings and sixpence should be charged for the registration of births and deaths; and £3 for the registration of a change in rank, 'for in all such cases the security of the inheritance of some property or rank is the object'. The registration fee for

marriages would operate on the basis of a sliding scale: £1 for the first wife, £2 for the second wife and so on. Shepstone realized that his scheme entered into and interfered with 'most of the important events in the domestic condition of the Natives' and that it would have to be carefully explained to them in advance. He said he could not recommend the scheme 'unless I saw my way clear to other measures which would tend to recommend it to the minds of the Natives themselves'. He envisaged a regulation of the lobolo custom which, he claimed, would achieve 'a serious amelioration in the conditions of a large class of the native population, i.e. the young men'. In the times before Shaka lobolo, according to Shepstone, seldom exceeded five head of cattle.⁴³ In 1848, according to the Reverend Aldin Crout, the amount averaged from eight to ten head.⁴⁴ Shepstone said that the amount required had increased very considerably in recent years, and that 40 to 50 head of cattle for the daughter of a commoner, and 100 head for a chief's daughter were not uncommon requirements. This increase, he claimed, had put marriage beyond the means of most young men, while it had encouraged polygyny in older and richer men; it had also tempted parents to force daughters into marriage 'in so far as force is capable of being applied without provoking a reference by the girl to the Magistrates for protection'. The higher amounts had led to increased cattle-stealing and caused a rise in the incidence of adultery and illicit liaisons. Shepstone proposed a ceiling on the amounts of lobolo that could be demanded: ten head of cattle for a commoner's daughter, and thirty head for a chief's daughter. Cattle in excess of these numbers could still be given as lobolo, but only the ceiling numbers would be recoverable in the law courts. He proposed also the appointment of 'official witnesses' who would attend marriage celebrations and ensure that the intending bride was entering the marriage of her own free will. He recommended that chiefs should act in this capacity. A girl's guardian would not be permitted to refuse his consent to her marriage after he had received

the lobolo and the girl had given her consent before the official witness. Finally, Shepstone suggested that all fines or payments arising out of adultery suits between Africans should be paid into the Treasury because '[w]here polygamy prevails there is a strong temptation to the men to encourage laxity in their wives for the sake of gain'. He cited instances of this phenomenon.⁴⁵

Shepstone's scheme met with a mixed reception in the Executive Council. The Attorney General, M. H. Galloway, opposed it, arguing that the 'imposition of this graduated scale of fees on each successive polygamous marriage ... would in law amount to an allowance of polygamy for the purposes of taxation'. In his opinion

'any attempt to check polygamy should be made pure and simply untrammelled by any system of taxation so that the natives can appreciate our intentions and feel convinced that our desire to abolish polygamy is an honest and sincere one, and that the native parent whose property (marriage portion) are [sic] depreciated cannot reproach the Government that they obtained a pecuniary benefit from their interference. To depreciate the marriage portion now payable to the father to the extent intended and to remove the girl from parental authority by giving her the power to select any husband who can pay the ten cows marriage portion seems to me an arbitrary interference with the present native custom and an interference likely to provoke disaffection and displeasure'.

The Colonial Treasurer, J. W. Ayliff, supported the scheme. A doubled hut tax would increase revenue but it would not promote the 'civilisation' of the African population. He claimed that one evil had already resulted from discussion of the feasibility of raising the hut tax, namely

'the reduction in the number of huts and consequent crowding of the inmates, a process with a polygamic people which cannot fail to promote the most vicious habits and by breaking down the safeguards which their customs now impose, will induce laxity and immorality and cause discomfort and discontent which will sooner or later be followed by still greater evils'.

Ayliff discerned several advantages in Shepstone's proposals. The information derived from registration would provide the Colony with better statistical data. It would raise the status of African women: 'It gives the woman a voice in her own disposal, a privilege hitherto

denied her, and will thus confer upon her a recognised and legal standing whence she may gradually rise from her present degraded condition to a higher social position' Older men of limited means would have to seek work or produce saleable goods if they wished to marry new wives; and they would not be able to exploit their wives because, with their improved status, they 'will hardly care to aid their husbands to form fresh matrimonial connections' The scheme would facilitate the marriage of younger men of limited means 'who when they find that marriage is attainable will be anxious to marry and obtain the necessary number of cattle to do so, they will readily enter the service of the Colonists' Finally, it 'secures to our interest the co-operation and fidelity of the Chiefs and Headmen by delegating to them the performance of popular duties and paying them for doing so'. Snyliff said that he mistrusted the chiefs and considered them 'incompatible with the maintenance of good government and permanent peace', but he conceded that their influence was considerable. The Government could secure their cordial good will rather than incur their opposition 'if we confer upon them a legal and defined position as salaried Government officers, in the place of the quasi-political one they now occupy'.⁴⁶

In submitting Shepstone's scheme to the Colonial Secretary, Lieutenant-Governor Keate mentioned that a law enacted in 1867 had not imposed fees on the registration of the births, marriages and deaths of whites. To impose fees on the registration of African births and deaths would be a violation of the Charter because it discriminated on grounds of race. But African marriages were different: 'The position of the Native with regard to marriage is so entirely different from that of the white person, that I am not inclined to attach much importance to this assimilation of their cases. It is in fact an assimilation in name only and it can only be from the poverty of language that two things so dissimilar as Christian and Native marriages are called by the same

name'. Traditional African marriages were 'a matter of payment or barter, a transaction which may be entered into as often as any other business arrangement for the profit or convenience of the parties concerned'. A tax on traditional marriage would be like a tax on an instrument or deed by which property passed from one party to another. Keate attempted then to anticipate the objection that the scheme, if it became law, would be giving further recognition to polygyny. He pointed out that to ignore polygyny would be to upset an entire system of family ties and inheritance. Recognition for purposes of taxation would not be giving the institution further sanction than was already given to its bearing upon the inheritance of property. He did not think that more direct means would achieve the abolition of polygyny. He claimed that the wives and children of polygynists supported the heads of families:

'Until surrounding circumstances so change as to throw upon the husband and the father the work and the duty of supporting wife and children polygamy will prevail. The preaching of Christianity will not abate it except in isolated instances. Polygamy must work out its own abolition and Christianity will follow, not precede or hasten to general extinction. All that can be done by legislative interference is to help on and remove obstructions to the natural causes which are leading however slowly to that result'.

Keate claimed that implementation of the scheme would increase the African labour supply and augment the Colonial Revenue. If the fee for registration of first wives were £2, second wives £4 and third wives £6 (Keate advocated higher fees than Shepstone) and so on, £13,100 would be collected annually. This would be an amount equal to what would be collected if the hut tax were raised by a little over four shillings; but approximately twenty five per cent would have to be deducted from the amount to allow for the remuneration of chiefs.⁴⁷

A bill giving effect to the scheme was published in September 1868: 'To impose additional taxation on the Natives of this Colony, and to make provision for the maintenance and support of the Chiefs of such Natives'. It was passed ultimately as Law 1 of 1869, 'To enable the Lieutenant-

Governor to impose fees on the registration of Native Marriages, and on certain other customs and usages of the Natives, and to make provision for remunerating the Chiefs of such Natives'.⁴⁸ The law was short, and, in essence, conferred upon the Lieutenant-Governor power to frame regulations. The elective members of the Legislative Council opposed the measure vigorously and requested that the Crown Law Advisers in London should examine it. The reply came in March 1870. The Colonial Secretary, Earl Cranville, and the Law Advisers pointed out that this was not their function, but nevertheless complied with the request:

'the law in question is drawn up with extraordinary carelessness and inaccuracy, so as to afford room for abundant cavil at almost all of its provisions, yet if it be read as a whole, with a bona fide desire to arrive at its meaning, we think that meaning sufficiently plain'.⁴⁹

Before regulations under the Law were promulgated, Shepstone toured the Colony and held discussions with Africans on the regulations that were proposed. In a memorandum on his findings he reported that

'the objects sought to be obtained by the law of enabling young men to get wives, by lowering the number of cattle transferred to the woman's family on marriage, of registering marriages, so that evidence independent of oral testimony might afterwards exist of the fact and condition of the marriage, were admitted by the old men to be good and desirable objects, and hailed by the young as a great boon. But, they asked, could those improvements not be made without the heavy payment to the Government, which it was proposed should accompany them?'

Shepstone explained to them that their contribution to the colonial revenue was not considered sufficient, and he claimed that the whites contributed 'much more' than they did. The Africans then asked that a fixed sum be imposed rather than a sliding scale for the marriage tax. They suggested £3, but Shepstone insisted that it be £5. In regard to lobolo, '[t]he older men proposed that in accordance with ancient custom, a difference should be made in the limit to be allowed to different ranks in the number of cattle they might receive for their daughters'. Shepstone accepted this proposal and recommended that the following table be adopted:

Hereditary chiefs	-	no limit
Appointed chiefs	-	20 head
Brothers and sons of hereditary chiefs	-	15 head
Commoners	-	10 head

Shepstone suggested that any number of cattle given in excess of those rates should become the perquisite of the chief of the girl's family, the chief being required to report every such seizure to a magistrate.⁵⁰ The fixed tax of £5 and the scale of lobolo amounts suggested by Shepstone were adopted.

Related to the limitation placed on lobolo was an attempt to clothe traditional marriages 'with as much finality as possible' by severing the ties between a married woman and her family. Shepstone was aware that a woman had the right to return to her kin should her husband ill-treat her, and that her father could demand another beast from the husband before allowing her to return. He believed, however, that this paternal power was used 'sometimes to an extravagant and pernicious extent', although an appeal to the chief would usually secure the husband's rights. Moreover, Shepstone considered it immoral that after the dissolution of a marriage a woman's father could demand lobolo in any subsequent marriage. Explaining this to the Cape Government Commission on Native Laws and Customs in 1881 Shepstone said that it had been hoped that making marriage a final transfer of a woman from her family to her husband's family would bring social and political advantages. It was thought that a modification of the lobolo custom 'would prevent misunderstandings and litigation where they most frequently occurred, and attach more solemnity to the marriage itself'. Accordingly, no property which passed between the families at the first marriage could be recovered on its dissolution, and furthermore, on the marriage of a daughter her father's family lost all legal right to interpose on her behalf.⁵¹

A contentious feature of the system was the institution of the 'official witness'. In terms of the regulations magistrates were to arrange with the chiefs in their counties and divisions for the appointment

in each tribe of two or more persons to act as official witnesses, as the size of the tribe required; such appointments were to be made by the magistrate, on the nomination or recommendation of the chief.

Chiefs were to be responsible for ensuring that no marriage took place in their area without an official witness being present. The following procedure was to be adopted:

'At an early part of the [marriage] ceremony the official witness shall publicly ask the girl to be married whether it is of her own free will and consent that she is about to be married to the man who proposes to become her husband? And if she declines publicly to announce her consent, or if she shall declare her dissent, the official witness is empowered and required to prohibit the further proceeding with the ceremony, and if necessary, to take the girl at once under his protection and escort her to the magistrate. Provided, however, that in the case of the marriage of any widow or divorced woman, at which none of the ceremonies that usually accompany that of a girl never before married are observed, it shall be a sufficient compliance with these Regulations for the official witness to put the question as to the woman's consent, and to require and receive the payment of the registration fee at any time between the day of engagement between the parties and that of marriage, inclusive of the latter'.

As soon as possible or convenient after the marriage, the official witness was to pay over the marriage fee to the chief or to the magistrate.

Marriages were to be registered at the magistrate's office.⁵²

The practice of ukungena was dealt with in the following year.

In a circular to the magistrates Shepstone said that ukungena

'is so universal and held in such respect by the Natives generally that it was deemed undesirable to attempt to put a sudden stop to it by any Regulations under Law No. 1, of 1869. It is, however, a practice which the Government has always discouraged, and is still desirous of discouraging as far as it may be wise to do so'.

The following rules were laid down to govern the custom:-

1. The free consent of the widow to being ngena-ed.
2. Widows were to be at liberty to marry under Law 1 of 1869.
3. Ukungena unions were to be registered after the consent of the widow(s) had been ascertained by the official witness, and reported to the magistrate.
4. Upon registration a fee of £5 (irrespective of the number

of wives who wish to be ngena-ed) was to be paid by the estate for whose benefit the arrangement was intended to be made.

5. 'The arrangement of "ukungena" shall confer no right of ownership upon the surviving brother in respect of the family or property of his deceased brother, but he shall be held responsible for the proper management and care of such family and property for the benefit of the heirs'.⁵³

In conveying the regulations under the Marriage Law to magistrates in October 1869 Shepstone said that it was 'desirable that the new regulations should be supported by a more stringent treatment of cases of seduction of girls and adultery'. Formerly these were civil wrongs triable under customary law; now they became criminal offences. He claimed that the aim was 'to check the licentiousness which some of the Natives fear will follow the liberty conferred by the new regulations upon the women, and that it is intended by such punishment to support the parental authority, as well as to enforce greater respect for the condition of married persons'. The punishments to be enforced were severe: for either seduction or adultery a maximum of twenty-five lashes and three months, or a fine of £10 were to be imposed. Whipping and imprisonment were to be reserved particularly for young, unmarried men. In the same circular Shepstone directed that the practice of keeping more than one wife in a hut be forbidden: 'This practice is not only objectionable, but if carried to any extent, will cause a serious deficiency in the proceeds of the Hut Tax'.⁵⁴

Missionary and colonist opinion reacted strongly to the Marriage Law of 1869. The essence of the opposition case was that the Law gave sanction to odious practices such as polygyny and lobolo. The most vociferous opponent of the measure was R. E. Ridley, an elected member of the Legislative Council and the editor of the Natal Witness, whose editorial columns he used to lambaste Shepstone and all his works. The institution of the official witness was ridiculed as a completely ineffective safeguard for women, because the official witness was to be an African,

recommended or nominated by the chief. It was argued that he would be more than likely to identify himself with conservative male opinion in matters affecting women's status and rights, and, therefore, he might be vulnerable to corruption and dereliction from duty. 'Kaffirs ought not to be called upon to perform duties which bring them into collision with Native Laws'.⁵⁵ Moreover, there was no guarantee that parental pressures could not be exercised on girls to induce them to give public consent to marriage in spite of their own reluctance. Ridley reminded the Legislative Council 'what Kaffir nature was, and what pressure a Kaffir could bring to bear upon his daughter'.⁵⁶

In June 1869 the Legislative Council presented Keate with addresses praying for the tabling of correspondence relating to the Marriage Law between him and the Colonial Secretary. Keate refused, saying to the Colonial Secretary, Earl Granville, that

'a correspondence which enters fully into the possible results of, and the dangers calculated to arise from this or that mode of taxing the Native population, and of interfering with their prejudices and customs, and which comments upon their inter-tribal relations, and the manner in which these are availed of for their control and government, seems to me to be the very last which ought to be submitted to the chances of public discussion'.⁵⁷

Commenting on Keate's refusal, the Natal Witness claimed (wrongly) that the

'secret despatches reveal very plainly how much Mr. Shepstone is in the power of the Kaffirs. He has submitted to them in everything. They have dictated to him how they would have the polygamy law applied and he quietly consented They were told that the girl must give her consent to the marriage before a magistrate. Oh no, said they, that will not do; but we will ask her consent before an induna at her kraal'.⁵⁸

Another manoeuvre of Ridley's was to introduce into the Legislative Council a bill 'To procure equality in Marital Facilities within the Colony of Natal'. The preamble read:

'Whereas it is the determination of Government officers in this colony that the possession of several women, under the name of wives, shall be licensed in perpetuity, on payment merely of a registration fee; and whereas Her Majesty's Principal Secretary of State for the Colonies

asked Shepstone if a legal marriage had in fact taken place, and when Shepstone confirmed this, the case was remitted to be heard under customary law. The magistrate imposed a very heavy fine on the husband, Nhlabati, and others who had aided and abetted him. Shepstone claimed that the girl was very interested in securing a conviction of the defendants because she had a lover and wished to dissolve the marriage. The defendants were convicted solely on her evidence. Shepstone doubted her veracity, and decided not to enforce the punishment. He claimed that the defendants would almost certainly appeal against their conviction and that the appeal would modify or reverse the magistrate's decision. This would do damage to the Government's prestige.⁶³ The matter had been forgotten when, in June 1869, Ridley moved an address in the Legislative Council requesting that the papers relating to the case be tabled in the House. At a time when loud accusations were being made about forced marriages and the probable ineffectiveness of the official witness, Ridley's action sharpened the edge of criticism against Shepstone. The outcome of the episode was that Shepstone was sharply rebuked by the Colonial Secretary, Earl Granville, and the despatch containing this rebuke was published in the Natal Government Gazette and in local newspapers, much to Shepstone's chagrin.⁶⁴ Granville commented:

'I fully understand the necessity of caution in dealing with Native Customs even of a very obnoxious character. But this caution ought not to prevent the Government from exercising a continually increasing pressure on these customs - especially by inflicting exemplary punishment when usages in themselves odious, are alleged to shelter acts of an exceptionally revolting nature Any indication that a Christian Government is indifferent to an event of this kind, must have a demoralising effect on the Natives - must weaken the influence of that Government in the direction in which it is most valuable, and must also weaken the argument which Mr. Shepstone's generally excellent management of the Natives supplies for retaining the Native Affairs [sic] under the exclusive control of the Executive Government'.

Granville upheld the Legislative Council's objections and stated that the magistrate's sentence ought to have been carried out. But he rejected the proposal to amalgamate the Native Affairs Department with the Colonial

Secretary's Office, saying that the Executive Government's control over Native Affairs should be strengthened rather than weakened.⁶⁵ Shepstone replied to this censure in characteristic vein:

'I have felt, and still feel, that the Government would not be justified if it incurred risk by pushing moral experiments with too strong and open a hand. It is a difficult task to manage such a population, as to conciliate the strong desire for its improvement, which every right-minded man must feel and at the same time to exercise what His Lordship [Granville] very accurately describes as continually increasing pressure upon odious customs, which pressure shall not however exceed the capacity of the people concerned to bear; this ... has been the steady policy and object of the Government since its first establishment. Open or apparent conformity to customs and usages which we consider seemly and proper may be secured with more or less rapidity, according as more or less force is used, but it will always be at the expense of sympathy and confidence and possibly at the risk of considerable Imperial expenditure'.

Moreover, Shepstone argued, the case in point was some years old, it was an exceptional occurrence, and it had been dragged up as a stick with which to belabour the Government.⁶⁶

Shepstone weathered the storm. In the Legislative Council debate on the bill to amalgamate his Department with the Colonial Secretary's he was provoked into the use of strong language by the elected members' criticisms: 'I am not so blind as to be unable to see that the office and position I hold are a stumbling block to the elective element of this Council (Hear, hear); and that it is sought to do away with both, under colour of achieving financial saving' He stigmatised their opposition to the Marriage Law as

'veiled, but very thinly veiled, by the profession of a tender solicitude for the moral welfare of the natives [The Law's] immorality was at first the great objection to it, but to this charge was invariably added the misgiving that it would not produce money enough. Gradually the charge of immorality became merged in the greater importance of the financial misgiving; and it is now very evident that if that law would give the objectors a little more money they would be content with much less morality ... the solicitude ... for the moral welfare of the natives is to be measured exactly by the amount of labour and money that can be got out of them'.

In conclusion he said that the 'natives are a separate people, separately

governed, separately taxed; they are treated as a distinct people because they are distinct, and must be so treated to be governed at all'. He did not object to Africans being taxed to contribute a fair share to the revenue 'but I do object to OUR NECESSITIES being made the gauge of what that fair share is'.⁶⁷ Judging by the tone of editorial comment in the press, Shepstone was justified in his comments. For instance, a Natal Witness editorial (written by Ridley) had said:

'He has not merely neglected to obtain more revenue from the natives, and allowed them to settle down in confirmed barbarism, but he has most determinedly and successfully opposed every attempt to improve the native policy, whereby we would have obtained more revenue, more labour and more civilisation'.⁶⁸

However mercenary the colonists' motives were in assailing the Marriage Law, some of their criticisms had a measure of plausibility. It was not, for example, prima facie unlikely that the official witness could be swayed by the conservative ideas of the male-dominated society of which he was a part. The Legislative Council had pressed for the consent of the women to be given before a magistrate 'or other duly appointed European inhabitant'.⁶⁹ But this would be inconvenient, as Shepstone had pointed out, because many Africans lived far from magistracies.⁷⁰ There were also ways of thwarting the restriction placed on lobolo. As a correspondent in the Natal Witness pointed out, 'all that is necessary for [a rich man] to do, is to promise the father of a girl a present, say of a dozen head of cattle, or more, as the occasion may require in the event of the young lady making her choice in his favour'.⁷¹

The implementation of the Marriage Law, after 1 November 1869, got off to a bad start. In a circular dated 25 November Shepstone reported that there had been extensive evasions of the law. Many cases of girls being married against their will had occurred; girls below the age of puberty had been married off in mock ceremonies; sometimes marriage celebrations had been omitted altogether. Taken lobolo of one or two

head of cattle and promises of many more to follow had been given, instead of the proper amounts. The aim behind this evasion was obviously to avoid payment of the marriage tax by concluding marriages before the Law could be effectively enforced. According to Shepstone:

'The girls themselves ... have, as a rule, been opposed to this wholesale and mercenary disposal of their persons. Many resisted, and were overcome; others fled, and awaited in concealment the proclaimed day to protect them. In some parts of the Colony their repugnance was attempted to be subdued by the circulation of imprudent falsehoods, representing that if by the proclaimed day any girl was found unmarried, she would be subjected to personal disfigurement by the orders of the Government, and the result is that, by such, and other unlawful and discreditable expedients, numbers of marriages, so called have been hurried through by parents and guardians, to avoid the operation of the law, and evil has been suddenly produced throughout a great portion of the colony'

Shepstone directed that the task of sorting out lawful from unlawful marriages be given to the chiefs. The resident magistrates were to make enquiries of each chief in their area of jurisdiction, and the chief's word was to be accepted, although they were to be warned against shielding offenders. 'It is essential ... that the Natives should see and understand that the Government is resolved to vindicate its dignity and that however quietly it may act it is inflexible in its manner of manifesting its displeasure'.⁷² The Natal Witness crowed at the reports of 'extreme excitement' among the African population and observed that the Government had 'assured the Colony and the Secretary of State that the fees under the marriage law could be easily collected, and would not be resisted, because it did not press upon the Kaffirs as a body at one time, and that therefore there would never be a combined resistance against it'.⁷³

The marriage tax remained unpopular with Africans, and it failed to produce the revenue which the Government had anticipated: Keate had estimated that an annual sum of £13,100 would be raised under the 'sliding scale' system, and, when this was abandoned in favour of the £5 fixed fee, he claimed that an annual sum of £19,115 would be obtained.⁷⁴

But after five years in operation it was seen that this estimate was over-optimistic. In 1874 the marriage fee produced only £13,648 while the hut tax produced £27,683. Objections to the Marriage Law by colonists and missionaries had continued unabated. In 1875, for example, the Wesleyan Missionary Society had complained direct to the Colonial Secretary, the Earl of Carnarvon that:

- '(1) The Sum of £5 is payable upon all Kaffir marriages, without exception, while Europeans can be married by banns for four shillings.
- (2) That by accepting this fee, and by registering the marriages of additional wives according to Kaffir usage, there is a legal sanction and status given to polygamy, one of the greatest evils affecting the social condition of the natives' 75

In the light of the continuing protest, the undoubted unpopularity of the tax among Africans, and the disappointing fiscal return (at a time when the expenditure of the Colony was increasing), it was decided in 1875 to abolish the marriage tax and instead to double the hut tax.⁷⁶ This was done in terms of Law 13 of that year.⁷⁷ Shepstone himself did not oppose the change very vigorously, but he asserted in 1876 that the doubled tax was more unpopular even than the £5 marriage fee.⁷⁸ Although the marriage fee was abolished, other features of the Marriage Law, including the official witness system and the limitation on lobolo, were retained.

Protests continued to be made about the alleged legalising of polygyny. In 1871 a large meeting took place in Pietermaritzburg 'to consider the propriety of memorialising government, or taking other steps, for the discontinuance of polygamy' In its report of the meeting the Natal Witness observed that polygyny might be an evil but polygyny which interfered with the supply of labour must be an evil worth grumbling at.⁷⁹ The polygyny issue was debated in the Legislative Council in October 1872 when J. N. Boshof moved a resolution requesting the Government to take steps to abolish the custom.⁸⁰ There were those who argued that the

colonists would deteriorate morally through contact with a people who practised polygyny. A correspondent in the Natal Witness claimed that 'in India Europeans are changing their faith for the purpose of polygamy' Public opinion would degenerate by 'contact with polygamous surroundings'.⁸¹ Lobolo, too, received continuing condemnation. In 1877, for instance, James W. Winter, a former member of the Legislative Council, brought out a pamphlet on lobolo called 'Gigantic Inhumanity, or Women Slavery in Natal' in which he cited alleged cases of cruelty occurring under a kinship system which had the declared protection of the British Government.⁸² Shades of the Nhlabati case were evoked in December 1875 when the Natal Witness published a sworn affidavit signed by an African woman:-

'My name is Nomabaga; my father's name is Jonas. He lives near Edendale Mission Station. I am not married, but my father wishes to force me to marry Isibulu, who asked me to marry him last year, but I refused. He afterwards asked me to marry, but I still refused I ran away, because I was afraid of being violently forced to marry Isibulu. To my knowledge, other girls have been forced to marry against their will. I know that the law says that I am not obliged to marry against my will, but my father threatened to shut me up in Isibulu's house with him until I complied'.

The colonist who took the woman under his protection had asked a magistrate for advice and explained what he had done. It was alleged that the magistrate had ignored the colonist's letter, 'but a warrant was brought by a white constable, charging the girl with deserting the service of her father, with directions to hand her over to the native police to be taken up to Pietermaritzburg'.⁸³ Further allegations of similar cases were made in the press, pointing to the inefficacy of the official witness as a protector of women. In September 1877 a letter published in the Natal Witness claimed: 'There are cases which prove that the girls are forced, as they have complained to the Native Department about it, but they are so cowed, tormented, and persecuted when they do so, that the greater number think it better to give in'.⁸⁴ The Attorney General admitted in 1879 that the system had not worked as satisfactorily as might have been hoped. He said that the Government was aware of the

desirability of a change and that, shortly, new regulations would be promulgated. In future the parties would be required to go to a magistrate, and the woman would have to give her consent before him.⁸⁵ The promised regulations, however, were never promulgated.

The 1881-2 Commission heard conflicting evidence on the working of the official witness system. Several witnesses said that it had not provided adequate safeguards for girls. An African informed the Commission that while he did not know of deliberate evasions of the Marriage Law he knew of parents who were able to persuade a daughter to marry a man chosen by them rather than the one she loved. But another African witness complained that they could no longer marry their daughters off to husbands whom they liked; and, moreover, although the Marriage Law provided for a father's consent to his daughter's marriage, this was not enforced. Formerly, he said, 'if the father liked one man, and the girl another, there used to be nothing but waiting for an amicable arrangement to be arrived at'. The Commission guardedly said that the official witness system had worked beneficially. It recommended that when a girl reached the age of twenty her parent's or guardian's consent to a marriage should no longer be required.⁸⁶ An interesting comment by the African newspaper Inkanyiso in 1891 cast further doubt on the effectiveness of the measure taken to prevent women being forced into marriage:

'The Government has ... forbidden this coercion, and has provided proper protection for a girl who complains of such treatment; but there are very few who care to avail themselves of this, they shrink from the thought of bringing their fathers before the Magistrate, and for this they are to be admired. The provision itself is a bad one since it encourages children to rebel against the authority of their parents'.⁸⁷

The regulation of lobolo under the Marriage Law produced few of the effects Shepstone had hoped for. He admitted this to the 1881-2 Commission, saying that the change had 'much loosened the ties between father and child' The stabilising effect of lobolo on marriage had been undermined. The father had lost his protective right in respect of a

married daughter, and he could no longer be required to return a portion of the lobolo in the event of a dissolution of the marriage.⁸⁸ Africans complained that the function of lobolo had been perverted. For example, Nambula and Makubula told the 1881-2 Commission that the Government 'by fixing the number of cattle have made lobolo a matter of buying and selling'.⁸⁹

Linked with the grievance over the change in the function of lobolo was a widespread feeling that women were granted divorces too easily. Godide and Madude said that women left their husbands with impunity knowing that they could not hurt their fathers as lobolo was not returnable. Others complained that when their sons married their wives followed them. Umganu complained:

'When a son marries and leaves his father, his mother takes her departure also, in this way a man's wives all leave him, and if unable to obtain a fresh one, he is left alone "to sweep his own hearth, and do other womanly duty"; this is a great grievance to us'.⁹⁰

Another complaint was that girls who were forced into uncongenial marriages submitted readily, knowing that divorces would be easily obtainable.⁹¹

The changes effected by the Marriage Law of 1869 were accompanied by other social and economic forces which undermined the traditional kinship system. Its economic self-sufficiency declined and increasing numbers of people had to go out and work as migrant labourers. The separation of families and increased mobility expedited the loosening of kinship ties. (see p. 331). The effect of economic forces was largely overlooked in the debate among colonists and missionaries on the burning issue of polygyny. The decline of polygyny was inevitable when the population increase resulted in land shortage. In such circumstances, as Lieutenant-Governor Keate noted in 1871, an additional wife could well become an economic liability rather than an asset to a man (see p. 118). The 1903-05 Commission on Native Affairs showed that Keate's prediction was accurate: polygyny had declined, and, according to the Commission, economic forces would in time cause it to die out completely.⁹² The

hut tax was a further economic burden for the polygynist, as was the inflated rate of lobolo (see p. 89). In 1875 Dean James Green estimated that the average price of a cow was £5 compared with £2 twenty years earlier. Green had asked several magistrates what the proportion of unmarried to married men was, and each had replied independently that unmarried men constituted over 65% of the adult males.⁹³

The registration of customary marriages after 1869 provided statistical confirmation of the decline of polygyny. The following table shows the percentage of first and subsequent marriages:

Year	Total Number of Marriages	1st marriage	2nd marriage	3rd marriage	4th marriage	5th marriage and upwards
1870	398	55.8	24.4	11.6	4.3	3.9
1871	1,056	56.8	25.2	9.1	4.0	4.9
1872	1,823	58.7	24.7	8.3	4.2	4.1
1873	2,125	59.2	24.9	7.9	3.9	4.1
1874	2,505	59.8	23.9	9.6	3.1	3.6
1875	2,573	57.7	23.5	9.5	3.7	5.6
1876	3,195	56.0	26.0	8.6	3.9	5.5
1877	2,750	60.6	21.9	8.8	3.1	5.6
1878	2,615	57.1	26.0	8.4	3.9	4.6
1879	1,733	63.4	22.9	7.8	2.5	3.4
1880	4,277	60.7	24.7	8.1	3.2	3.3
1894	4,071	68	22	5.9	2.2	1.9
1895	4,065	67	23	5.9	2.4	1.7
1896	4,347	69	21	6.6	1.9	1.5
1897	3,736	69	22	5.6	1.3	2.1
1898	3,792	71	21	5.0	1.8	1.2
1899	2,211	69	21	6.4	2.0	1.6
1900	2,732	67	22	6.3	2.1	2.6
1901	3,649	70	22	6.6	1.7	0
1902	4,442	67	25	7.0	1.9	0
1903	6,151	69	22	5.8	2.0	3.1
1904	4,984	68	23	6.4	2.2	0.4
1905	5,583	67	23	6.3	2.1	1.6
1906	5,739	72	21	5.4	1.9	0
1907	5,182	70	21	5.8	1.5	1.7
1908	5,998	69	22	5.9	1.8	1.3
1909	4,990	70	22	6.0	2.0	0

(Figures for the years 1881 to 1893 were not published)

Source: Evidence of Theophilus Shepstone, Report and Proceedings of Government Commission on Native Laws and Customs (Cape Town, 1883) G.4 - (83) p.69

Blue Books on Native Affairs, 1898, 1902, 1906, 1908 & 1909 (published in Pietermaritzburg).

As this chapter has shown, the treatment of polygyny was one of the main issues which divided the Natal Government and colonists and missionaries in the 1860's and afterwards. Shepstone dashed any hopes of vigorous onslaughts on polygyny and lobolo, but he was prepared to impose a heavy punitive tax on African marriages. The tax showed clearly how cultural differences could serve as a peg on which to hang discriminatory legislation.

University of Cape Town

VI

Provision for Christian Marriage

If the missionaries were anxious to abolish polygyny, they were no less anxious to ensure that their converts married according to Christian rites. But under Ordinance 3 of 1849 customary law was held to apply to all civil matters between Africans, and marriage, being a civil contract, therefore had to be according to customary law. Conversely, the Ordinance regulating marriage under the ordinary law of Natal (Ordinance 17 of 1846) could apply to whites only. Despite legal uncertainty missionaries went ahead and married Africans by Christian rites. The complex situation that was created is illustrated by a case that occurred in 1853 when an African, Umzondo, who had been married by Christian rites, wished to obtain a divorce. Pine attempted to clarify the situation:

'I am clearly of opinion that these natives by marrying according to civilised law, have not ipso facto freed themselves from the jurisdiction of Native Law as reserved by the Letters Patent, and that it is perfectly competent for me, and officers acting under me according to Native Law, to dissolve the marriage so far as Native Law and Usage are concerned. The effect of such divorce will be to enable the parties to marry again according to Native Law, and to compel the restoration of the cattle given on the marriage. But the divorce will not enable the parties to marry again according to the Roman-Dutch Law, for the moment they enter its jurisdiction for that purpose, the former marriage would be a barrier to the second one'. 1

From the missionaries' point of view this was not a satisfactory state of affairs. Nor could Pine be said to have clarified the issues: the back-handed, indirect recognition accorded to Christian marriages hardly put them on a firm legal footing. The matter clearly required intervention by the legislature. Scott said that he had drafted a law to regulate Christian marriages shortly after he had taken office (November 1856), but, for reasons he did not disclose, it was never introduced into the Legislative Council.²

The legal uncertainty clouding Christian marriages continued into the 1860's. The authorities, however, were forced to pay attention to the anomalies of the situation by a Supreme Court case in 1863. John Ogle, an Englishman and one of the earliest settlers in Natal (he was Fynn's servant), contracted a marriage with an African woman for whom he gave lobolo. Ogle subsequently married several other African women. He had four children by the first wife and publicly announced that the eldest son would be his successor. Ogle died in 1860, having earlier in that year made a will whereby he left all his property, which was of substantial value, to the Wesleyan Missionary Society. The first wife now sued the Missionary Society's trustees for half of Ogle's property as his widow entitled to community of goods. A majority of the Court found for the widow on both of the main questions to be decided: whether she was the lawful widow of Ogle, and whether community of goods attached to the marriage. The judgments were strange and widely disparate.³ The case, however, had the effect of focussing attention upon the anomalies that could occur when two matrimonial systems interacted.

In a discussion of Christian marriage by Africans in the Executive Council, the Chief Justice, the Attorney-General, the Secretary for Native Affairs and the Lieutenant-Governor all agreed that these marriages were valid only if they complied with the essentials of a traditional marriage, by which, presumably, they meant that lobolo had been transferred. (In an interesting sidelight on the social changes occurring among Africans the Council noted that lobolo now often took the form of money).⁴

A further problem had arisen when Africans who had married by Christian rites wished to obtain divorces. Scott said that he, in his capacity as Lieutenant-Governor and Supreme Chief, had often been asked, even by missionaries, to pronounce a divorce between African couples married by Christian rites, but, he continued, 'I have always refused, because although competent to decree a divorce between married natives, I could not take upon myself to set aside a marriage solemnised under the Christian ritual'.

One case had been brought to him by the Reverend Aldin Grout, but Scott had advised him to take it to the Supreme Court. The Supreme Court, however, declined to entertain the suit on the grounds that it had no jurisdiction, i.e. because it was a matter that related to customary law and usage.⁵

From Scott and Shepstone's point of view the problem was one of reconciling Christian marriages with pre-existent kinship obligations that missionaries

'are found to hold extreme opinions when their own calling comes under consideration and civil laws are not always recognised by them if opposed to their particular religious views. There are ... instances where they have married natives who were not competent to marry, having spouses to whom they were married by Native Law. These ministers are shocked and astonished when told that the Christian ceremony of marriage which they had performed was no marriage or if a marriage it could only be accepted as a Native polygamic marriage. Polygamy may be according to their interpretation of the scriptures a sin but so long as the Native Laws are in force we are compelled to recognise the validity of native marriages' 6

On another occasion Scott said that '[t]he ceremonies which take place on a marriage between Natives differ much in their minor details, and to us, who are accustomed to the formal and solemn ritual of the Church, they appear, perhaps, too informal and frivolous, but we are none-the-less compelled to accept them as equally binding'.⁷

A draft law prepared in 1863 attempted to meet all these difficulties. It aimed to validate all Christian marriages previously entered into, and to enable Africans to marry under the ordinary marriage ordinance of the Colony. If one or both of the parties wishing to marry by Christian rites were not exempted from the operation of customary law (the exemption legislation was being prepared simultaneously (see p. 67)) they would have to obtain a certificate from the clergyman under whose care or teaching the intending husband had been. The certificate was to show that neither was a partner in a pre-existing marriage. The certificate was to be duly declared before a magistrate and then forwarded to the

Secretary for Native Affairs who, in turn, would forward it to the Lieutenant-Governor, who would then decide 'whether it would be right to permit the marriage'. If he were satisfied that there were no valid objections he could issue a letter of authority. Parents or guardians would be required to give their assent to the marriage in the case of a minor. The assent of the father or guardian would be required for the marriage of a woman even if she were over the age of twenty one years if she was the daughter of a man not exempted from the operation of customary law. According to Scott's commentary on the draft, this

'exceptional provision is for the purpose of preventing a civilised native obtaining a wife surreptitiously from amongst those natives living under their own laws and customs and without payment to the father of the ukulobola which is an essential feature of a Kaffir marriage. It is not easy to explain the effect of this; I will only state that it might be very mischievous and hence a check has been placed upon its being practised'.

A unique and unprecedented attempt to synthesise customary law and Roman-Dutch Law provisions was contained in Clause 13 of the draft bill: if the intending husband was not exempted from the operation of customary law the parties were, 'both in their persons and property', to continue to be subject to customary law. Scott remarked that their first intention in framing this clause was to make the Christian marriage itself an act which would exempt the married person from customary law, 'but on a full consideration this was felt to be objectionable on many grounds and it was abandoned the more readily as by the law for exempting individual natives such married persons could themselves by their own act step out of the native law'. As the parties could still be under customary law a further clause provided that divorce could be obtained only by a Supreme Court order, and not by any customary law procedure. It was further provided that in the event of a divorce or the death of one of the spouses future marriage by customary rites was to be prohibited. This was an attempt to prevent possible 'sliding back into heathenism'. Another clause provided that a man who was a party to an existing Christian

that there was any clash in the provisions of the draft law, as the Queen's Advocate had suggested, and explained why the bigamy clause had been inserted:

'It is to be hoped that when a Native has become a Christian convert and has contracted a marriage in accordance with Christian practices, he would not relapse into heathenism, but we cannot say this may not be the case, and it becomes necessary to provide against his taking advantage of his abandonment of a religion he had adopted, and scandalising the marriage ceremony he had himself selected; besides it might be that his wife whom he had married by the Christian ritual still remained a sincere Christian, and, would, therefore, claim to be protected from the heathen inclination of her husband'.

In practice, said Scott, it was unlikely that the clause would have to be used because it was probable that most Africans who married by Christian rites would wish to become exempted from the operation of customary law.¹¹

Scott's arguments re-assured the Colonial Office in Whitehall, which admitted that the Queen's Advocate had not been fully informed of Natal's policy. According to an official, Sir R. Rogers, 'this native marriage project enables natives to marry as Christian; without in other respects abandoning their native usages. The effect will be, or ought to be, to aid missionaries in breaking down what is the great obstacle in their improvement - the peculiarly base form of polygamy which prevails among them'.¹² In his reply, E. Cardwell, the Colonial Secretary, acknowledged that the proposed law would, by providing for the gradual introduction of Christian marriages, be part of the general scheme for the 'improvement' of Africans. He suggested minor alteration in the wording and substance of the draft law and authorised Scott's successor, Maclean, to assent to it should the Legislative Council pass it with these amendments.¹³ The bill was introduced into the Legislative Council in August 1865 and received a first reading, but then it was allowed to lapse.¹⁴ It was not reintroduced at the next session of the Legislative Council. No reasons were given for this at the time, and neither is there documentary evidence to explain why this should have occurred. The most likely

explanation is that Shepstone, who was notoriously unenthusiastic about the legislation, dragged his feet and caused the bill to be quietly buried.

Colonist opinion was scandalised at the absence of clear legal footing for Christian marriages for Africans. The colonists, like the missionaries, saw in Christian marriages a means whereby traditionalism could be attacked. Their demands for making such marriages available to Africans generally went hand in hand with attacks on polygyny, lobolo, and demands that the status of African women be raised. At a protest meeting in Durban in September 1863 a memorial was drawn up which noted

'the case of two Kaffir spouses, married by Christian clergymen, in accordance with British custom, but without the usual purchase money being given in the form of cattle, in which case, as understood by your memorialists, the marriage is pronounced invalid; the spouses so living together are declared guilty of the most offensive crime, the children born to them are illegitimate, and on the death of the husband, the nearest male relative most commonly claims the widow, her children and all her property as his own, and not infrequently sells the former again into the bondage of corruption'.

The memorialists recommended the enactment of legislation 'confirming all marriages between Kaffir spouses performed by Christian clergymen, securing to such parties and to their issue all legal rights, and clearly exempting them from the operation of Kaffir Law'.¹⁵

Despite the absence of statutory provision for Christian marriages, the regulations issued under the Marriage Law of 1869 dealt with them. They provided that where Africans wished to marry by Christian rites, the presence of the official witness could be dispensed with, but the parties were required to obtain a licence permitting the marriage from a magistrate and to produce this before the officiating clergyman. It was laid down also that the parties to a Christian marriage could, if they so wished to forego the transfer of lobolo, provided that the father or guardian of the woman made a declaration before a magistrate voluntarily resigning his right to receive lobolo, and 'such declaration of voluntary resignation ... shall be an effectual bar to any future claim for property on the ground that none passed at the marriage'.¹⁶ The Ratal witness commented that

the regulations contained so many 'difficult and obnoxious conditions' as to make the concession of lawful Christian marriages almost valueless to Africans: 'Instead of affording facilities and encouragement to Kaffirs who desire to imitate the white man in this respect, they do the very opposite, - they raise impediments in the way of a Kaffir marrying according to Christian rites, which the heathen ceremony is not burdened with'. The procedure for resigning rights in lobolo was deficient because

'the responsibility is thrown on the girl to prove who is her proprietor. Her father may not be living, she may be the property of some distant relative, yet the onus rests on her to find out that the proper owner is brought to resign property in her. Should the wrong man, by any chance, do so, the marriage would be invalid, and she might in after years be dragged from her husband and sold to some other man'.

Shepstone was accused of 'unblushing hypocrisy' and inconsistency: he had dismissed objections to the 'official witness' system because the alternative of having women declare their consent to marriage would involve the parties in many instances, in lengthy journeys, but this inconvenience was not considered in the case of Christian marriage.¹⁷

The provisions of the regulations left the status of Christian marriages unclear, particularly when they were considered vis-a-vis customary marriages. Speculatively, it may have been the Government's intention to issue these regulations (in so far as they related to Christian marriages) as a sop to hostile colonist and missionary opinion, pending the day when the time would be considered ripe for a more definitive statutory measure. In a memorandum drawn up some time afterwards, Shepstone said that one of the main aims of the regulations had been '[t]o add to the dignity and solemnity of [Christian] marriages by issuing a licence for their celebration similar to that required by law in cases of Christian marriage.' But the addition of a Christian ceremony made no difference to the legal status of the marriage.¹⁸

The limited extent of the changes effected by the regulations became

marriage of a widow, as of a girl to be valid, some consideration, no matter how small, must pass between the families

- (c) Is it punishable for a native, male or female, who being married under Native Law, on being released from Native Law, or without being so released, to contract a marriage under the ordinary Marriage Law of the Colony; if so, what is the punishment; if not, what is the effect of such latter marriage under the administration of Native Law?

Answer: - It is not punishable for a native, male or female, married under Native Law, to go through the form of a second marriage according to Christian rites; the marriage under Native Law being valid, the second ceremony is not necessary to make it so, and cannot therefore be called a marriage. It has very correctly ... been described as the giving of blessing of the Church to the union of persons already married, and has no legal effect whatever'. 19

To the colonists and the missionaries the evil of polygyny and the desirability of spreading Christianity, including Christian marriage, were two sides of the same coin. But the Natal Government refused to be stampeded into action. The Government's reasons for its inaction became clearer when, in 1871, Lieutenant-Governor Keate replied to a memorial that had arisen out of a public meeting on polygyny. The memorialists had demanded that when Africans married according to Christian rites the marriage contracts 'should be dealt with by the same laws as govern the marriages of Europeans' Keate said that the Government had only a choice between evils: 'in lieu of substituting monogamy for polygamy, we only foster and encourage concubinage'. He said further that the Government of the Colony 'smoothes the way, as opportunity offers, by Legislative and executive interference, but it takes no direct part in inculcating Christian as opposed to heathen principles among the bulk of the people. It leaves, in short, Christianity to extend itself by its own forces'. Keate pointed to the economic and moral factors affecting marriage:

'In Christian communities men remain unmarried or only marry late in life for want of means to support a family. As population presses on the means of subsistence the addition of wife to wife and family to family will become to the

heathen also an occasion of cost and weakness, instead of wealth and power As heathens the natives have not yet reached a point at which their minds are capable of conceiving the notion of morality attaching to marriage with one person and not to marriage with more than one. This is an advanced idea which it is the special province of Christian teaching to inculcate; it must result from, it cannot be made artificially to precede, such teaching. It is vain to attempt to legislate in advance of the intelligence of those for whose benefit the legislation is intended'. 20

Similar sentiments were expressed in October 1872 by Shepstone when speaking in a Legislative Council debate on polygyny arising out of a motion moved by J. N. Boshof. He claimed that in many cases where Africans married by Christian rites 'they were young, and made the promise thinking they understood what they said, but constitutionally and from their habits they did not enter into the contract with the same spirit as those who had been trained from their youth up to a knowledge of its solemn import' He was doubtful of the likely effectiveness of Boshof's scheme to explain the consequences and responsibilities of Christian marriage to couples before the ceremony. Shepstone opposed the further proposal to exempt from customary law all Africans who married by Christian rites. How, he asked, would a man exempted from customary law be capable of inheriting under that law? Significantly, Shepstone raised the spectre of the franchise: 'He [Shepstone] did not suppose that those Natives who were married according to Christian rites were ... capable of exercising the franchise; but practically the resolution almost entirely effected their release from Native Law'.²¹

The sequel to Boshof's questions and his motion on polygyny and related issues was the appointment of a Select Committee of the Legislative Council to investigate the subject of African marriages according to Christian rites. All the evidence was taken from missionaries: no African appeared before the Committee. The missionaries complained bitterly about the widows and children of Christian unions who were 'forced back into heathenism' when the husband died because they and their property were taken over by the dead man's kin group. The Reverend

James Allison of Edendale spoke of the disappointment to missionaries of Africans who broke their Christian marriage vows:

'A Kaffir professing Christianity marries a woman also professing Christianity, and gives a solemn pledge that nothing but death shall part them, and to associate with no other until death parts them. The Kaffir can with impunity break that solemn contract as things are in Natal, and he can force his children born in Christian wedlock back into heathendom, and may even get assistance from the Government here to do so'.

Most of the witnesses advocated that exemption from customary law should accompany Christian marriage. But exemption could lead to difficulties in matters of inheritance (as Shepstone had pointed out) and guardianship in families some of whose members might be Christian while others were pagan. Some witnesses argued that pagan kinsmen ought to be prohibited from inheriting from Christian families (this possibility could arise, of course, only if an exempted man were to die intestate) or from becoming the guardians of the widows and children of Christian marriages; but the reverse was not to apply i.e. Christians could inherit from or become guardians of pagan families. Others argued, however, that this would be like trying to 'bribe' Africans to accept Christianity, and that African Christians ought to be prepared for the sake of their religion to renounce their rights of inheritance and guardianship when pagan kinsmen were concerned. According to the Reverend G. W. Posselt,

'the Honourable Council troubles itself in vain by framing a law which shall overthrow the Native Law of Inheritance and Guardianship as regards the relation of the Christian Kaffirs to their heathenish friends, and vice versa, for this reason. No Christian native will ever forego his claim he has upon the property of his relations amongst the heathens; consequently it would not be fair to force these to give up their claim on property of their Christian friends'.

The Report of the Select Committee betrayed a note of diffidence and even hesitancy:

'while the subject submitted for their inquiry and consideration is not only an important one, but not a little difficult to deal with, yet ... at any rate a commencement should be made in the attempt to permit Natives, under certain conditions, when married under

brother-in-law. It was claimed that the magistrate had been forced to uphold the validity of the union. Shepstone immediately wrote to the newspaper and demanded to hear of 'even a single case' that had been enforced by a magistrate.²⁴

The missionaries did not generally dispute the theoretical right of women to claim relief from magistrates but they claimed that the right was rarely exercised. The Reverend H. Callaway, for instance, told the Select Committee on Christian marriage that

'although she "can" apply to the Magistrate for aid, it is very rarely indeed, scarcely ever, except at the instance of a missionary or white man, that she will do so. It is difficult to persuade her to go to the Magistrate in such a case. The Magistrate is a formidable power in her eyes, and she is much too attached to her friends [by which Callaway meant her own or her husband's kin, depending on the situation], notwithstanding the present difference, to wish to bring them into difficulties'.²⁵

The Attorney General, M. H. Callway, agreed with Shepstone's view that it would be undesirable to exempt Africans from customary law on marrying by Christian rites. He said that the main question was who was to be the arbiter of a man's fitness for exemption. A clergyman or the Lieutenant-Governor? 'The Governor in his capacity as Supreme Chief is the proper arbiter, more interested in the native social and moral position than the clergyman, who plainly is only bound to enquire into the natives' honest desire to embrace Christianity, and as a member of that particular sect conform to its ceremonies'.²⁶

Missionary bodies continued to press for reform in regard to Christian marriages.²⁷ In 1874, for example, the Wesleyan Missionary Society complained direct to the Earl of Carnarvon about the support given to polygyny and the anomalous status of Christian marriages among Africans.

'Under the native chiefs, the Mission Station is a refuge for those averse to the disgusting and demoralising usages of Heathendom, and the Missionary has sufficient moral influence to protect his peoples from those evils but under a so-called Christian Government "the religious and conscientious scruples" of a Christian widow cannot save her from submission to the sad and degraded lot to

which widows of the common people are subjected by Kaffir Laws and usages. From the experience of our missionaries in South Africa during the last half century, we are fully satisfied that the attempt to maintain the tribal system in the Colony of Natal, and to sacrifice the rights of thousands of human beings now brought in contact with a higher civilisation ... is a serious mistake, and one which appears to be fraught with the most serious dangers to the peace of the Colony'.

The Society declared that the system now in existence had not been contemplated by the Locations Commissioners in 1847 who had recommended a steady progress towards the assimilation of customary law with Roman-Dutch Law and the remodelling of the customary law of marriage and divorce.

'Yet after twenty eight years the tribal distinctions which give power to a few individuals to alarm and endanger the Colony [a reference to the Langalibalele episode. See pp. 147ff] and to check the progress of native citizenship on equal terms with the Colonists, as is now the case in the Cape Colony, far from being weakened is stronger than ever: and the consequence is that Christian Missions in the Colony of Natal are placed under greater disadvantages in certain respects, compared with the same mission in the Cape Colony and among the independent tribes'. 28

But the missionaries would have to wait until 1857 before the Natal Government bestirred itself to give full legislative recognition to Christian marriages (see p. 293).

VII

Chieftainship under Shepstone

The use of chiefs in the early days of Natal's existence as a British possession was largely necessitated by the small number of civil servants available to rule the African population. By 1871 the African population of Natal was 300,000 and the total number of magistrates only eleven. Moreover, the magistrates had jurisdiction over both whites and Africans, although in their capacity as 'African administrators' they were properly styled 'administrators of native law'. With so small a staff only a low intensity of administration over Africans was possible; and Shepstone claimed, plausibly, that the task of governing Africans would be quite impossible were it not for the use made of chiefs.¹ The magistrates themselves tended to become desk-bound as the volume of office work increased. A Commission observed in 1871 that this hindered them in their performance of

'the more important matters for which the office was created - viz. a regular, constant oversight of the whole country in all its material interests and the active unceasing supervision of, and personal acquaintance with, the native population the Magistrates are appointed to direct and rule'.²

Certain factors made the use of chiefs in administration more acceptable to the Government in Natal than in the Cape Colony. Tribal organisation in Natal had been pulverised and then refurbished through Shepstone's efforts. Many chiefs were commoners appointed to the office by Shepstone: appointment in this manner made them more amenable to control by the Government (see below). Moreover, many Africans were probably grateful to the Natal Government for affording them peace and protection from their former Zulu overlords. This predisposed them to accepting colonial authority. As compared with some of the tribes on the eastern frontier of the Cape, the Natal tribes were small. Lieutenant-Governor Pine noted

these differences in 1854 in a despatch outlining his objections to Shepstone's system. It was a false analogy, he said, to compare the Cape and Natal. For one thing in the Cape situation the frontier chiefs were beyond the borders of the Colony and they possessed jurisdiction over large tribes. One or two chiefs could combine and offer formidable resistance to the Government. But in Natal 'the people are split up into a vast number of petty tribes under their respective chiefs who cannot so readily combine for mischief at present, but who will assuredly become troublesome if we foster instead of checking their powers.'³ Many years later, when asked by the Cape Government Commission on Native Laws and Customs, Shepstone agreed that there were 'no such great chiefs' in Natal as Sarili and Gangelizwe: 'our most considerable chief in Natal would not be able to raise more than five thousand men'.⁴

Shepstone's views on chieftainship must be discussed in some detail. As has been noted above (see p. 41) he possessed sufficient insight into the functioning of traditional African society to appreciate that chieftainship was not typically an autocratic institution. He could also appreciate the invidious position in which chiefs found themselves when they had been absorbed into the colonial bureaucratic system. When asked by the 1852 Commission whether he thought any attempt to abrogate or destroy entirely the powers of hereditary chiefs would be met by extensive opposition, he replied that it would, and cited the sequel to the deposition of Fodo (see p. 22):

'[Fodo] was deposed by me on behalf of the government, and his uncle nominated in his stead. For a while the people obeyed the uncle, and the uncle himself consented to administer the government of the tribe; but he soon found that the strength of public opinion was so great as to render his influence and rank only nominal; and the real power gradually reverted to Fodo, when the Government also found it advisable to pardon and allow his re-instatement'.⁵

In 1892 Shepstone wrote in similar vein:

'Hereditary chiefs may be officially deposed by the paramount power; may be refused recognition; may be sent

into exile; or placed under personal disabilities. These are the means which civilised governments generally use, and which have been used in South Africa; but they have succeeded only in making martyrs; in augmenting the powers of the chiefs concerned for mischief, and in clothing with greater reverence their persons and their utterances. The effect is to inflame the tribal sentiment and to strengthen attachment to its representative member The answer is, use them as they have been used during the last 45 years in Natal; use their influence, their system of tribal management, their principle of mutual responsibility; make room for these in your own system. Let the chiefs understand that they rule as your lieutenants; that they carry out your behests, subject to your general supervision, even in tribal matters. Pay them fairly. They will prove loyal and zealous, inclined, perhaps, to severity rather than otherwise; correct this by giving their people the privilege of appeal to a white magistrate, and ultimately to a still higher tribunal. Forbid, except by special leave, the performance of any function devised to keep up the idea of tribal independence. Prohibit absolutely accusations of witchcraft. "Witch dances" as they are called, such accusations being their purpose, are the great political engine of the hereditary chief; they take public opinion by storm, they make it easy to strike down, without trial or defence, the most formidable rival; they are what a standing army is to the military chief. Take away this engine and nothing will be left to lean upon but the power of the Government'. 6

In the early days of British rule the hereditary chiefs hardly considered themselves as being 'ruled', indirectly or otherwise by the Natal authorities. According to John W. Shepstone:

'A Kaffir chief will come to you as they have come to Government, but he never means for one moment that you are to rule them - he must not lose his influence or position - all he wants is our protection, and paramount authority, but no interference in his rule - except in tribal quarrels. Langalibalele came here to place himself under the British Government [in 1849] - at that time chiefs more or less governed their own people, but they were always supposed to report anything of importance to Government here and they did. Langalibalele was about the most independent chief'. 7

Bishop Colenso's vivid account of his visit with Shepstone to Chief Pakade's great place in 1854 suggests a certain lack of clarity in the Chief's appreciation of his status as a chief in a colonial system. Pakade was a powerful chief who resided in the Weenen district. Colenso commented that '[i]t would seem almost impossible for a military force to

reach Pakade in such a situation as this'. For the benefit of his visitors Pakade staged a review of his regiments, although in compliance with a government ban on the use of assegais on occasions of this kind, the warriors brandished wooden rods only. According to Colenso,

'Pakade is so childish and wayward, that he has been several times in serious difficulties with the Government, out of which Shepstone's advice has rescued him. He is behind his tribe, at present, in respect of civilisation, for the reason ... that many of them are, from time to time, in service with the colonists; and he cannot at all realise his position, as a subject of the Crown of England. He is, however, very much afraid of committing any act of disobedience; and, in any emergency, he sends up to Mr. Shepstone hurried messengers, to know what he is to do, and follows his advice implicitly Two months ago he had collected all his men for the purpose of attacking Nodada, another neighbouring chief, with whom he has a feud, and would have done so but for Mr. Shepstone's "advice".' 8

By no means all the chiefs in Natal were hereditary. In an appendix to the Natal Native Commission of 1861-2 there were said to be 102 tribes under the charge of 173 chiefs or headmen in Natal. Of the chiefs 99 were hereditary, 46 were created or appointed while twenty-eight ranked as headmen appointed and recognised by the Government. 'These have charge of portions of tribes or collections of people (remnants of tribes), and are practically the same as appointed Chiefs'. Roughly 100 of the chiefs and headmen ruled over tribes or parts of tribes possessing under 400 huts. Only two tribes in the Colony possessed more than 3,500 huts. A further estimate showed that hereditary chiefs governed 63,979 huts, appointed chiefs 24,727 huts and headmen 3,083 huts.⁹

Appointed chiefs originated in several ways. Ngoza, for example,

'is Mr. Shepstone's headman, and though not an hereditary chief, has acquired considerable power, and is practically a chief of as much authority as any in the district, which he owes partly to Mr. Shepstone's patronage, partly to his own modest and amiable character. There are, probably, (by reason of refugees having flocked to him, who had left their own chiefs behind), more pure Zulu under Ngoza than any other chief in Natal'. 10

By 1864 Ngoza had more people under him than any hereditary chief in the Colony.¹¹ He was ranked as 'principal induna' of the Government. He

had been allowed for political reasons to encourage the formation 'of a powerful tribe which looks upon itself as specially belonging' to the Government because its organisation and Chief were creations of the Government. According to Shepstone Ngoza's people were found to be 'of great service' in enabling the Government to hold a balance of power. A dispute over the succession arose on Ngoza's death, but Shepstone ruled that because Ngoza was not an hereditary chief no son of his could claim the succession and the 'tribe' was not permitted to nominate a chief either.¹²

According to Shepstone, writing in 1874,

'[i]nstances constantly occurred ... of individuals, families, and even sections of tribes, becoming dissatisfied with their hereditary Chiefs and desiring to have their connection with them severed; I observed that these malcontents were not unwilling to be placed under headmen of no hereditary rank; all they cared for was that their new heads should enjoy the countenance of the Government. Here then seemed to be presented a mode of supplying a serious deficiency; countenance was at first tacitly and cautiously given to the natural operation of this feeling, but it was necessary to observe the character of the man whose personal qualities had drawn these malcontents to them before a too decided countenance could be given, many of these men failed, others succeeded, and became the headmen of one or two large tribal organisations, in which the hereditary feeling was supplanted by the idea that, being especially Government tribes, they took precedence of sic all those under hereditary Chiefs; and thus the Government had at its disposal a large force upon whose services it could at any moment rely. These "unborn chiefs", as the natives call them, being commoners, have no interest in supporting hereditary pretensions, all their importance depends upon the breath of the Government, and although their position is fully acknowledged, they are always looked upon by the Chiefs of ancient descent as interlopers, and weakeners of their rightful power and influence'.¹³

Despite his views on the influence of hereditary chiefs, Shepstone looked to their gradual elimination. In 1864, for example, he wrote:

'I believe that the power of the Chiefs will become extinct from the force of circumstances; as a rule, their people precede them in civilisation, the nature of the questions before them become complicated in proportion to their progress and in the same proportion the inability of the Chiefs to deal with them will be felt, and they will be practically superseded by the people themselves, hence the policy and necessity for the presence of a white functionary'¹⁴

He encouraged the fragmentation of tribes, sections or individuals of which had become dissatisfied with their chiefs, and put together different fragments in 'government tribes'.

'It is by the gradual and judicious extension of this system, in courts with and under the control of white Magistrates, that I think will be found the shortest and safest means of breaking down the power of hereditary Chiefs, without losing the machinery, as yet indispensable to us, of tribal organisation; I would without anxiety let the hereditary houses crumble and their Chiefs lose power so long as the material does not become confused rubbish, but can be built into others, although smaller, edifices, which possess none of the dangerous associations of ancient tradition; the Government will then become practically, what to a great extent it is now only theoretically, the source of all rank and power in the Colony'.

Shepstone claimed that tribal organisations could not be dispensed with 'for a long time to come, because we can substitute no system of management half so effective even at ten times the cost'¹⁵

Minor judicial powers were left in the hands of chiefs in terms of Ordinance 3 of 1849. Chiefs' courts were competent to adjudicate in all civil matters between Africans, and in criminal matters of a minor nature involving Africans. Because of their usefulness in administration the Natal Government tried to maintain chiefs' prestige in allowing them to retain judicial power. In 1862, for example, Shepstone advised the resident magistrate of Inanda to allow Chief Dubulana to settle a case arising out of an affray among his people: 'to prevent Chiefs adjusting minor disputes among their people would tend to destroy their authority altogether and result in serious evil. But it is desirable in all such cases, that the matter should be reported by the Chief to the Magistrate for his approval and confirmation, and this would be a sufficient check'¹⁶

Chiefly power in judicial matters, Shepstone described as 'a proper and harmless jurisdiction [by which] the dignity of the Chief is saved from any rude shock; native ideas of right in such matters are very much guided by their own peculiar customs and habits, and none are better able to understand these than the Chiefs'. Magistrates could correct the 'manifest

injustice of any custom', by hearing appeals from chiefs' courts.¹⁷

Chiefs were entitled to summon any of their people to appear before them, and refusal to obey the summons was punishable by fine. If an individual were charged with a criminal offence the chief had the right to send his messenger to bring him in, and resistance was punishable by seizure of person or cattle or both.¹⁸

In a further attempt to shore up the chief's prestige, magistrates were directed not to hear civil suits between African parties unless the parties had first taken the suit before the chief's court.¹⁹ In 1858 the Natal Mercury claimed 'good authority' for an allegation that magistrates had been ordered to receive a payment of five shillings before hearing African complaints and charges:

'This is playing into the hands of the chiefs - rebuilding the fabric of their power - with a vengeance ... for ... the effect of this requirement will be to drive natives into the hands of their own chiefs for the settlement of disputes'.²⁰ According to the Reverend G. H. Mason's observations in 1859, in cases between Africans a magistrate's interference was sought only when the parties belonged to different tribes and 'then, though it prevents bloodshed, yet for want of a fixed standard of law, it often becomes imperative for the magistrate to consult the weaker suitor's real interest by giving the case against him, rightfully or wrongfully'

Mason claimed that the effect of the use of customary law had been 'to Cafferise the subordinate officials, and made them like so many petty white chiefs' He alleged that in cases between Africans and whites (in which the application of customary law was not permissible) magistrates made the 'best compromise possible between British jurisprudence and Caffre usage'. He added that the decision usually puzzled both parties.²¹

Shepstone's own account of procedures in the magistrates' courts lends some credence to Mason's (admittedly biased) claim. Shepstone argued that the rigid rules of evidence and procedure in English courts were applicable only to 'cases between individuals of a people far advanced in civilisation' But

the Government's word was final. In 1871 the magistrate at Newcastle reported that the regent of a tribe had resigned and the heir had been installed as chief. In reply Shepston directed the magistrate

'to inform the young Chief and old men of the tribe that in this Colony Chieftainship does not depend upon hereditary succession, but upon appointment by the Supreme Chief ... that the Supreme Chief is always willing to appoint the sons of deceased Chiefs, where those sons are found to fit for the duties required of them, and he is willing to do so in this instance, but the young man must be made to understand clearly, that if by his conduct he is found unfit for the position of chief, the Supreme Chief will order his immediate deposition and appoint one more trustworthy in his place. He must also be told that the people of whom he has been allowed to take charge, are not his people, that they belong to and are subjects of this Government and that he is allowed to take charge of them on behalf of this Government'

The chief was to pay his respects at the seat of Government as soon as convenient.²⁵ In another succession case, the deceased chief had nominated a son to be his heir but Shepstone declined to confirm the nomination and appointed instead the son of a woman ngena-ed by the Chief. It was believed that had the chief's nominee been appointed the tribe would have split up. Shepstone's comments on this case provided a classic statement of the status of chiefs and tribes under his system: 'Although it may be desirable occasionally for political reasons to dismember tribes when opportunity such as this offers, yet His Excellency doubts the wisdom of doing it in this instance, as there is a danger of the Natives supposing they may have their own way'. A short while later the magistrate reported that the tribe in question were refusing to recognise the Supreme Chief's decision. Shepstone advised him 'to punish in detail and by degrees, each of the persons engaged in this act of contumacy'²⁶ In traditional times the possibility that a disaffected section of a tribe might hive off was a powerful check on chiefly rule: chiefs would be careful not to dissipate their power, which was measured in terms of the number of subjects, by alienating a section of their people. In colonial Natal this process of splitting away was carefully regulated. In a

system in which great stress was laid upon the efficacy of 'dividing and ruling', requests to hive off from the main section of a tribe could be granted or refused, depending upon how Shepstone viewed its effect upon the balance of political forces. If the request for separation were granted a new 'tribe' would be created. In 1872, for example, the resident magistrate of Pietermaritzburg conveyed a request from Bavulama to be allowed to separate, with a group of followers from Chief Hemuhemu and to be appointed chief of the new group which was to be allowed to take the name of Ncwabe. The request was granted by the Supreme Chief.²⁷

Many of the political devices used by Shepstone in regard to chieftainship had parallels in traditional African political systems. Chiefs in many societies manipulated sub-chiefdoms in the interests of patronage or security or a combination of both.²⁸ Shaka, for example, was well aware of the political advantages that flowed from a policy of divide and rule, and he deliberately kept his chiefs 'at loggerheads with ~~one~~ ^{each} ~~another~~'²⁹ In the Natal system the power to elevate commoners to the rank of chief was often used as a form of patronage. Africans who had performed some useful service could be rewarded by being made chiefs. Their gratitude and their knowledge that they held office by virtue of Shepstone's favour (which could be withdrawn) made them readily amenable to the Administration's wishes. This use of commoner chiefs as a means of ~~binding~~ ^{binding} them and their people in loyalty to the Government is reminiscent of the widespread use of common headmen for similar purposes. Among the Ngwato, for example, common headmen, who were entrusted with the care of cattle belonging to the chief, were important foils in chiefs' efforts to fend off rival kinsmen. According to Schapera, common headmen

'were dependent upon [the chief] for their sustenance, while, on the other hand, they had to be at his call in all matters. As a result, they came to be more and more trusted by him in political affairs as well, until in time they attained a very prominent position in the government of the tribe' ³⁰

Shepstone assumed that hereditary chiefs had 'pretensions' by which he

meant that they were loathe to recognise their lack of real independence. He hoped that this competing influence would be neutralised by the steady extension of commoner chiefs at the expense of hereditary ones.

Acts of contumacy by chiefs were treated ruthlessly by the Natal authorities. The Colony possessed only limited military resources and the "fear" of a Native rising entertained by the Europeans of Natal was strong, enduring and at times almost pathological'.³¹ Shepstone believed, in these circumstances, that any rebellious act must be dealt with swiftly and severely lest the contumacious spirit spread to other Africans in Natal. He believed also that African unrest should be put down as far as possible by Africans themselves, acting under the direction of white superiors. It was with this in mind that the Native Police Corps was established in 1848. In selecting men for the Corps care was taken to ensure that they were drawn from a variety of tribes so that no one tribe was predominant.³² After the Fodo episode in 1846 (see p.22) no rebellious acts of significance were recorded until 1857. Early in that year Chief Usidoi, who lived south of the Mkomanzi River, attacked Chief Umshukangubo's people who lived sixteen miles away. According to Shepstone, the casus belli had been a quarrel arising out of the celebrations at a wedding between a man of Usidoi's people and a woman of Umshukangubo's people. Usidoi had invaded Umshukangubo, defeated his forces and then killed and mutilated the vanquished chief, an act which, according to Shepstone, was the prerogative of an independent chief. In his report of the affair, Shepstone claimed that the smaller tribes in the area had become worried on hearing of Usidoi's attack.

'To these it appeared that their fate depended on this single decision of the Governor. Usidoi had exercised a power which they had hitherto believed not possessed by any native chief in the colony - that of levying war on his neighbour, despite the presence of a white magistrate. He had also committed an act of mutilation on the person of a chief vanquished by him, exclusively belonging to an independent as well as hereditary chief. Would the Government permit this proclamation of independence within its own territory? If so, then

a pistol on his person and, allegedly, firing it at Matyana. A further

twenty five of Matyana's people were killed in this encounter. Matyana himself escaped and fled to Zululand. The Natal authorities outlawed Matyana, deposed him from his Chieftainship, seized the large majority of his people's cattle, and broke up the tribe, dispersing the people among other tribes.³⁴ The Colonial Secretary, Sir E. Bulwer-Lytton, unaware of any allegation that John Shepstone had behaved treacherously, approved the action taken by the Natal Government.³⁵

The authoritarian character of the regime and the attitude of Africans towards it, is illustrated by Theophilus Shepstone's account of his visit to the Njuswa people in 1869 to explain to them the working of the marriage regulations. The Njuswa were, on Shepstone's admission, an impoverished people, and the menfolk of the tribe made several bitter speeches to Shepstone. 'It is all darkness and death, we see no light in the future, no evidence of our humanity being acknowledged. Our labour is taken for the hut tax, our sons for public works, and now our daughters are wanted to add money to the Government stock'. They said that the choice of living in Natal as opposed to Zululand was a choice of deaths, the one quick, the other slow. Several other speakers expressed similar sentiments, to the applause of the gathering. In his report Shepstone said that these were 'serious and ominous' words, and 'it was necessary to preserve my own dignity and that of the Government at such a moment'. He offered them the option of going to Zululand because they were 'discontented subjects'. The following day, according to Shepstone, he received profuse apologies from the tribesmen for their behaviour. He claimed that 'in such encounters one side or the other must always permanently lose ground and strength too. It depends much on the skill with which you play your game. In this instance I won, they lost'.³⁶

An institution that had a great effect on chieftainship was the isibalo: the power of the Supreme Chief to call upon Africans to labour on public works in the Colony. The word isibalo derived from the practice of the labourers' names being written down in a register by the official

who requisitioned them. Shepstone rationalised this system of forced labour as 'a prerogative which all native Chiefs enjoy, of requiring their people to build their kraals, cultivate their fields, and discharge military duties; feeding, but giving them no pay'. If the Lieutenant-Governor was Supreme Chief of the African population he could, it was claimed, compel his subjects to work.³⁷ The isibalo system started in 1848 when the road between Durban and Pietermaritzburg was made impassable to wagon traffic by heavy rains and the Lieutenant-Governor called upon chiefs in the neighbourhood to send out men to work on the road.³⁸ The system was continued until 1854 when fears of a 'native rising' caused the authorities to discontinue it. It was resumed in 1858 and remained in existence until 1911.³⁹

Typically, a request for labour would be made by a Government department to the Secretary for Native Affairs who would transmit the request to the magistrate in the area where the labour was required. In February 1854, for example, Shepstone wrote to the resident magistrate of Durban with a request to approach chiefs in his division 'requesting each of them to induce a certain number of their followers to engage in the service' of constructing the Pinetown-Durban road.⁴⁰ In 1861 the resident magistrate of Lower Umkomanzi was requested to require the 'immediate attendance' at the Secretary for Native Affairs' office of the eight chiefs in the division 'for the purpose of explaining to them the Lieutenant-Governor's requirements relative to the supply of labour for carrying on the Harbour work [Durban], about to be commenced'. An identical letter was sent to the resident magistrate of Inanda.⁴¹

The isibalo system provided labour for public works only. But in 1852 magistrates were directed to use their 'legitimate influence to cause the chiefs to induce their young men to enter into service of the [white] farmers'. The magistrates were forbidden to use force or threats in doing so, and, in turn, chiefs were forbidden to do so in relation to

their young men.⁴² In 1874, however, when the coastal districts were experiencing an acute labour shortage and cane crops were said to be rotting for want of reaping, the resident magistrates of Durban, Inanda, Tugela, and Alexandra received the following circular from Shepstone:

'His Excellency requests you to summon before you all the Chiefs and Headmen under your jurisdiction, and inform them of this state of things; the practice of combined effort to prevent the gifts of the season from being lost for want of being reaped, is familiar to the Natives as between each other, and the Supreme Chief wishes it to be impressed upon them that the practice should be considered by them to be a duty to the white man also, under whose Government the Natives enjoy so much protection and so many privileges'.

In terms of the Supreme Chief's directive chiefs and headmen were required 'to send all the young men of the tribes who are unemployed or not engaged for employment, to assist in gathering in the crops' Resident magistrates were urged to avoid 'direct collisions' with chiefs.⁴³

The isibalo system often caused considerable annoyance to private employers of African labour when they found that chiefs, anxious to comply with isibalo requirements, would summon men who were already employed. In 1864, for example, the Natal Mercury reported a case of a chief who had summoned men out of employment to work on the construction of Durban harbour. The paper took the opportunity to condemn the entire institution of isibalo:

'We should like to know if this is not coercion - and coercion of the very worst kind. We should like to know whether the colonists in the Legislative Council ever proposed anything which was half so tyrannical, unscrupulous, coercive, or monstrous. It is barbarism out-barbarised. It is the grossest interference with the rights, the interests, and the liberties of the subject; not merely towards the native himself, though that is bad enough, but towards the white employer whose prospects may be blighted, whose industry thwarted by such an arbitrary exertion of a power, which, exercised in the same way, would disgrace Carolina or shame Russia'⁴⁴

No single institution was hated more by Africans than the isibalo.

In his visit to the Diocese of Natal in 1864, Bishop Gray was told by Lieutenant-Governor Scott of one chief who found the system so intolerable

that he had applied to leave Natal and join Mosheshwe.⁴⁵ Another chief told Shepstone:

'in these latter days, I am no longer their chief, you have put people over my head, they are greater than I; if any of them do wrong and I attempt to punish them by fine or any other means they acknowledge the justice of it, but as it is impossible to please two parties in a case, the losing one runs off to the Magistrate, and I am told that I have no right to punish or to fine, and that I must restore the fine. When you want labourers for the harbour works or the public roads, then I am a chief, then I have people You pay me nothing and you allow me to get nothing from my people, one day you object to my ruling and then again you threaten to punish me if I do not make my power felt by the people enough to make them go to work'. 46

Such, then, was the dilemma of the chief under the Shepstonian system: stripped in all essential respects of his power and the dignity of being the head of a sovereign entity, and yet expected by the administration to exert his influence to ends which were not his own, and the implementation of which made him unpopular with his people. Inevitably, his tribesmen must come to identify him with that administration and not with their own interests.

Shepstone acknowledged that the transfer of powers from chiefs to the Supreme Chief 'has entirely changed the political relationship between Chiefs and people' and that the social and political status of chiefs had seriously declined; indeed, it was ostensibly part of his long term policy that the legitimacy of hereditary chieftainship should decline. He claimed, however, that Africans'

'own maxims of tribal or mutual responsibility, by which they have been governed, secured an interest in the people to keep their Chiefs right in their relations with the Government, and it is no uncommon thing that the headmen counsel their chief to obedience for the common good, where probably he might be inclined to remonstrate'. 47

Initially, Shepstone had doubted the wisdom of paying salaries to chiefs because he thought that this would confirm their status as petty functionaries of the bureaucracy and thereby lower their position in the

eyes of their people even further. But by the 1860's chiefs and headmen were frequently asking for payment.⁴⁸ In 1863 a Select Committee of the Legislative Council had suggested, in the course of a report recommending increased taxation of Africans, that chiefs be paid since they had lost their traditional sources of income. The Executive Council accepted this suggestion, and said that if the hut tax were to be raised part of the increased revenue should be appropriated to chiefs and headmen. 'Apart from the justness of such a measure it would be politic to make the chiefs paid servants of the Government'.⁴⁹ When the Marriage Law of 1869 was enacted instead of increasing the hut tax, provision was made for remunerating chiefs,⁵⁰ and the provision was retained even after the abolition in 1875 of the £5 marriage tax. In 1893 a list of recognised chiefs in the colony showed that their salaries varied from £6 to £30 annually, depending on the size of the tribe; and in some cases the salary was earmarked 'personal to the present holder'.⁵¹ Payment symbolised the bureaucratic use of chieftainship, and accelerated the process whereby chiefs derived their 'breath' (to use Shepstone's word) from the Government rather than from their people.

Occasional criticism of the isibalo were made in the 1870's, but the system survived. In 1873, for example, the Colonial Secretary, the Earl of Kimberley, directed the Natal Government that 'applications should not be made to the Chiefs to supply native labour, except when the case is one of absolute and pressing necessity, and the Natives cannot be induced to work by the pressure of usages'.⁵² In 1874 Shepstone himself, who had devised the system and given it its rationalisation as a 'customary practice', recommended that it be gradually abolished.

'It is irritating and is the cause of much unpleasant contact between the Magistrates and the Chiefs under them The Magistrate sends to the Chiefs under him to supply these men; the service is unpopular, the Chief finds it difficult to get them, some excuse themselves, others evade, and those who obey, do so unwillingly; the consequences frequently are that the time fixed [i.e. chiefs were given a time by which they had to comply

with the isibalo requisition] passes by, the chief is held responsible and perhaps fined; this process is inseparable from the system, and order must be obeyed when once it is given, and every time this is given there is a chance of it being disobeyed'.

While recommending gradual abolition, Shepstone urged that the prerogative be retained

'but be used only occasionally to show that it is retained, not only because it embraces the right to call out for military service, a call always readily responded to, but because it would represent to the natives and remind them in a practical manner from time to time of the absolute supremacy of the Government'. 53

In the following year Shepstone returned to the theme, arguing that the limited military strength of the Colony made it

'unwise for the Government to be continually incurring the risk of its orders being disobeyed by a population too numerous for it to coerce, except by means of that population itself, and on a subject as likely as any other to make opposition unanimous, because the young, most excitable and fighting men of the country are directly and universally affected by it'.

He noted that chiefs were complaining about their men moving out of the reserves onto white-owned farms in order to avoid isibalo.⁵⁴ In 1878, the Lieutenant-Governor, Sir Henry Bulwer, quoted Shepstone as saying that this movement of Africans onto private lands was weakening chieftainship. Bulwer said that the Government was competing with other would-be employers of labour; Africans were leaving the reserves for periods of several months at a time. The result was that chiefs were having greater difficulties in meeting their isibalo quotas and were frequently obliged to send the same men again and again.

'The power of the chiefs ... is not so great either within or without the locations as it used to be, and difficulties arise from this cause also; and there is cause to think that the obligation upon the Chiefs to comply with these labour requisitions has in many instances operated unduly against them, and placed them in a disadvantageous and unfair position both towards the Government and towards their own people'. 55

Despite the antagonism between Pine and Shepstone, and the colonists and Shepstone, all managed to agree on the desirability of a law 'To More Effectually Check and Prevent the Stealing of Cattle', which became Ordinance 1 of 1855.⁵⁶ The Ordinance and the reasons for which it was promulgated illustrated the convenience to the authorities of customary law concepts. The fact that the colonists made no real criticisms of the legislation showed that where these concepts suited their own interests they would not oppose them.

The preamble to the Ordinance said that the existing laws of Natal did not provide an adequate means of detecting offenders, 'whereas the native law is better adapted to check the offence of cattle-stealing ... but ... is undefined by express legislative enactment, and does not apply to cases of theft committed by natives on the property of white offenders'. Clause four provided:

'Whenever any cattle shall be stolen from any person in this District, and the same shall be traced, by satisfactory evidence, to any native village, kraal, or collection of kraals, are in the habit of grazing, if the inhabitants thereof shall, upon such evidence being pointed out, fail to follow the same so as to exculpate themselves from any participation in, or privity to, such theft, either before or after the fact, the said inhabitants shall be compelled to restore such cattle, or to make good their value to the owner thereof'.

Clause five made the offence of harbouring cattle thieves or stolen cattle a similar collective responsibility. Africans accused of cattle-theft were to be tried by a specially created Combined Court consisting of a judicial assessor, appointed by the Lieutenant-Governor and approved by the Crown, the resident magistrate of the county or division in which the offence was committed, or in which the accused resided, and the chief of the tribe to which the accused belonged. If the accused had no chief, or if his chief had been involved in the crime, the Court would consist of the judicial assessor and the resident magistrate only (clause eight). Punishment was severe, and could include the forfeiture to the Crown of all the accused's property of whatever kind (clause seven).

The Ordinance was described officially as 'merely a modification of existing Native Law, so adjusted as to extend to the white men the privileges which, under his own law, the Native would enjoy in regard to the recovery of cattle stolen from him'. The fact that a chief would sit on the Combined Court reflected 'a desire on the part of the Government to act impartially and not to exclude [Africans] from deliberating on matters upon which they are capable of forming an opinion, and which affect their chiefs and themselves in an especial manner'.⁵⁷

Shepstone claimed that cattle-stealing was 'the most serious crime in South Africa' because of its potentially harmful effect on relations between Africans and whites, but he denied that it prevailed to any alarming extent in Natal. But he accepted the principle of 'collective responsibility' as

'the corner-stone upon which all efficient management of masses of Barbarians can be based, and one which if judiciously and not hastily or recklessly applied, need work no greater individual oppression than the application of the same principle is found to do, when applied in certain cases in the most civilised countries'.⁵⁸

Shepstone emphasised this theme many times in his career, saying that the line of authority in his system of administration started with the head of the family, proceeded through several sub-divisions of the tribal political structure to the chief, and thereafter through the magistrate, Secretary for Native Affairs, and culminated in the Supreme Chief.⁵⁹

Each authority was subject to the one immediately above him. Above all he considered this to be an effective means of communication:

'Substitute your magistrates and your codes, and your own police, for their chiefs and their ancient system of tribal responsibility, that turns every member of the tribe into an active policeman, [italics added], and what have you? Flocks of sheep without shepherds; alien rulers of an estranged people; the cessation of all sympathy and frank intercourse. How, in such a case, are you to get your information except through prejudiced and naturally misleading sources?'⁶⁰

This was the lynch-pin of Shepstone's system. He admitted that administrative problems were created when Africans lived outside of the

reserves and the system of 'collective responsibility' was less effective: 'experience has shown that in proportion as this is weakened, so is the power of management weakened also'⁶¹

When the cattle-stealing ordinance was originally being considered the Recorder of Natal, Cloete, protested vigorously against the draft provisions. He resented the principle of 'borrowing' from customary law and the creation of the Combined Court as a usurpation of his judicial authority. In a report on the draft he said:

'The ordinary case which we may suppose to occur will be, that any Kaffir bringing cattle with him to his kraal or village will always tell his friends that he had bought, earned, or in some manner lawfully acquired them, and if, upon some information reaching him that search is being made, he suddenly absconds, is it not the height of oppression to require the peaceable inhabitants to produce the body of the offender? This I believe to be ... in conformity with the Kaffir Law or usage; but I have yet to learn, while Her Majesty has graciously declared it not to be her wish "directly" to abrogate their laws, it has ever been Her Majesty's will or intention that we should borrow from the Kaffir Code principles which are directly in conflict with the fundamental rules of justice as established in every civilised country; rules which direct that every person is liable to punishment for his own misdeeds, but not for those of another'.

Cloete doubted, too, whether it had been the Crown's intention to introduce into the ordinary legal code the customary law provision of property forfeiture as part of the punishment of a convicted cattle-thief. He pointed out that Roman-Dutch law had abrogated property forfeiture for every crime except high treason because such forfeiture hurt not only the offender but his (innocent) family as well.⁶²

Despite his opposition to the principles underlying the Shepstonian system, Pine defended the Ordinance against these criticisms, and set out the official view of the present place and the future of customary law in Natal's legal system:

'The great statesman [Earl Grey] who, at the period of the issuing of the Royal Instructions [1848], held the seals of the Colonial Office, saw the danger and folly of attempting to govern savage men by laws made for highly civilised nations. He saw that such laws would not only interfere with their cherished institutions but that they would be powerless to control them; he saw that the laws

of enlightened nations, all-sufficient as they are to bind civilised men, who are controlled by moral influences more powerful than statutes, are unable to restrain men who are strangers to such influences'.

He remarked on the 'striking analogy' that existed between African customary law and the Laws of England and other countries 'in past ages', noting that 'collective responsibility' had been an accepted principle in those historical legal systems. He urged the legislature to study these analogies, and

'by so doing, and modifying and gradually altering the Native Laws by the light of precedents thus afforded by institutions framed for people in a comparatively barbarous age, and which have led them on to civilisation, we may legislate more wisely and more safely for the native than, on the one hand by at once sweeping away laws and institutions which they understand, and substituting for them others which, however good in themselves, are not adapted to their present state; or, on the other hand, by following the views of mere theorists, and adopting measures, the efficacy of which has not been tested by experience'. 63

The Ordinance was assented to by the Crown, but the Colonial Secretary, Sir William Milesworth, instructed the Natal Government to watch very carefully its operation 'so that its provisions may be as little productive of vexation to the natives as possible'. 64

The principle of 'collective responsibility' became firmly entrenched in the Shepstonian system. It was convenient for both the colonists and the Administration because the onus was upon communities of Africans to exculpate themselves: under Roman-Dutch Law procedures the onus was upon the prosecution to prove the guilt of individuals. Moreover, the procedure for fining provided an easy way for aggrieved colonist farmers to be compensated for their losses. Undoubtedly it was the obvious possibility of abuse inherent in such a system that prompted Milesworth to sound a cautionary note.

The casuistry of colonist objections to traditionalism was clearly shown by their general support for collective responsibility. Thus R. E. Ridley (Shepstone's leading colonist critic - see chapter five) could include in his election manifesto in 1873 the following statement,

couched in terms almost identical to those used by Shepstone in 1854:

'I would support any judicious measure that may be introduced for enforcing more generally and effectively the principle of Tribal Responsibility. This principle, which is partially applied under the Cattle-stealing Law, is the cornerstone of Native management and ought to be carefully preserved'. 65

In terms of Law 4 of 1868 collective responsibility was made applicable in cases involving Africans accused of killing, stabbing or wounding cattle. In 1873 colonists pressed for the principle to be extended to further offences, and the Legislative Council unanimously passed in 1874 a law which empowered the Government to do so. This was Law 21 of 1874 which was specifically directed against indiscriminate grass burning:

'a very common offence, one which is difficult of detection under the ordinary Roman-Dutch law and which is annually the source of grievous loss to country residents'.⁶⁶ Section two of the Law gave the Supreme Chief power to extend and apply customary law to other classes of crime committed by Africans against whites. He was empowered also to 'modify, vary, or alter any of the said provisions of Native Law, customs and usages as may be found necessary or expedient for such purpose'

With reluctance the Colonial Secretary, Lord Carnarvon, confirmed the Law, but, in view of the recent Langalibalele affray (see chapter eight) he urged the Natal Government to proceed cautiously in exercising the powers vested in them by the Law:

'At the present time the natives would, not unnaturally, view with apprehension and dislike changes specially affecting them and their law, and passed as they might, however erroneously, suppose with a view to bring [sic] them under more stringent rules and to tighten the reins of government over them'. 67

Four months later Carnarvon expressed 'grave doubts' as to the operation of the law and he directed that no proclamations were to be issued under it without the approval of the Colonial Secretary.⁶⁸ It is probable that Carnarvon's directive was a response to the Natal Government's handling of the Langalibalele affair which he considered to have been a gross abuse of executive power.

VIII

The Langalibalele Affair and its consequences

The claim Shepstone always made for his administrative system was that it had brought peace to Natal, while in other parts of South Africa wars with Africans and tribal revolts were common. There was an element of truth in his claim for between 1847 and 1873 only the Usidoi and Matyana incidents had disturbed the tranquility of the Colony, and both of them had in reality been minor affairs only. The Langalibalele affair, too, was a minor one, hardly meriting the description of a 'revolt'; as Lord Carnarvon afterwards said, 'it deserves rather the name of a disturbance, which a few policemen would have effectually dealt with'.¹ The significance of the affair was that it called into question the entire system of African administration in Natal and led to the introduction of what were intended to be far-reaching reforms.

The Hlubi people under Chief Langalibalele had crossed over into Natal from Zululand in 1848.² The Hlubi were an aboriginal Natal tribe, who, in 1812, lived in what became northern Natal, occupying lands that stretched from the foothills of the Drakensberg to the Mzinyati River. When the Trekkers entered Natal in 1838 the Hlubi straddled the Mzinyati River.³ By August 1849, when Shepstone and his brother John went to 'locate' Langalibalele, they were in the Ladysmith area at Mbulwane. Langalibalele and his people were taken south of the Tsekela to the neighbourhood of Ntabamhlope in the foothills of the Drakensberg.⁴ Their new locality became part of the Kahlamba reserve. It was hoped by the Natal authorities that the Hlubi would form a protective buffer between colonist farmers and the Bushmen bands who dwelt in the foothills.⁵ In his reminiscences of Theophilus Shepstone, John Shepstone said: 'We put Langalibalele there at Ntabamhlope. I was left there to see that Langalibalele did what he was ordered to do. I had not [sic] trouble but only a certain amount of passive resistance. They were quite loyal'.⁶

Langalibalele's account of his removal, as recorded by Colenso, is interesting although Colenso mentioned that he had not been able to check the numbers of cattle seized from Langalibalele for this alleged resistance:

'When he [Langalibalele] arrived here, he built his huts at Emhivanini. When he had cropped once, the Secretary for Native Affairs ordered him to leave the spot and go under the Drakensberg. But that was hard for the people, seeing that they had only cropped once; they wished to get a second crop, and then remove; they lamented their strength which they had sunk in the ground. Some, however, started and went to the place assigned them by the Inkos' ['chief', i.e. Shepstone] under the Drakensberg. The Inkos' was angry when he saw that the Amahlubi and their chief still lingered. He called out a force, Somahashi, and Pakade, and Nodada, and Zikade, and others [neighbouring chiefs], and marched in person against Langalibalele'.

Langalibalele was fined forty head of cattle and the force 'ate up' the cattle of the Hlubi who remained; according to Langalibalele, this amounted to some 4,000 head.⁷

In subsequent years Langalibalele and his people proved to be law-abiding. Langalibalele himself acquired a considerable reputation as a rain-maker. According to the resident magistrate of Weenen, MacFarlane, under whose jurisdiction Langalibalele had been since 1855, the tribe had generally conducted themselves well and had paid the hut tax regularly. Writing in 1874, MacFarlane said that 'some years ago' part of the tribe and especially Langalibalele himself 'were beginning to exhibit an independence and impatience of control' which would lead to punishable conduct.

'Of this risk the Chief and his headmen were repeatedly warned and cautioned by me, and especially on one occasion in my presence by the Secretary for Native Affairs when Langalibalele pretended to have misunderstood the marriage regulations promulgated by the Government in 1869, although previously explained to him by the Secretary for Native Affairs in person. This pretended misunderstanding of these regulations in effect defrauded the Government of certain dues which the tribe knew they ought to have paid'.

This led to a sharp warning for 'contumacious conduct'.⁸

The Langalibalele episode arose out of the widespread practice of

young African men going to the diamond fields and acquiring guns. In theory all Natal Africans who acquired guns were supposed to register them with a magistrate, but in many cases, probably most, this was not done. Indeed, many employers at the diamond fields, including three of Shepstone's sons, either gave their African employees guns in lieu of wages or allowed them to buy guns.⁹ Few Africans realised that non-registration was an offence. According to Frances E. Colenso

'This would be more especially natural when the masters who thus furnished their men with the forbidden weapon were themselves in some way connected with the government of the country (Natal), whose sanction would therefore be looked upon by the natives as an equivalent to the permission of Government itself. But ... the law had always been enforced in such an extremely lax way, the evasions of it were so easy and numerous, and so many white men of position and respectability in the Colony were party to the infraction of it, that it is no wonder that its reality and importance was but lightly engraved upon the native mind'.¹⁰

Langalibalele himself appeared to resent the fact that his young men were attracted to the diamond fields. He was quoted as saying:

'I do not go [to the diggings]; it is the white men who scratch about the ground and look for diamonds. I sit at home, and am well known as a great chief. The white people take our young men there to work, and to buy guns with the money they earn; I am no purchaser of these guns'.¹¹

But as chief he was expected to make them comply with the requirements of the law. This was difficult. Langalibalele asked: 'How can I know all the maggots in a piece of beef?'¹² His question indicated the dilemma of a chief in a colonial system: he was responsible for maintaining law and order, but the need to supplement incomes forced his people to go out and work as migrant labourers. They became more mobile and more independent of chiefly authority. A contemporary observer wrote of the effect on young men of acquiring guns: 'It has undermined the political influence of the elder chiefs, such as Langalibalele himself, who were disposed to remain in orderly subjection to the British Government'.¹³

Langalibalele's offence in 1873 was his failure to ensure that the guns held by his people were registered, and the offence was compounded by his refusal on three occasions to obey a summons to appear at the seat of government in Pietermaritzburg and explain his conduct. In his defence Langalibalele said that he had disobeyed the order to appear before the Supreme Chief because he feared he would be executed: years before his brother had been summoned before the Zulu King and had been killed on arrival. He remembered also Matyana who had been summoned to parley with John Shepstone and was allegedly fired at by Shepstone in the course of the meeting.¹⁴

The Natal Government construed Langalibalele's behaviour as an intimation of revolt, and in October 1873 a force of regular and irregular troops started out from Pietermaritzburg. On hearing the news of the force's approach Langalibalele and his tribe fled from their reserve through the Drakensberg into Basutoland. In a skirmish between the force and the Hlubi three white and two African members of the force lost their lives, while some 200 Hlubi were killed when the force entered their reserve.¹⁵ There can be no certainty about what Langalibalele actually intended. In reviewing the evidence as to whether his 'rebellion' was premeditated or not, Brookes and Webb suggest that it points 'fairly strongly' to the theory of premeditation:

'Colonel Griffith the Governor's Agent in Basutoland, informed the Cape Government as early as July 1873, of the arrival among the Basuto of messengers from Langalibalele enquiring about a safe refuge for his cattle and people in Basutoland in the event of trouble arising through his disobeying the Natal Government's orders. Drilling and ritual preparation for war is also said to have taken place. There is also the suggestion that Langalibalele approached Cetshwayo for help, and certainly messages and gifts were exchanged between them'.¹⁶

Further evidence to support a theory of collusion between Langalibalele and other chiefs is presented in Smith's biography of Daniel Lindley. Apparently Mqawe, a powerful chief in the Inanda reserve, was 'tempted to join in a conspiracy with Langalibalele and to raid and destroy Durban'.

Lindley is said to have dissuaded Hqawe from any such action.¹⁷ In her account of the Langalibalele episode Frances E. Colenso makes no mention of any conspiracy. She said:

'The tribe, ... far from having the least wish to fight, or intention of opposing the British force, deserted their location as soon as the news reached them that the army had started, and fled with their chief over the Drakensberg Mountains'. 18

An interpretation by Thomas J. Lucas (written in 1879) suggests that the Hlubi desired only secession from Natal. According to his Langalibalele was torn between fear of the anger and contempt of his people should he meekly submit, and fear of disobeying the Natal Government:

'But whatever may have been [Langalibalele's] private intentions, the other leading men of the Hlubi tribe, and of their kindred and neighbours the Putili, had already resolved on a desperate course. They did not mean rebellion or insurrection, but secession from the province of Natal, renewing the expedient of their former voluntary departure, in 1848, from the Zulu Kingdom of Panda, and following likewise the example of the Dutch Boers, in their repeated exodus from the British provinces'.

Plausibly Lucas suggested that Africans at that time had only a remote conception of colonial borders and their significance:

'It is scarcely practicable, one would think, to teach the Kaffirs to regard the pale of each province or district as a prison in which they may be kept by force at the discretion of their white superiors: they are a liberty-loving race of migratory habits, and they have the example of the Boers for repeated changes of abode'. 19

The Natal Government, however, could not condone any such traditionalist form of revolt, as the departure of some 10,000 of its African subjects into Basutoland could only have caused the searchlight of critical scrutiny to be directed at Natal's system. In the event, however, the Colony's handling of the affair produced this very effect. The action taken against Langalibalele was in accordance with Shepstone's view that 'contumacious chiefs' must be dealt with swiftly and ruthlessly before the germ of resistance could infect other Africans and cause a 'combination' in rebellion against the government. In Lord Carnarvon's words

'the tribe was broken up, its lands were harried, women and children were summarily expelled from their homes and placed in servitude, their property was confiscated by the State; and no less than £50,000 or £60,000 in cash was paid into the Colonial Exchequer. This was a severe punishment for a tribe which, so far as I know, had taken but little part in the disturbances. But the Natal Government went on to take proceedings against a neighbouring tribe [Futile's people with whom the Hlubi had intermarried 20] against whom I am absolutely unable to find anything in the evidence involving guilt or complicity'. 21

The emphasis in this chapter must be upon the use of what was claimed to be customary law and customary court procedures in the trial of Langelibalele. Langelibalele had sought refuge with Chief Molapo in Basutoland, but Molapo handed him over to a detachment of the Cape Mounted Police who, in turn, handed him over to an officer of the Natal force which had followed him in pursuit. 'He [Langelibalele] and most of his cattle were finally given over to the Natal Party who brought him heavily chained into Maritzburg last week. The mob all turned out to hoot and jeer at him, and one man, a brother of one of the poor fellows who were shot ... had the brutality to run out and strike him as he passed'. 22

Lieutenant-Governor Pine (whose second term of office in Natal was destined to prove no happier than his first) explained the maxims of customary law which, he claimed, justified the action taken against Langelibalele in a despatch to Lord Carnarvon in July 1874: in terms of customary law a subject chief must obey the summons of the Supreme Chief. He maintained that '[t]he refusal or neglect to obey such summons is considered as an act of contumacy and rebellion'. The mode of executing a summons was clearly prescribed in customary law: 'an accredited and well known messenger of the Court of the Supreme Chief is sent to such party personally'. Langelibalele had fled the Colony, thereby violating the 'well-known maxim' of customary law that a chief or a tribe could not leave the jurisdiction of the Supreme Chief without his sanction. Finally Pine justified the action taken against the Hlubi and Ngwe tribes (the latter were alleged to have harboured some of the Hlubi's cattle)

by arguing that the 'cornerstone' of customary law was the principle of collective or tribal responsibility: 'it is under this great police [sic] that the Government with a mere handful of troops, and those not adapted to native warfare, with no other police, has for more than a quarter of a century been enabled to govern its barbarous native people'. Pine adduced a further ground on which the Natal authorities felt justified in appealing to customary law in Langalibalele's case:

'Under that law, as a whole, the natives have enjoyed rights and privileges which they highly prize, but which are denied to their white fellow-subjects, such as polygamy, chieftainship, tribal association, free use of land, etc. I will not inquire whether some of these rights and privileges are, or are not, objectionable. I think some of them are so; but the natives themselves, after so long enjoying these exceptional rights in a British Colony under their own law, have no ground to complain that under that self-same law they are coerced and punished for violating it, to the imminent peril of the Colony in which they have lived in peace and security. And least of all does it become men who have supported the natives in the enjoyment of those privileges - I allude particularly to polygamy - now to turn round and try to withdraw them from the jurisdiction of their law, when it is used to coerce and punish'. 23

Pine's last remark about 'men who have supported the natives in the enjoyment of those privileges' was a reference to Bishop Colenso who had been horrified by the treatment of Langalibalele and his people, and who now acted rather as an attorney on behalf of Langalibalele. For nearly twenty years Colenso and Shepstone had been 'like brothers';²⁴ but the friendship now ended. According to Mrs. Colenso, 'as soon as John [Bishop Colenso] found the line he was taking, he said in this case "it must be war to the knife between us", and he has not been to his house since'²⁵ Colenso, with his powerful influence in England, had done a good deal in the past to build up Shepstone's influence. Shepstone, for his part, had stood by Colenso in his theological disputes. With the break in the friendship Colenso's influence swung around to a massive and merciless attack on the Natal Government.

A special 'Supreme Chief's Court' was formed to try Langalibalele,

his sons and an induna in January 1874. Pine was president of the court which comprised the seven members of the Executive Council (including Shepstone and Erskine, (the Colonial Treasurer) whose son had been killed at Bushman's Pass), three magistrates and six chiefs and indunas. According to Colenso, only two of the chiefs were of any importance, the third having only about 60 huts under him (compared with Langalibalele's 2,344); the fourth an African member was Zatsuke (who had replaced Usidoi in 1857; see p. 135) and was now 'head induna of the Government', the fifth was 'induna' to the Secretary for Native Affairs, and the sixth was 'induna' to the magistrate's court at Durban.²⁶ According to Pine 'by the native law ... a supreme Chief possesses in himself not only all the executive, but also all judicial authority. He is by that law at once supreme Governor and Judge'.²⁷ Critics like Colenso pounced on the composition of the court which clearly violated the canons of English Law that no man could be judge in a case in which he was a party. Langalibalele had allegedly revolted against the Supreme Chief who was now president of the court that was to try him. In addition to this Shepstone's brother, John, acted as the prosecutor.

The trial started on 16 January 1874. On the fourth day of the trial (which lasted altogether six days) all the members of the Executive Council, except Shepstone, dropped out of the proceedings. According to Colenso's version, the incongruity of their membership of the court had become apparent: they were, in terms of Ordinance 3 of 1849, to constitute the Court of Appeal. One member had written, a week before the trial, an editorial in a newspaper in which he prejudged Langalibalele's guilt: 'We have no pity to spare for the rebel Chief or his advisers, who well deserve the doom, whether of steel, lead or cord, which they must undergo'²⁸ It was also anomalous for the Supreme Chief and the Secretary for Native Affairs to continue to sit on the court as they had already pronounced their judgment by deposing Langalibalele, outlawing him and his people as 'rebels' and 'eating up' the tribe. Further changes in the composition

of the court occurred during the course of the trial; the number of magistrates was reduced from three to two, and another African member was added. Of the African members Colenso observed, with justice,

'no colonist will doubt that, sitting in the presence of the Secretary for Native Affairs and the Supreme Chief himself, there was hardly one of those natives who would have dared to utter his real sentiments as to the prisoner's guilt, if they differed from those of the white Authorities, for fear of being implicated as secret sympathisers with his "rebellion", especially as they had the lesson taught by the fate of Putini's tribe before their eyes'. 29

Opening the proceedings of the Court Pine, the Supreme Chief, announced that 'we are assembled to try Langalibalele for the greatest crime a human being can commit against society - for rebellion against the authority of the Queen'. Furthermore the accused was to be given the 'benefit' of a trial by 'customary law, tempered by civilised usages' as 'We are Christian men and live, under a Christian dispensation'.³⁰ Langalibalele was allowed no counsel until the trial was in its third day. Bishop Colenso's protests caused Pine to change his mind, and Harry Escombe, a Durban lawyer and a partner of one of Shepstone's sons, was then appointed. But when Escombe applied for permission to see Langalibalele he was refused, and then declined to accept the brief. Langalibalele himself refused to have counsel who had been appointed by his prosecutors, and sent 'a stealthy message' to Advocate John Bell Moodie requesting him to appear on his behalf. Moodie applied twice for permission to see the accused but was not allowed to do so. Moodie's comments on the trial are worth quoting at length:

'The feeling of the Colony kept the native chief a close prisoner in strict confinement. He saw no friend. He had no adviser. He had not the chance nor the intelligence to prepare any defence; and I believe that until the morning of the trial he had never heard of the long written indictment against him, and that he had no notice of it. At the trial itself the strangest anomalies prevailed. It was stated to be by native law. There was not a single element of trial by native law in it. Native law knows nothing of a systematic prosecution, and an indictment or a prosecutor. Yet all these were present. Native Law not only permits,

but constantly employs in its trials, not one, but twenty Advocates. Here there was no Advocate allowed. In a native trial everyone that the audience will listen to may speak for or against the accused. As at a public meeting in England any one may speak who is competent to obtain a hearing, so in native trial any of the friends of the accused may argue for him, or call witnesses for his defence. But in the face of the red jackets and fixed bayonets, no one spoke or dared to speak for this man. All the disadvantages of both systems, English and Kaffir, were arrayed against him. He had the advantages of neither. While on the one hand there was a systematic and consistent prosecution, there was on the other, none of the laxity of native law. While the prosecution availed itself of one of the privileges of native law, namely, to find a man guilty without evidence, it gave him nothing in return'.

Moodie claimed that 'no single charge of a serious nature ... was proved against the prisoner'.³¹

Langalibalele was duly convicted and sentenced to deportation for life to Robben Island. Colenso was permitted by Pine to appeal against the conviction and the sentence. The main grounds of the appeal were as follows:

1. That Ordinance 3 of 1849 did not give the Lieutenant-Governor as Supreme Chief the power to form a court such as the one by which Langalibalele was tried.
2. That Section 3 of the Ordinance meant that the Lieutenant-Governor was debarred from sitting on such court because the Section provided that he, acting with the advice of the Executive Council, should be the sole judge in the Court of Appeal for all cases tried under customary law.
3. Because the Lieutenant-Governor was already committed to a decision adverse to Langalibalele by having issued a proclamation on 11 November 1873 declaring Langalibalele to be in revolt.
4. Because, up until the date of the trial, no serious crimes were tried under customary law and Langalibalele was charged with the common law crimes of high treason and rebellion.
5. Because the killings at Bushman's Pass took place outside the boundaries

- of the colony as defined by an Ordinance of 21 August 1845.
6. Because Langalibalele was not allowed the assistance of counsel, and, according to Maclean's Compendium of Kaffir Laws and Customs at pp. 38-40, such assistance was permissible under customary law.
 7. Because the sentence was ultra vires. Section four of Ordinance 3 of 1849 limited the power of the Supreme Chief to 'appointing and removing the subordinate chiefs or other authorities' among Africans, conferring upon him no power to sentence to death or to banish or to transport.
 8. Because banishment was a punishment unknown to customary law, according to Maclean's Compendium at p. 39.
 9. Because Langalibalele had escaped the jurisdiction of the Supreme Chief. According to Maclean at p. 75: 'Refugees are always received by the chief to whom they fly, whatever might have been the nature of the crime for which they fled from their own Chief; and they are never demanded, for if they should be they would not be given up'. Colonel C. D. Griffith (the Cape Governor's Agent in Basutoland) as Supreme Chief of the Basotho must have caused Langalibalele to be surrendered under 'civilised' law and not under customary law, and, therefore, he should be tried in the ordinary colonial court and not in an 'African court'.
 10. Because Langalibalele submitted that any offence in respect of guns was not an offence known to customary law, and could therefore be tried under ordinary law only.

The Executive Council heard the appeal on 8 and 9 July 1874 and dismissed it on 13 July. The judgment attempted to meet all of Colenso's arguments:

'the Lieutenant-Governor, clothed with the functions and powers, and acting as a Supreme Chief, is not restricted to the exercise of appellate powers, he is by Native Law invested with original jurisdiction, and can try and sentence under such law, either by himself, or with such assessors, as he may summon, or by deputation; and in

such trial is not bound by the opinion of his assessors, but may decide according to his own opinion, although those who sit with him may differ from it; while in the Court created by Ordinance No. 3, 1849, Section 3, he is bound to act "with the advice of the Executive Council" .

In a memorandum dealing with Colenso's grounds of appeal Shepstone had asked

'by what Court could the prisoner have been tried, except by one constituted under native law? ... provided that the members of it were, from the functions they commonly exercised, connected with the administration of native law, the Supreme Chief's selection was unlimited; he himself possessing original as well as appellate jurisdiction, might sit or not as he chose. What cognisance could the Supreme Court take of the separate circumstances, which together make up the crime of rebellion under native law? Removal without previous sanction from the Colony, with his cattle and his men, was not a crime known to civilised law, any more than disobedience to the summons of the Supreme Chief, or the disregard of an order, unaccompanied by a written warrant, or the firing upon and killing her Majesty's subjects, supposing these acts to have been committed outside the Colony'. 32

Shepstone's argument was accepted by the Executive Council which declared that Langalibalele's offences were 'specially known' to customary law; moreover, 'the Government was bound to vindicate its authority by its own inherent powers, or cease to exist'. The Executive Council rejected the argument that the offences had been committed beyond the Natal border: even if they were, customary law was 'personal' and not 'territorial' in its jurisdiction. Shepstone had argued that 'unless a native leaves his tribe with the Chief's permission, he is liable to his authority wherever he goes'³³ The Supreme Chief's jurisdiction being personal, his 'right to pursue and seize fugitive subjects is limited only by considerations of policy and prudence'. The arguments based upon Maclean's statement of customary law were summarily dismissed by the Executive Council because, it was said, his Compendium had never been recognised as authoritative in Natal. It was asserted that customary law 'knows of no such institution as that represented by a body of professional lawyers ...' and that banishment was a punishment known to customary law.³⁴

As Wyn Rees has remarked, the Colonial Office was not unimpressed with Colenso's arguments, despite the rejection of them by the Executive Council. A Whitehall official commented:

'The case in its legal aspect is full of difficult problems, and the justification of the local government seems ... to depend in great measure on what is and what is not Native Law in Natal, as to which we have no evidence but their own bare statements, for the Council in its judgment more than once denies the authority of the only independent Record we possess of what is Kafir Law - i.e. the Compendium of Kafir Law drawn up by the direction of the Cape Government. The Appeal of Bishop Colenso and the judgment of the Executive Council are both ... very able and ingenious documents. The Council often gives a good answer to the Bishop. But in the places where his points seem awkward, they quote a great string of them together and avoid so much as is awkward, and when they are driven altogether into a corner by the Bishop, they often answer by saying that a Native Chief is absolute, that Sir Benjamin Pine is a Native Chief by statute, and that therefore Sir Benjamin Pine is absolute and can do what he likes and sit as judge in his own cause'. 35

Although dismayed by the course of events, Colenso persevered and applied to the Supreme Court of Natal for an interdict to restrain the authorities from deporting Langalibalele. But this, too, was unsuccessful. Colenso remarked:

'At this moment, it would seem, 350,000 of the Queen's subjects in the Colony have no protection from any rash or headstrong measures of their Supreme Chief by appealing to the law of the land, though the first of the three "absolutely indispensable" conditions, on which Natal was first occupied as British Territory was this -

"That there shall not be in the eye of the law any distinction of colour, origin, language, or creed, but that the protection of the law, in letter and in substance, shall be extended impartially to all alike" '. (See p. 11) 36

Stronger words were used by Advocate John Bell Moodie who complained to Lord Carnarvon that the entire trial had been a travesty of justice. He said that Ordinance 3 of 1849 could apply to cases between African and African only.

'The indictment against the native Chief will show that none of his alleged crimes were against natives, and that, therefore, they could not be tried by native law.

The offences were against the white man, the Queen and her authority, and the statute laws of the Colony, and the accused could only have been legally tried in the Supreme Court, and by a sworn jury of nine good European men. To apply the native law, therefore to the case of Langalibalele, while it secured a certain and already determined upon conviction, was a wholly illegal act. It is a fair illustration of how a system, which was established only to meet the more harmless crimes and customs of the natives, among themselves only, can be misapplied so as to deprive them of all the rights of British Subjects'.

Hoodie complained further that the Natal Government had done nothing to change the African population or to prevent them from consolidating their strength. The administrative system had been weighed and found wanting:

'The whole thing is tumbling to pieces. The successors of those who have governed badly, and who have been favoured by circumstances, will thus get all the blame. Tribe after tribe will be shot, because by our mismanagement we have tempted them to set us at defiance. We have done all we could to maintain everything Kafir, and to keep the tribes and locations united'. 37

In his explanation to Carnarvon Pine adopted a defensive stance, claiming that the trial

'was not a trial of a prisoner in the ordinary sense, but was an enquiry to ascertain the whole circumstances of the case, and its ramifications so far as other tribes were concerned. The position of Langalibalele and his leading men was clear from the beginning; they were taken red-handed resisting the Government, assisted by their tribe, all fully armed, and never attempted to deny these facts. By their own law the punishment for such an offence is death. I may here remark that it seems very unreasonable to object that the native law was not exactly followed in these proceedings, because it was not carried out in all its rigour'. 38

Carnarvon was unimpressed by Pine's defence, although he conceded that it was necessary for the Natal Government to compel chiefs to obey orders. He criticised the composition of the trial court as 'peculiar and anomalous'.

'Not less peculiar was the law by which the prisoner was tried. It was what is known as native law, and the procedure adopted differed widely from the ordinary practice of the Courts. Looking to the fact that the crimes charged in the indictment were conspiracy, sedition, treason and rebellion, it would seem desirable that such grave charges should have been investigated by the highest judicial ability in the country, and under

the guidance of such rules as have been decided by the experience of civilised men to be the most fitting for the purpose. But if on the other hand, it could be deemed necessary to have recourse to native law, on the ground that the acts committed by the Chief were not criminal in the view of civilised law, it was to say the least, unfortunate to have imported into his indictment charges which are cognisable and punishable by the ordinary law courts'.

Carnarvon announced in the same despatch his intention of implementing major reforms in Natal's system of African administration, and recalled Pine from the Lieutenant-Governorship of Natal.³⁹

To add to Pine's discomforture another case of gross irregularity in the administration of customary law had been reported direct to Carnarvon by William Shaen, a Natal colonist. An African accused of murder was detained for nearly four months without preliminary investigations being conducted. An attempt to try him for murder before the Circuit Court had been abandoned because a material witness had left the country for good. But the man was kept in gaol for possible charging with assault under customary law: the crime had been reduced from murder to assault to enable it to be brought within the jurisdiction of a court empowered to employ customary law 'which might convict him without evidence'. An application for a writ of habeas corpus had failed in Langalibalele's case, and it failed in this case too. Carnarvon informed Pine that he could hardly believe the story, and that, if it were true, the prisoner must be released immediately.⁴⁰

In reviewing the Langalibalele affair it is obvious that the overriding concern of the Natal authorities, in both their executive and judicial capacities, was a political one: to smash Langalibalele and to set an example to all chiefs in the Colony. This could be done only by recourse to the dubious trial procedures about which critics complained so vigorously. Colenso was quite correct (he, in fact, cited Shepstone as his authority) in asserting that prior to the trial all serious crimes had been tried under Roman-Dutch law in the ordinary courts of the Colony.⁴¹ Moreover, as Lord Carnarvon suggested, to the amusement of the House of

Lords, customary law could have been used validly only if it were assumed that the Supreme Chief, Lieutenant-Governor Pine, was of a class 'whose ignorance and habits unfit them for the duties of civilised life' (the twenty-eighth clause of the Royal Instructions of 1848). What emerged from the trial, as is evident from the Colonial Office minute quoted above, was that in the absence of a definitive manual or code of customary law, customary law virtually amounted to what Shepstone claimed it was. The institution of the Supreme Chief was itself a legal fiction, bearing no relation whatever to the actual position occupied by a paramount chief or king even in an autocratic political system such as that of the Zulu. As Shepstone himself said of the traditional political system, '[i]t is a form of Government at the head of which is the chief, who is apparently arbitrarily supreme, and who possesses all power, but, practically, that power cannot be exercised by him safely, except with the consent of the people'.⁴² In 1881 the former King of the Zulu, Cetshwayo, gave information on the position of the Zulu monarch to the Cape Native Laws and Customs Commission:

- '90. Is Compassing the death of a chief a crime punishable with death?
91. Is a man killed for trying to kill the king? - He is simply fined cattle, and is talked to very severely.
92. Is a man punished with death for disobeying a direct order of the king? - He is simply fined when he has committed the offence twice before.
93. What is the punishment for a man deserting from his tribe? - If the chief of his district had given him any property he would be asked by the chief to return that property, and then he would be at liberty to go.
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144. As king of the Zulus, was all power invested in you, as king, over your subjects? - In conjunction with the chiefs of the land.
145. How did the chiefs derive their power from you as king? - The king calls together the chiefs of the land when he wants to elect a new chief, and asks their advice as to whether it is fit to make such a man a large chief, and if they say "yes" the chief is made.

146. If you had consulted the chiefs, and found they did not agree with you, could you appoint a chief by virtue of your kingship? - In some cases, if the chiefs don't approve of it, the king requires their reasons, and when they have stated them he often gives it up. In other cases he tries the man to see whether he can perform the duties required of him or not.

147. In fact, you have the power to act independently of the chiefs in making an appointment, although you always consult them? - No; the king has not the power of electing an officer as chief without the approval of the other chiefs. They are the most important men. But the smaller chiefs he can elect at his discretion'. 43

Natal's Supreme Chieftainship knew nothing of this flexible and consultative pattern of rule: it was a rationalisation of a harsh and arbitrary bureaucratic despotism.

The Natal Government's action was well received by most Natal colonists, and, paradoxically, may have served to knit together white public opinion behind the Government and, in some degree, the Shepstonian system. If the Supreme Chief and the use of 'customary' law could bring about the annihilation of a tribe, the system was not without its usefulness. A Select Committee of the Legislative Council approved the Government's action in the affair, and censured Carnarvon for 'very inadequate comprehension' of the circumstances. The Committee claimed:

'The trial of Langalibalele and his people, according to Native law, was a necessity of the case, and the technical peculiarities upon which stress was laid we are satisfied, arose from a sincere desire to reconcile the asperities of that system with English notions of moderation and justice the Lieutenant-Governor, as Supreme Chief, had unlimited power to order the trial as to him might seem fit, and [the Committee] share the opinion which is, with few exceptions, held throughout South Africa, alike by Europeans and Natives, that the sentence as carried out was essentially lenient and just'. 44

Missionary opinion, too, was overwhelmingly behind the Government: seventy four ministers and missionaries signed a petition approving the action taken. The signatures constituted a very high proportion of the total clergy in Natal, and the few who did not sign were mostly the clergy of Bishop Colenso. 45

Carnarvon was critical of the Natal Government's handling of the

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or property, which upon the usual preliminary examination are found to have originated in quarrels at tribal gatherings, or social or other accidental meetings, or to have taken place at such gatherings, or in which tribes or portions of tribes become involved, as in faction fights and the like; because the trial for such offences by the ordinary Courts of the Colony is ineffective, not from want of severity in the sentences passed upon conviction, but from incapacity to deal with sections of a population in contradistinction to individual members of it.

- (3) Such crimes or offences for whose trial before a Special Court any law has been or may hereafter be enacted.

This would avoid interference with what is commonly called the Cattle stealing Ordinance'

For the trial and punishment of Africans accused of these crimes Shepstone recommended the creation of a Native High Court. This was to consist of the Secretary for Native Affairs, assisted by such magistrates and chiefs or headmen as might be from time to time or in each case, approved by the Lieutenant-Governor. An appeal would lie from this court to the Lieutenant-Governor-in-Council. The court would deal also with all disputes between chiefs, or disputes arising out of succession to chieftainship in the past, these latter cases had been dealt with by himself as a Court of the first instance as they were of 'too serious and disturbing a character to be safely left in the hands of Magistrates, whose decisions might be inconsistent, and who are in daily contact with the litigants, and therefore liable to have ill-feeling created against them'.

Shepstone then considered the position of the Lieutenant-Governor as Supreme Chief. He suggested that the system of 'dual capacity' had caused confusion in the recent episode which might have been avoided had the Supreme Chief been an official other than and subordinate to the Lieutenant-Governor. In legal matters 'there is no doubt an apparent incongruity in an appeal lying, as a matter of course, to the same person as Governor, who decided originally as Supreme Chief. This it is that places the Governor in a position of difficulty'. The Lieutenant-Governor,

considered Shepstone,

'should be able to do as Governor, all that it is necessary he should do in native matters, without being subject to the disadvantage of having perhaps to correct, as Her Majesty's representatives, a mistake he may have fallen into in his subordinate capacity of Chief of the natives, and he should ... occupy no position that makes the distance between the Governor and the natives less than that between him and the white Colonists. He should be Governor, and Governor only, with all the functions which that title implies, over both'.

To overcome this dualism Shepstone recommended that the Secretary for Native Affairs be made Supreme Chief of the African population, subject to the direction of the Lieutenant-Governor.

Although Shepstone believed that 'tribal organisation cannot be dispensed with for a long time to come', he said that

'[i]n the transition journey which the natives must travel from their present condition to more intimate and practical contact with civilization, they need guides more experienced and advanced than their own hereditary Native Chiefs; these latter are naturally wedded to their ancient customs and prejudices, and are tenacious of their hereditary rank, and the social position of their families'

He advocated that more magistrates should be appointed to the reserves and that the magistrate should be both 'adviser and example' to the African population. ⁵²

Despite the length and detail of Shepstone's memoranda on African affairs, it is difficult to discern in them any proposals for a substantial measure of reform. Indeed, one could hardly expect this of so conservative a person as Shepstone who, by conviction, distrusted anything that smacked of 'social engineering' and preferred 'piecemeal changes'. The Langalibalele affair had brought into question the entire bureaucratic structure as far as it affected Africans, but could Shepstone's suggestions be said to make any improvement? Making the Secretary for Native Affairs Supreme Chief merely translated a de facto position into a de jure one, because, in fact, ever since the establishment of the Supreme Chieftainship Shepstone had been the dominant force in any matter affecting native policy.

Of the Native Administration Bill, which Shepstone drafted, Mrs. Colenso wrote: '[it] is nothing but a legalisation of this same native policy all lodged in Mr. Shepstone's breast, which issued in that mockery of justice, the trial of Langalibalele'.⁵³ To have advocated anything else, of course, would have implicitly acknowledged that previous policy had been a failure.

The discrepancy between the sweeping reforms called for in Carnarvon's despatch and the limited changes advocated by Shepstone and accepted by the Colonial Office can be explained by Shepstone's influence over the Colonial Office officials, Carnarvon and Sir Garnet Wolseley, the famous soldier, who had been sent to Natal as Administrator to inaugurate the new dispensation. Carnarvon regarded Shepstone as a key figure in his confederation scheme,⁵⁴ and thought highly of his capabilities as an administrator. He wrote to Wolseley on his appointment to Natal, saying that he would derive 'the greatest advantage in the advice and assistance of the able and experienced Secretary for Native Affairs, Mr. T. Shepstone, C.M.G....' Shortly after his arrival Wolseley wrote to Carnarvon, saying that he had been in constant communication with Shepstone and had benefited greatly from 'his sound practical judgment'.⁵⁵ Wolseley took Shepstone with him on his tour of inspection of the Colony and, according to Mrs. Colenso, 'as he does not understand the native language, he will only hear what Mr. S. chooses'.⁵⁶ Discussion of reform centred on the security issue, turned in this direction by the recent 'revoit', and rumours of disturbances in Zululand which, according to Mrs. Colenso, 'help to keep up the notion of danger from any interference with the prestige of the Native Department (i.e. Mr. Shepstone) under whose rule, for so many years, neither our black fellow-subjects, nor our black neighbours, have risen in arms against us. This is the string on which Mr. S's friends have harped'. In a further interesting comment, which casts some light on African views of Shepstone, Mrs. Colenso claimed that the Natal Government's prestige among Africans was based not only upon conquest,

but also upon the fact that life and property were safer in Natal than in Zululand. Now, however, 'this latter ground of confidence has been shaken by the treatment of these two tribes. (No news would be more welcome to the Natives of Natal than that Mr. S. was deposed from his office). They have no confidence in his justice - his favorites prosper and those who offend him go to the wall'.⁵⁷

Wolseley set out his views in a despatch to Carnarvon in June 1875. As one might expect of a soldier, Wolseley was concerned primarily with the vulnerability of Natal to an African rebellion. But Natal had enjoyed peace for thirty years: why was it necessary to change the administrative system? According to Wolseley:

'Under this system not only has barbarism been legalised and perpetuated, but its strength has been fostered. So far from the Colony gaining strength during these years of false peace it is actually weaker now than it was years ago. While the white population has remained stationary, the natives, under our care, and as a consequence of our policy, have multiplied and grown sufficiently powerful to resist our authority, and possibly to drive us from the country if led to combine by the persuasions of a prophet, or any of the accidental but potent influences to which savages are liable'.

The African population of Natal was now 350,000 and many had acquired guns. With few exceptions, said Wolseley, 'the Kaffir of Natal is as idle, as barbarous, and as superstitious now as he was twenty years ago'. The laborious endeavours of missionaries had achieved 'trifling success'. At the root of the problem was the power of the chief:

'So long as the Chiefs are allowed to retain their present power I conceive that such must be the fate of all attempts to introduce civilisation. Each Chief is a nucleus of barbarism; he it is who has the most wives; he it is who is most opposed to his people becoming Christians as he thereby loses influences over them; he it is who is most interested in maintaining the nefarious practice of witchcraft - the bane of the Zulu race - and all their other barbarous customs, for he it is who gains power and wealth thereby'.

If the chiefs were to retain their power the Colony would be at their mercy, and more episodes such as the recent one could be expected.

Shepstone's draft Native Administration Bill struck at the power of the chiefs by decreasing their power; and Wolseley wondered what course they would adopt 'to protect what our past inherent weakness has taught them to regard as their hereditary right'. Wolseley emphasised the military weakness of the colonists and the danger posed to Natal by the Zulu might to the north. Equally menacing was the acquisition of guns by Natal Africans, but Shepstone had advised against disarming them as the irritation might provoke unrest. Wolseley requested an amount of £20,000 per annum for five years to build up a Mounted Police Force. He claimed that in the Cape Colony Sir George Grey had been granted £40,000 annually for several years from 1854, to be expended in breaking the power of the chiefs - the same object presently entertained by Wolseley - and the result had been twenty years of peace.⁵⁸

For his part Shepstone claimed that what was hailed as 'the new native policy' was the same policy that he had advocated in the 1840's. But times had changed.

'what in those days would have been easily introduced and heartily welcomed will now be looked at from a very different stand point. Aspirations and objects of ambition have supplanted the docile spirit which then craved only for protection and was ready to submit itself to the guidance of the protecting race; risk therefore there must be in the attempt to introduce now what should have been introduced under such different and favourable chances of success so long ago'.

But further delay would only increase the danger. Shepstone considered it 'a great and pressing necessity' to increase the military force in the Colony before embarking upon the new policy. The extensive possession of guns by Africans created among them 'an inordinate idea of strength and importance, they boast of what they can do, then become tempted to try to do it and so become destroyed'.⁵⁹

The Native Administration Bill had been drafted by Shepstone in the Colonial Office in London. It incorporated all the changes he had suggested in 1874. The provisions of the Bill were not favourably received by the elective members of the Legislative Council or by the

colonists. Despite an increase in the number of nominated non-official members of the Legislative Council,⁶⁰ several important amendments to the Bill were made by a Select Committee, and later, a Committee of the whole House. The most important amendments concerned the Native High Court and the codification of customary law. Shepstone had envisaged a Native High Court consisting of the Secretary for Native Affairs, assisted by magistrates and chiefs (see p. 167). The Native Administration Law, however, provided for a Native High Court of which the Secretary for Native Affairs would not be a member: it was to be presided over by a specially appointed judge (equivalent in status to a puisne judge of the Supreme Court) who could either sit as sole judge, or be assisted, as occasion might require, by administrators of native law, or chiefs or 'other Native Officers' as assessors. The Native High Court was to hear appeals in cases from the courts of the administrators of native law; and it could try criminal cases of the kind which Shepstone had recommended should not be heard under the ordinary law of the Colony (see p. 166). Appeals from the Native High Court to be heard by a Court of Appeal, which was to be a branch of the Supreme Court and would consist of the Chief Justice or one of the puisne judges of the Supreme Court, the Secretary for Native Affairs and the Judge of the Native High Court (Sections 7, 8 and 9 of the Law). This amounted to a substantial whittling down of the judicial powers previously exercised by the Secretary for Native Affairs.

The Law abolished Ordinance 3 of 1849 with all its obscure and vague provisions. It provided that all crimes and offences committed by Africans should be tried before the ordinary courts of the colony 'in the same manner as if they had been committed by persons of European descent'. The exceptions to this provision (those mentioned above) were enumerated in Section 6. Section 15 reflected Shepstone's stress upon the usefulness of communal responsibility:

'Where any homicide, assault or other injury to person or property, whether of native or person of European descent, has occurred, and it is shown to the satisfaction

of the Lieutenant-Governor that such homicide, assault, or other injury aforesaid was caused by natives, and that there is a combination among any tribe or community of natives to suppress evidence material to the trial of such offence, or to conceal the perpetrator thereof, or otherwise by passive resistance to constitutional authority to encourage the repetition of such crime or offence, it shall be lawful for the Lieutenant-Governor to impose upon such tribe or community a fine not exceeding five pounds per head of the adult male population for each offence

The Law affected chiefs in several ways. Their former limited jurisdiction in criminal cases involving Africans was entirely removed, and in civil cases in which they adjudicated they were bound, within ten days of giving a decision, to furnish all details of cases to the administrator of native law. It was also provided that 'in all cases decided by any Native Chief or other Native Officer, a new trial may be had ... before the Administrator of Native Law

The Natal authorities envisaged that one or more administrators of native law should be appointed to each location and that all chiefs and headmen should be subject to them. In a minute on the introduction of the Law Shepstone said that it would not be popular among the chiefs, and he recommended that it be introduced gradually.⁶¹

Section 5 of the Law recognised customary law for the purpose of most civil cases between Africans, subject to the repugnancy clause. But it was specifically provided that all civil cases between Africans arising out of trade transactions or out of the ownership of or succession to land should be tried according to the ordinary Colonial Law.

In November 1875 the Aborigines Protection Society complained to Carnarvon that while the legislation was apparently intended to destroy the power of chiefs, 'it does not assist the Kaffirs to obtain land, or to acquire individual rights of citizenship. So far as we are able to judge, it is a measure calculated to perpetuate the anomalies of native law, and to multiply the dangers of double government which has hitherto existed'. The Society claimed that the Native Affairs Department 'which

has been greatly discredited by recent events', would be made more powerful than ever. Judicial and political functions could still be exercised by the same individuals, 'and thus we may expect to see repeated the scandal of Langalibalele's trial' Replying on behalf of Carnarvon, a Colonial Office official, W. R. Malcolm, suggested that the Society did 'not seem correctly to apprehend the scope and intention of the Law'. He assured the Society that the administration of customary law 'shall be guarded by placing at the head of it a Court composed of men of high standing, though not necessarily or exclusively the Native Department, acting in accordance with the usages and practices of civilised nations' The Society was further assured that a trial such as Chief Langalibalele's 'will never recur'.⁶²

Criticisms of the legislation were voiced in Natal by J. W. Akerman, an influential colonist and a member of the Legislative Council. He had been responsible for the addition to the title of the Law of the clause making provision for 'the gradual assimilation of Native Law to the Laws of the Colony'. Akerman objected to the inclusion of the Secretary for Native Affairs in the Court of Appeal, claiming that the 'political element has been thrust back again upon the judicial rostrum'. The Court of Appeal was to consist of the Judge of the Native High Court, the Secretary for Native Affairs, and the Chief Justice or a Judge of the Supreme Court. Akerman maintained that the Supreme Court judge 'will avoid sitting if possible in such association, and that practically the Secretary for Native Affairs with his probable nominee and subordinate, the Judge of the Native High Court will thus rule the whole Native Judicial System as now, though a strictly political officer'. Akerman remarked upon 'how degraded' he and others felt at having to recognise customary law, even if, in this case, it was for the purpose of initiating reforms. 'The whole fabric on which it rests may be described as two-fold - Chieftainship with its concomitant tribal association, and women purchased under the name of marriage. All this we have had to legalise in order to

begin that improvement so many years officially neglected'. Moreover, Akerman continued,

'by enacting that all civil cases between natives shall "be decided by Native Law", I fear we relegate to fossilised barbarism thousands and thousands of natives quite prepared at once - through long commercial contact with colonists - to emerge from tribalism, become loyal and individual land-holders and become governed by the Ordinary Colonial Laws'.

He considered that the Law would 'in no way' break down the powers of the chiefs.⁶³ Shepstone dismissed Akerman's arguments as of no consequence.

The chief object of the legislation was to assimilate the two legal systems and 'no one more than myself wished it were possible that such assimilation could be accomplished at once'. He said that the Court of Appeal, to whose composition Akerman took exception, was a transitional measure which would be changed when customary law had been reduced to writing. Akerman, said Shepstone, was not competent to speak authoritatively on African affairs: he was a townsman 'who know but little of the real character of the natives; their [townsmen's] contact with them as domestic servants gives no insight whatever into their condition as a people'.⁶⁴

Wolseley's successor, Lieutenant-Governor Sir Henry Bulwer, claimed that the lines of future political and legal changes suggested by Carnarvon had deliberately been left vague in the Law and that this was disappointing to a large sector of colonist opinion who expected 'some distinct and well defined rules of policy to be fixed by legislative enactment'. It was widely felt among colonists that the Law effected no real change in the system. After outlining the changes the Law provided for, Bulwer expressed the view that the codification of customary law would foster its assimilation to the ordinary law of the Colony.⁶⁵ The following chapter shows that, ironically, the effect of codification was the very opposite.

The Codification of Customary Law

The provision for codifying customary law in the Native Administration Law of 1875 was the culmination of nearly twenty five years agitation by colonists. The agitation was an elemental part of their objections to Shepstone and his system. They considered it necessary to bring to bear upon the Native Affairs Department the searchlight of public scrutiny. Few colonists knew anything about customary law, apart from some garbled and inaccurate ideas. The content of customary law was believed to be locked up in Shepstone's breast, and to force it out, colonists hoped, might be a spectacular expose of all the nefarious dealings that were alleged to be conducted in the name of customary law.

The colonist-dominated 1852-3 Commission was the first body to demand that customary law be reduced to writing. In a section of the Report giving 'Reasons for the present unsatisfactory state of the Kafir population', the Commission alleged:

'The non-existence of a full and complete digest of the rules and principles of Kafir Law for the guidance of the magistrates At present each magistrate administers within his own jurisdiction what he considers is, or ought to be Kafir Law. The Kafirs see and comment upon the contradictory decisions arising. Uniformity of management is absolutely essential to success'. 1

It is evident from several sources that uncertainty as to the true provisions of customary law did lead to irregularities and inconsistencies. In a document entitled 'A Short History of Native Law in Natal', the Reverend J. L. Döhne cited several examples of inconsistencies and alleged travesties of justice occurring in magistrates courts when cases were being decided according to customary law. Döhne said:

'Magistrates ... had every reason for excusing their fault by appealing to their ignorance of Kaffir Law. And, although every Magistrate had several Indunas for assistants they could not get on, since these men took bribes, and told falsehoods instead of Kaffir Law'. 2

Advocate J. Y. Campbell (who drafted a second code but denied responsibility for the one that came into force in 1891), in his account of the difficulties encountered in administering customary law, mentioned that the tribes of South-East Africa had legal systems embodying many common principles, but with many differences in details; and when magistrates were appointed in Natal they knew nothing about customary law and had to acquire a knowledge of it from Africans.

'Thus one magistrate acquired, say, the law of his division, being that perhaps of the Alubi tribe, whereas another, in another part of the Colony, was learning in his division that, say, of the Manzini tribe; and so long as those magistrates remained in the same divisions their decisions were uniform. A time came, however, when those magistrates were changed and passed on to other divisions, and, when changed they set about laying down in the new division the law which they had learned in the old one This of course, unsettled matters. The natives knew the law, but the white chief ruled so and so, and, although puzzled, they had, perforce, to submit'.

The more magistrates were moved around and the greater the number of magistrates 'so also grew the confusion'.³

In an effort to ensure a greater degree of uniformity in magistrates' decisions, and to discuss where and how customary law provisions should be superseded on grounds of undesirability, a conference of magistrates, lasting four days, was held at Pietermaritzburg in December 1859.

Points of customary law were discussed and resolutions were adopted.

The right of the authorities to change customary law was justified by noting that both Shaka and Dingane had made alterations to the Zulu laws of inheritance and marriage.⁴ No further conferences of this kind were held, but magistrates who were uncertain on points of customary law could obtain rulings by writing to the Secretary for Native Affairs.

Lieutenant-Governor Pine accepted the 1852-3 Commission's recommendation that customary law be codified, but he clashed with Shepstone on this point. In May 1854 Pine reported that magistrates were experiencing considerable difficulty through not having an adequate knowledge of customary law. He said that he had, on several occasions, expressed the view to Shepstone

that a code would be a useful innovation. Shepstone, however, pleaded that drawing up a code would be very difficult. Pine disputed this, saying that Shepstone had so much experience that preparing a simple statement of customary law would be easy.⁵ Later, in 1858, a correspondent writing in the Natal Mercury claimed that it was a 'notorious fact' that Shepstone 'broke down' when required by Pine to frame a code. He asked: 'Is this a proof that he is the only competent authority on the subject?'⁶ Shepstone was unquestionably a competent authority, but his lack of enthusiasm for codification stemmed from a conviction that it would be undesirable. The elected members of the Legislative Council pressed for codification in 1857, but when, in the following year, Shepstone was asked what progress had been made in compiling a digest, he replied such a task was hardly part of his duties. The Colonial Secretary suggested that if the Legislative Council wished to have a code they should vote a sum of money and appoint a committee for the purpose.⁷ Shortly afterwards a Legislative Council member proposed a motion for the production of 'a compilation or collection of Kaffir Laws'. In reply to this the Colonial Secretary said:

'The form in which Kaffir Law is administered in the Colony is this. The Magistrate is informed by his indunas as to the custom of treating cases similar to the one which may be before him. They advise him. In fact, the system is one in many respects similar to that of our jury. The law existed in that oral shape from time immemorial, and it exists to this day. I don't intend to go against the motion to obtain a code of Kaffir Law, but the member for Weenen says he wishes to have the law as administered for the last ten years. How is he to get it on the table? I say it is impossible to place on the table an oral law'.⁸

In 1860 a further question in the Legislative Council elicited the reply that no progress was being made in the work of codification.⁹ Later, in 1862 the Legislative Council addressed the Lieutenant-Governor to codify customary law, whereupon Shepstone announced that he was willing to do the work but that it would take a great deal of time: '... the duties of my office are increasing and allow little time for such an

undertaking even after the usual office hours'.¹⁰ In 1863 Shepstone replied to another question that 'he had got his notes together, and hoped some progress would be made in the recess'.¹¹ In his reply to the same question in 1864 an unmistakable note of deviousness was apparent:

'The Secretary for Native Affairs said that last year he had omitted to state that this digest was in progress by a private individual. It was not the intention of the Government to have any digest made; what he had said last year was, that there was a digest in course of preparation by a member of this house, that was himself. It was being proceeded with'.¹²

According to the Reverend J. L. Döhne's account, he was at some time asked if he could prepare a code of customary law, but he declined to do so. After Shepstone had declined to undertake the task (probably in 1858: Döhne's account mentions no dates), Judge Harding was asked to do so. Harding (who had at one time been an administrator of native law) prepared a code based upon his own records, but Döhne reported that the records gave a completely inaccurate account of customary law. Harding's draft was never laid before the Legislative Council. Shepstone was asked again and again, but excused himself on grounds of too much other business.

According to Döhne:

'at last, when he [Shepstone] was pressed, he declared: it was impossible to put Kaffir law down to writing! There this noxious subject has been left. Ignorance and confusion is still going on at Magistracies; bribing never ended with the indunas; oppression among the natives takes deeper roots, and the abomination of the witch-and-rain doctors is more and more winked at, whereas formerly they were punished'.¹³

An indication of Harding's approach to the administration of customary law was given by Thomas Mhipson in 1873:

'When I was Sheriff [between 1853 and 1861], Mr. Harding, the present Chief Justice, very kindly volunteered to recommend me for promotion to a magistracy, and to use his influence on my behalf. I told him that ... I could not avail myself of his offer, as I did not know what Native Law was, and from so much as I knew of it, I thought I should not like to administer it. He replied that I could do as he had done when he was a magistrate. When he was doubtful about what Kafir Law was, he put a chief into the witness box, and swore him as to what was the law'.¹⁴

The elective members of the Legislative Council returned to the attack in August 1869. The occasion was a debate on their proposal to amalgamate the office of the Secretary for Native Affairs with that of the Natal Colonial Secretary. Ostensibly the proposal was designed to be an economy measure, but the real aim was to break Shepstone's power and to eliminate the alleged evils of what was called 'double government', i.e. the separate administration of Africans. In a vigorous attack on Shepstone Ridley claimed that there were no rules for the guidance of magistrates and that their judgments were constantly being reversed 'by the arbitrary will of the Supreme Chief'. He maintained that rulings were determined by 'the whim of the moment'. The fault lay in the absence of a definitive code:

'The Secretary for Native Affairs had persistently refused to put Kaffir law in writing, or allow the magistrates to do it. Let the office of the Secretary for Native Affairs be abolished and the law would, before long, be put into a concrete shape The abolition of the office of the Secretary for Native Affairs would bring another boon, it would enable the House to place the natives gradually under colonial law as they were raised from their present barbarous condition'. 15

In September 1869 the Legislative Council took up the question once again and agreed to an address to the Lieutenant-Governor, stating inter alia:-

'2nd. That it is advisable that the Lieutenant-Governor should cause steps to be taken to codify that which is now administered in the Colony under the name of Native Laws, so that the Imperial Government, the officers who have to administer those laws, and the inhabitants of the Colony generally, may have an opportunity of knowing what those laws are; and that this House might be in a more favourable position to judge how legislative provision may best be made for the improvement of the native population; and that the House will be prepared to vote the necessary sum required for such purpose.

3rd. That it is the opinion of this House that it is quite practicable to codify and publish the Native Laws, because the principles and usages which regulate the administration of these laws exist in the decisions of the cases in the Record Books of the Resident Magistrates, in the decisions of appeals before the Lieutenant-Governor as Supreme Chief, of which, it is presumed records are also kept, in the evidence on Native Laws and usages taken by the Commission which sat in 1852, in the minutes of the

meeting of the Magistrates on the above subject, held in December, 1859, and in the records made by the present Chief Justice when acting as administrator of Native Law'. 16

The address, however, fell upon deaf ears. Further requests for codification were made in 1872 when a deputation including three members of the Legislative Council, Akerman, Turnbull and Ridley, presented to Lieutenant-Governor Musgrave a memorial requesting that he direct his attention to the feasibility of 'discountenancing' polygyny. The memorialists enquired '[w]hether the Native Law could not be reduced to writing, with a view to its gradually being assimilated to the Law of the colony'. They suggested that codification of customary law 'would lend to its being uniformly administered, which is impossible under existing circumstances'. Musgrave's reply ignored the suggestion and dwelt solely on the impossibility of imposing monogamy upon the African population.¹⁷

In commenting upon the reply the Natal Witness observed: 'It is simply absurd to suppose, that, in a small place like this, two opposing laws and conflicting systems of social life, should permanently exist'.¹⁸

Shepstone's resistance to the codification of customary law may have been partly attributable to his notorious secretiveness. But nowhere in his public statements or private papers does he adduce as a reason for his resistance the view that publication of a code would be a further stick with which he would be belaboured by the colonists. He genuinely believed that codification would be undesirable because it would impart a rigidity to customary law which, in its traditional setting, it did not have.¹⁹

As Secretary for Native Affairs, Shepstone constituted, before 1875, the Court of Appeal for cases from magistrates' courts. He did so, he claimed, in his capacity as 'induna' to the Supreme Chief, a practice said to be in keeping with customary law. From the Secretary for Native Affairs Courts there was theoretically, a right of appeal to the Lieutenant-Governor-in-Council, but this was very seldom exercised.²⁰ Combining executive and judicial functions in this manner Shepstone could, by virtual fiat, declare

what customary law was, and effect such changes as he desired. It is reasonable to assume that he believed codification would spell an end to this flexible situation: if the content of customary law was set out in a code it would probably be much more difficult to amend.

The insertion of a provision for codification in the Native Administration Law of 1875 was forced upon an unwilling Shepstone by the efforts of the Legislative Council and Bishop Colenso.²¹ In terms of Section 10 of the Law, the Lieutenant-Governor was required to appoint a Board consisting of the Chief Justice of the Colony, the Attorney-General, the Secretary for Native Affairs, the Judge of the Native High Court and any other three persons who were either magistrates or justices of the peace; any five of these were to constitute a quorum. Apart from framing various procedural rules for courts administering customary law, the Board was required, within two years of the date of the promulgation of the Law, to

'reduce to writing the Native Law as at present administered in this Colony; and shall from time to time, as occasion may require, propose the alterations, amendment, or repeal of any of the provisions of the aforesaid Native Law, and also the establishment of new provisions therein, and the alteration, amendment or repeal, from time to time, of any such new provisions'

In a commentary on the provisions of the Law Shepstone suggested that changes in customary law would be initiated by the Executive Council which would convey its recommendations to the Board.²² The provisions of the Law, however, were quite explicit in vesting powers of initiative on the Board. This could have been an oversight on Shepstone's part, but it might equally have been deliberate: an indication of Shepstone's wish to retain firmly in executive hands the power to initiate changes in customary law. Changes recommended by the Board would be conveyed to the Lieutenant-Governor who would submit them to the Legislative Council for approval and sanction. The changes would be confirmed by the Lieutenant-Governor and then published by proclamation in the Government Gazette. The Code, itself, however, would not be ratified by the Legislative Council. In terms of the Law, as soon as the code was completed it was to be proclaimed

and published in the Government Gazette. Power to initiate changes in customary law was also excluded from the purview of the Legislative Council. The process of amendment of customary law was, unlike the previous system, a very cumbersome one, and, in practice, as will be shown, amendments were simply not made.

The Colonial Office kept a watchful eye on Natal, and in March 1878, Sir Michael E. Hicks Beach, the Colonial Secretary, wrote to Bulwer enquiring what progress had been made with codification.

'The reduction of Native Law to writing with a view to its ultimate amendment in conformity with civilised and Christian principles was, you are aware, an object of my Predecessor's policy, and I need hardly say that I am as anxious as he was that the work of ameliorating the laws and condition of the Natal natives should be steadily and vigorously pursued'.²³

But codification had virtually been completed, and in July, Bulwer was able to announce this to the Legislative Council who, in reply, expressed the hope that 'the reduction to writing of the Native Law of the Colony may lead to improvement in the principles embodied therein, as was intended by the Native Administration Law of 1875'.²⁴

The Code was a curious document, divided into 68 sections.²⁵ It was an amalgam of traditional law and such modifications as had been introduced in the past by the Natal Government. The regulations under the Marriage Law of 1869, for instance, were woven into the Code. In so far as the Code embodied customary law, it was an exceptionally poor statement of that law. In the preface it was stated that

'[t]he main elements of Native Law hinge upon a few leading principles. The subjection of the female sex to the male, and of children to their father or other head of their family. Primogeniture among males as the general rule for succession - the incapacity, generally speaking of women to own property'.

As H. J. Simons has said of a later code, which incorporated similar principles, it 'stereotypes a concept of feminine inferiority unknown to the traditional society'²⁶

In an apologetic report on the Code in 1884 the Attorney General,

M. H. Gallwey, explained that

'[1]n the framing of the Code of Native Law the Board mainly depended upon the Secretary for Native Affairs, the Judge of the Native High Court, and the Resident Magistrates appointed on the Board ... for their version and statements of what the Native Law was. Any absurdity that exists in the Code is therefore caused by the information so obtained. The great difficulty the Board had to contend with in reducing the Native Law to writing was to reconcile the conflicting opinions expressed by the skilled members as to the various Native Law doctrines or canons. It was this diversity of opinion that has prevented any Code of Native Law being reduced to writing before that time, and it is the reduction of the elastic Native oral Law into a fixed written code that has caused the difficulty in administering the present Native Law, the ultimate Court of Appeal being bound to adjudicate upon the written Code and that alone'. 27

It was quite apparent that the 1878 code was an unsatisfactory document. Many points of customary law were so starkly and sketchily made that Administrators of Native Law continued to enforce their own versions of customary law. Advocate Campbell described the situation in 1891 as a 'miserable state of affairs'. He found 'all the magistrates giving different judgments upon the same points, the Native High Court upsetting these judgments, the Native High Court in turn often being upset by the Court of Appeal. Of course all legal judgments are liable to be upset on appeal, but the upsetting in the native tribunals of Natal by European judges were something quite beyond the ordinary rate'. 28

The Natal Native Commission of 1881-2 found that

'the system of introducing changes in Native Law, provided for by Section 10 of the Native Administration Law, is cumbrous for practical purposes, and we are informed that though several changes have been proposed under it they all still remain incomplete by reason of some part of the process towards completion not having been effected. We think that a Resolution of the Legislative Council should not be requisite to give validity to alterations of Native Law, but that instead opportunity should be given to that Council for rejecting them, either absolutely, or unless some specified corrections should be made'. 29

The difficulty in amending the Code and its many defects led the Government to decide that an entirely new code should be prepared. Law 44 of 1887 provided that a board of experts should be appointed for this

purpose and, on completion of their task the new Code was to be laid before the Legislative Council for a period of two weeks for approval or possible amendment. The legalisation of the Code, however, was delayed when members of the Legislative Council, notably Harry Escombe, protested that inadequate time had been allowed for study of the Code. An extension of time was obtained by means of a hasty amendment of the 1887 legislation. It was impossible for members of the Legislative Council to have an informed discussion of the principles of customary law embodied in the Code because, as H. Binns remarked, 'The amount of knowledge which honourable members, as a whole, have on this question of Native Law is, I am sorry to say, of a very limited character'. John Robinson corroborated Binns, saying that not five per cent of the members knew anything about customary law. Moreover, they were primarily interested in the constitutional position of the Supreme Chief (because this would be of importance when responsible government was achieved. See pp. 318-9) and the power to amend the Code. Law 44 of 1887 had envisaged that the board which was created would have power of amendment, thereby eliminating the previous cumbersome procedure. Few members were competent or sufficiently interested to discuss critically the intricacies of customary law. One member, Hartley, suggested that only African representation in the Legislative Council would ensure that African opinion was sounded on matters - such as the Code - that vitally affected them. But this was not a popular view.³⁰

The elected members insisted that amendments to the Code should be passed by the Legislative Council in the ordinary manner. The debate, according to the Governor, Sir C. B. H. Mitchell, was 'desultory and peculiar'.³¹ There was a grain of truth in W. W. Darby's comment that 'although this is headed a "Code of Native Law" ... [it] is not Native Law. It is simply a Code of Regulations under which it is proposed to govern the Natives'. The provisions were passed en bloc: the Colonial Engineer's observation in the committee stage that 'shimiyana' (an intoxicating

concoction with a treacle base) should be spelt 'isityimiyana' was virtually the only other change made in the original version of the Code.³²

The new Code received a mixed reception. The American Board Mission condemned it outright in forthright terms:

'This Native Code is an English adaptation of barbarian law. It is an abominable strong hold where heathenism hides and defies progress. It is a level tolerable only in an initial period. It is a Code which should be abolished or at least modified as soon as possible. It is with profound regret then that we notice such changes as have come with recent modifications. In our opinion the new Code in no way discourages "Lobola" - and encourages polygamy. Such improvements as are incorporated in the new Code must not blind us to the radical wrong of the Government in the persistence with which it refuses to look at Native Law from a Christian standpoint. We are face to face with a difficult problem. Our Christian natives are shadowed with heathenish laws. The way out is so hedged up that few care to make the struggle'.³³

The Zulu/English newspaper Inkanyiso reported in September 1891 that the Code met with general approbation among Africans. Although it had defects, it was in many respects a 'very good digest of our Native Laws'.³⁴ But in 1893 Inkanyiso changed its tune, describing the Code as 'an abortion': 'Its omissions and commissions [some of which it listed] are so numerous that we cannot enumerate them in our present space'.³⁵

Like its predecessor the Code contained at many points clauses which bore no relation whatever to traditional customary law. The Supreme Chief (Chapter two of the Code), for instance, was unlike any traditional chief in the powers he could wield (see pp. 319-20). The Code also regulated traditional practices. Section 194 provided that 'No medicine man, woman or herbalist may practise his or her calling for hire, unless licensed by an Administrator of Native Law so to do'. The annual licence cost £3. Many other bureaucratic intrusions aimed at a closer regulation of traditional mores.

The Code contained a serious mis-statement of traditional law in its provisions regarding the property rights of women. Section 94 stated that women were always considered minors without independent power.

(Provision was made, however, in section 78 for women to be vested with 'the powers and privileges of a kraal head' [i.e. head of a family] in the discretion of the Native High Court). As minors women were bound to hand over their earnings to the head of the family; they could acquire and hold property for the use of their respective 'houses' (i.e. the units in the extended family created by each wife) but they could neither inherit nor bequeath property (Sections 138 and 143). The writer was given the following information by a prominent Zulu chief in 1961:

'Before our Law was codified there is not the slightest doubt that women did and still do own property. This is not only my view but is also a view held by my Mother and some elderly members of the Tribe. There were for instance women - Inyangas [medicine men] and Izangomas [diviners] who acquired and owned property. Diligent women also weaved mats and other handicrafts and accumulated first goats and with goats, cattle and that became their own property. Another diligent woman might till her land so well that she uses the surplus to acquire sheep, goats and cattle, and all these become her property without any question. ... the Code dealt a heavy blow to Native Law as practised before the advent of the White man and feel bitter about this interference on the part of those who codified such wrongs as "Native Law". There are several instances ... where a woman gives a loan of cattle to a man to lobola a wife. I know of cases where a woman makes love to another for and on behalf of her husband, and uses her cattle as acquired above, to pay her lobolo.

It is a definite fallacy that women had no property in Zulu society. A father could give property to his daughter and that became her property. There are instances where a husband also bequeaths cattle and other property to his childless wife'. 36

Cetshwayo, in his evidence to the 1883 Cape Commission on Native Laws and Customs, stated that unmarried and married women could acquire and hold property independently of their fathers or husbands.³⁷ Bryant found that 95% of the diviners in Zulu society were married women and, as the statement quoted above indicates, their earnings were regarded as their own property.³⁸ But section 199 of the Code regarded the earnings of female diviners and midwives as belonging to their houses, and women had no independent powers over house property 'charge, custody or control' of which vested in the head of the family (section 68). Certain property was given

to the mother of a girl on her marriage. The last of the lobolo cattle, known as the mumba beast, was specially allocated to a bride's mother. She, in turn, usually gave it to her last-born son for lobolo purposes. The ngquthu beast also was given to a girl's mother when the girl lost her virginity. The mother of a girl would receive, also, the bikibiki, a present in money or kind from her son-in-law at the time of the wedding. A father might also give his daughter a beast, inkomo yokwendisa, on her marriage. The Code's account of these gifts was inaccurate: section 26 regarded the mholiso beast (a beast slaughtered by the intending husband in honour of his fiancée during her betrothal visit), the mumba beast and the nguthu beast as the same.³⁹ The point is that, as among other peoples such as the Venda, Epondo, Shona and Tswana, Zulu women did have the right to acquire and hold property, and the various sources indicated above constituted the nucleus of a separate estate.⁴⁰ The Code's treatment was a serious abrogation of rights that women had traditionally enjoyed.

The courts interpreted the Code's provisions for women's property rights narrowly.⁴¹ Mr. Justice Boshof, judge of the Native High Court, told the 1903-5 Commission that these provisions should be changed, the Court having held that a woman could not own property independently of her house. He said: 'There are cases where women have by their own energy acquired property, and provision should be made to protect them'.⁴² The customary law of inheritance could also press heavily on women. An African clergyman, the Reverend R. M. Sikutshwa, gave an example in his evidence to the 1906-7 Commission.

'A woman who had lost her husband had the whole of his property taken away by the heir. She had no voice in the matter, notwithstanding the fact that such property might have accrued as a result of their joint labour. This applied also to the cases of marriages under Christian rites [Christian marriage between unexempted Africans did not remove the parties from the operation of customary law. See p. 294]'.⁴²

Moreover, said Sikutshwa, if a man died leaving only daughters, his

property was inherited by a male kinsman, and his womenfolk might be left entirely unprovided for.⁴³

The Code went even further than Shepstone's changes in the lobolo custom in 1869. Section 177 provided that all lobolo cattle were to be delivered on or before the day of the marriage, and section 182 provided that no court could hear claims for the recovery of lobolo or inheritance arising out of lobolo claims. These interferences with lobolo irritated Africans. Chief Stephen Mini told the 1906-7 Commission that it was wrong in principle for the state to interfere in a private agreement between two parties. According to Chief Dhlolzi the requirement that lobolo be paid in full on or before the day of marriage led to an undesirable state of affairs:

'Girls were now in the habit of going to their lovers before marriage. The reason why the father "lent" their daughters was because they felt that, by keeping them at their kraals, they were running a serious risk. In accordance with Native custom, other young men would come to court these girls, and would bring medicine with which to drug them. By reason of these risks they were driven to lend their girls to their lovers, although the latter were not in a position to pay the lobolo'.

The innovation was vulnerable to sharp practice. The parties might agree privately upon a 'lend-lease' arrangement, with the son-in-law undertaking to transfer the balance of the lobolo at some future time after the marriage. But if he defaulted the woman's father had no redress.⁴⁴ To Africans it was puzzling and inconsistent for the Government to regulate lobolo in detail and yet to prevent the courts from hearing disputes arising out of it.⁴⁵ There were reports, too, that the number of seductions was increasing as young men attempted to force the girl's father to sanction marriages before the transfer of all the lobolo.⁴⁶

Despite the difficulties experienced in amending the earlier Code, amendments to the 1891 Code also had to be passed by the Legislative Council. Exactly the same difficulties arose. As John Shepstone told the 1903-5 Commission codification

'does not prohibit the making of changes, but where you have

to go through a Legislative Council, it is very different to having the Government in one or two experienced hands, to make any changes. Very few members of the Legislative Council understand what they are about, and, therefore, mistakes are made'. 47

It was soon realised, moreover, that codification had imparted a rigidity to customary law which it had not had in its traditional context. In 1897 the Prime Minister, Sir H. Binns, admitted as much:

'In our young days as politicians we were all very hot about codifying the Native Law, and I am not very certain whether we were very clever in our ideas at that time. There was a certain amount of elasticity about Native Law before you codified it, which made it extremely useful. But now we are bound hard and fast, and tied to the four corners of the law'. 48

In 1898 the Attorney-General, Sir Henry Bale, expressed similar sentiments. He remarked that the common law of a country was not repealed by a statute except in so far as the statute expressly altered it. A statute was, therefore, supplemented by the common law on points that were not included in the statute. But the Code, although a statute, was not in the same relationship to the corpus of customary common law: it purported to be an exhaustive statement of customary law. Bale considered that it had been a mistake to do this, and recommended the enactment of legislation to recognise the residual body of customary common law to supplement the Code. He continued:

'We are continually baffled by the inadequacy of the written Code. To supplement it from our own common law is unsatisfactory and often not possible. No one will appreciate better than [the Governor and the Secretary for Native Affairs] the difficulties and disappointments that have been experienced; the paralysis of action and the necessity for straining the clauses of the Code that have resulted in consequence of the omission from the Code of material points. It is impossible to construct an entire system of law by a series of special enactments, and the Code of 1891, as was inevitable, left many points untouched'. 49

These difficulties were yet another manifestation of cultural misunderstanding. Part of the reason for codification had been the inability of white administrators to grasp the essentials, as well as the nuances, of the unwritten law. Codification was for their benefit, and

the legal requirements of the African population in a rapidly changing society were of secondary importance. The Code had been enacted by a parliament that contained no African representatives and that remained unresponsive to African representations about the inadequacies of the legal system by which they were bound. Moreover, for reasons that are given in succeeding chapters, by the 1890's the majority of colonists had swung around to the view that traditionalism, and with it customary law, was a useful instrument in the preservation of their racial domination. Africans of the kholwa class realised this. In a letter published by Inkanyiso in 1892 Lanyazima claimed that while policy up to 1876 had been the gradual assimilation of customary law to Roman-Dutch Law and the substitution of magistrates for chiefs, it was now the very opposite:

'Law 19, 1891 [legalising the Code], has confirmed my views and ... has clearly demonstrated the retrogressive policy now indulged in. The tribal system is being built up, strengthened, and perpetuated, instead of being gradually broken up with a view to its final abolition. If the latter were done it would immensely benefit our people and the Colony generally; because, with the tribal system, in the event of its abolition, would go those tribal customs, ideas and predilections which are so baneful to our existence as a people By maintaining and nursing the tribal system and the power of the Chiefs, our Legislators and Rulers are maintaining and nursing the very things which check our progress, which prevent our taking that interest in the works and affairs of our land which we should take, and which are sure only to demoralise and ruin us'. 50

Law should mirror social relations and codification tended to freeze a legal system that could have adapted to changing social relations. This exacerbated the position of the growing class of Africans who saw in traditionalism an incubus which hindered their assimilation of modern culture. J. Tsh. Gumede said in Inkanyiso in 1894 that:

'Native laws were made by men, who died many years ago. These men lived quite a different life from ours; and never saw a streak of today life. They quitted the world and left us with their laws, which were only convenient to them. We find these laws inexpressibly weighty We find it very inconvenient to give our consent to their rules and principles. The circumstances of the world have changed and our opinions change also! [a paraphrase of sentiments expressed by Tom Paine whom Gumede quoted]'. 51

Similar views were expressed by Ilanga lase Natal in 1908:

'the so-called native code is simply a means of keeping the native people down in [a] state in which they were forty years ago'. 52

A considerable amount of evidence showed that the code was insufficiently flexible to allow for the changes that were undermining the social base of traditional law. Social change was not matched by legal change and the lag in the law was a source of irritation. Charles Barter, the administrator of native law in Pietermaritzburg, said in his report for 1881 that:

'the borders between Colonial and Native Law, especially in the towns, have become well-nigh obliterated; and for all practical purposes there is no alternative left but to ignore the latter entirely, and for the Government to proclaim that all natives, being permanent residents in towns, are exempted from Native Law' 53

The magistrate of the rural division of Inanda said in 1894 that the Code was 'quite unsuited to the times' and he called for its complete revision.⁵⁴

Mr. Justice Boshof of the Native High Court informed the 1903-5 Commission that, in his opinion, the time had arrived when the Code should be 'amended or removed from the statute book altogether and replaced by another Code'. Boshof said that the Code's requirement that a son transfer his earnings to his father caused difficulties: 'When he arrives at a time when he is able to establish himself, he should be allowed to retain his own earnings'. Boshof's remarks on the legal status of African women (quoted above) also suggested that the Code was lagging behind social reality. Women were working in the cash sector of economy and, as the ties that bound the traditional family loosened, they were acquiring a measure of independence that was not reflected in the Code.⁵⁵ The 1903-5 Commission considered that codification had been a mistake for the reason that it inhibited changes in the law:

'The weight of the evidence adduced before the Commission is against the enactment of a statutory code based on Native Law. It has been suggested, and with this the Commission agrees, that a text book or handbook, for reference only, descriptive of Native Law and custom would be useful as a help towards uniformity in administration'. 56

With a system of legal dualism and an increasing involvement of black and white in a common society it was inevitable that conflict of law situations would arise when the two legal systems interacted. The Code was intended to be an exhaustive statement of customary civil law, and with few exceptions (one of which was section 242 which provided that cases between Africans arising out of trade transactions were to be dealt with under colonial law), unexempted Africans could have civil law matters dealt with only in terms of the code. What happened when Africans entered situations which were not encompassed by the code (with all its admitted omissions) or even by the wider traditional law? A legal limbo existed. The acquisition of land in free-hold by Africans often created legal difficulties that illustrate the point. They might buy land individually, or in partnership with others, or through and jointly with their chief by contributions paid to him. In many cases Africans were entirely unaware of the proportion of each partner's liability or title in the land. Land bought through a chief was generally registered in his name, not as a trustee or as representing himself and other partners, but in his own right. It often occurred that the chief would order a subject (who was in reality a partner) off the land, and the evicted person was powerless.⁵⁷

In 1893 Inkanyiso cited the hypothetical case of Tom who had three wives, each with four sons. Following the code the sons handed over their earnings to Tom who bought land with the money. In terms of Law 12 of 1864 (~~see p. ———~~) Tom could bequeath the land to anyone he wished. If he did not do so the land, upon his death, could be inherited by the eldest son of the chief wife only, or by the eldest son in each house. What, asked Inkanyiso, would the other sons get for the fruits of their labour? Other difficulties could arise: disputes could arise between the eldest sons of each house if each received a different sized portion of land based upon the different amounts they had contributed; or it might be that the eldest son was under customary law while his brothers in the same house were exempted: which right of succession was to prevail?:

that of the former, under customary law, or that of the latter, under Roman-Dutch law?⁵⁸ In another editorial Irkanyiso spoke of the 'maze of conflicting systems' and drew attention to another anomaly arising from it: unexempted Africans could settle their disputes in the court of the administrator of native law at only a small cost, but disputes between exempted and unexempted people were heard in the magistrate's court both with respect to liabilities incurred before and after exemption. The costs involved in bringing a case before the magistrate's court were heavy. It was hard for an unexempted creditor to have to sue another in the magistrate's court when the debtor had quietly got exempted without informing him. Claims which existed under customary law were shut out and exemption became a convenient means of escaping liabilities. The editor deplored the confusion resulting from legal dualism and suggested that had a gradual process of assimilation been followed customary law would have been in a much more satisfactory condition:

'We may with justice ask, what advancement have we made as a people under the present regime? In what way has our simple and effective system of law been improved? Is it more defined? Is it less repugnant to civilised notions? Are the liberty and the property of the individual protected? Are there greater facilities for the despatch of our business in the Courts, and are we treated in any way with greater courtesy and consideration than we were in our own Courts? Is even-handed justice administered, and is there anyone amongst those who deal with our affairs, who is actuated by sympathy for us more than simply by the performance, in some manner, of the duties of his office? To all these questions we may with confidence reply, No!' 59

It is one of the ironies of colonial Natal's history that those who pressed for codification as a means of attacking the Shepstonian system and fostering legal assimilation should have allowed the Code to become, in effect, a straitjacket which stultified the development of customary law. Another irony was that African women, whose plight was bemoaned so vigorously, suffered a deterioration in status as a result of the Code.

The Economic Background

Economic factors were important in shaping the background to the events and processes described in this thesis. Indeed, as foregoing chapters have shown, the struggle between Shepstone and the colonists centred around the labour issue. The aim of this chapter is to examine the economic aspects of Shepstone's policy and its subsequent effects.

In the early days of Natal's existence as a British possession there had been a conflict of views over the future of the tribal economy. In 1849 Earl Grey agreed that it would be 'difficult or impossible' to assign to Africans reserves of such a size that they could continue to be economically self-sufficient. Moreover, said Grey, it was desirable that Africans should 'be placed in circumstances in which they should find regular industry necessary for their subsistence'.¹ Shepstone and his colleagues on the Locations Commission of 1847, however, appeared to envisage the growth of an independent peasantry adopting more progressive agricultural techniques that would lead to a 'different description of agriculture to that which now obtained among them, both as to the manner of cultivating and the article cultivated'. The growth of export crops, such as cotton, was to be encouraged.² According to one member of the Commission, Lieutenant C. J. Gibbs, each African family was to have about 100 acres of arable and grazing land combined.³ Shepstone opposed any measures aimed at 'so crowding the Kaffirs as to compel them to leave their locations, and seek work'⁴

The reality, as it emerged, fell far short of those hopes. Not all of the African population could be accommodated on the reserves, and the remainder continued to occupy Crown lands and colonist-owned farms (see p. 197). The reserves themselves were made up of the worst farming lands in the Colony. According to G. R. Peppercorne, most of the land

in Impafana reserve was 'as worthless as the sands of Arabia'. He estimated that not more than 2,000 acres of it had been, or ever could be, available for the planting of the staple crops. He reckoned that the extent of cultivation in the reserve was about three quarters of an acre per hut, totalling some 1,500 acres. 'The greater part even of this is so light and superficial as not to exceed three inches in depth, and can only be used alternate years, by means of an intermediate fallow'.⁵ Of the Inanda reserve Daniel Lindley observed: 'A more broken, worthless region could hardly be found'.⁶

The gratitude which Africans probably felt to the Natal Government for protecting them from the Zulu was tempered by resentment at the loss of their lands. In 1869 John Bird wrote:

'Many aged men still live, or lately lived, who could point out to the present generation the precise localities occupied by their forefathers. It would be a strange refusal to believe in the ordinary impulses of human feeling, if anyone should harbor the thought that the natives have regarded the alienation of these tracts with indifference, or that they have known with equanimity the existence of a wish, at one time warmly and loudly advocated, to reduce and circumscribe even the unattractive locations assigned to them'.⁷

By the 1870's Africans were complaining bitterly of land shortage. There was nothing in the legislation that set up the Natal Native Trust in 1864 to restrict the further acquisition of reserve land although the Legislative Council did pass several resolutions attempting to peg the acreage vested in the Trust.⁸

In 1869, after further colonist agitation, Keate wrote to the Colonial Secretary, Cranville, setting out his views on the land question. He said that:

'There is no fear that the remaining Crown lands will become absorbed for native purposes, or that there is likely to be want of room for beneficial occupation by colonists The European population is about 16,000. About 5,032,944 acres of land have been granted to colonists. For the use of the native population a much smaller portion has been reserved. To the colonists have been assigned the richer and more cultivatable portions, and much of which still remains uncultivated and unoccupied; to the natives the more broken tracts, which are fully occupied. This

principle of division will be adhered to when "a reasonable extent of land is transferred to the Natal Native Trust for the benefit of the natives in the County of Alfred [annexed to Natal in 1866]"⁹

In Keate's statement lay the reason for what de Kiewiet has described as 'one of the most familiar paradoxes of South African life':

'the same process which produced an exaggerated and uneconomical sparseness of European settlement was responsible for an equally exaggerated condensation of the native population'.¹⁰

Granville replied to Keate, confirming his view that there were no restrictions on acquiring further land for the Trust. He considered it important that they should be 'justly and even liberally' treated in land matters.¹¹ But, as Brookes and Kurwitz have shown, there was virtually no increase in land provision for Africans between 1864 and 1913.¹²

By 1882 the distribution of the African population in Natal was as follows:-

On reserve and other Native Trust land (including mission reserves and glebes)	169,800
On private lands as tenants	162,600
On Crown lands as squatters	42,600
	<u>375,000</u>

It was estimated that the reserves contained 39,913 huts occupying 2,050,880 acres, giving an average of nearly 51½ acres per hut or about thirteen acres to each person occupying a hut (the estimate of four persons as the probable average of occupants in each hut was based on various past calculations).¹³ Unfortunately the figures do not reflect the amount of land that was actually cultivated or was cultivable. But on the evidence of Shepstone and others it can be safely assumed that a high proportion was not cultivable. A former clerk of the Natal Native Trust told the 1903-5 Commission that not more than ten per cent of the reserve land was cultivable.¹⁴

The essence of the colonists' objections to the reserves has already been described (see chapter three). They resented African farming, not

because it competed with their own struggling efforts, but because it enabled Africans, for the most part, to subsist without having to take paid employment as labourers. Africans, in their view, had no right to exist as an independent peasantry. Trollope remarked in 1877 that:

'It seems never to occur to a Natal farmer that if a Zulu has enough to live on without working he should be as free to enjoy himself in idleness as an English lord'. 15

Colonists complained not only of the small number of Africans who worked for them but also of their unreliability. In requesting the importation of indentured labourers from India in 1855 a Cape Government official said of the Natal African population that:

'A considerable portion of [them] are by no means disinclined to labour, or unwilling to render it to the planters; but upon their own terms and at their own times They are ready to work for two or three months at a time, but they then insist upon returning to their locations, and the planter can never count upon seeing them again at any definite time. Such irregular and unskilled labour does not suit the planter, and jeopardises the success of all his undertakings'. 16

The importation of indentured Indian labourers began in 1860.

Lieutenant-Governor Scott expressed his hope to the Legislative Council in 1861 that doubts about a sufficient and constant labour supply had been 'satisfactorily and permanently' removed.¹⁷ But demands for labour continued as loudly as ever. In October 1863 the Natal Witness commented:

'As yet the presence of the Coolies makes no impression on the demand and supply of native labour. The number of Kaffirs employed is probably larger than at any previous period: the demand for their services is greater than ever, as shown by the readiness with which a higher rate of wage is given'. 18

The Indian labourers were employed mainly on the coastal sugar plantations. They contributed a good deal to putting the industry on a firm and prosperous footing; but the planters preferred African to Indian labour: Africans were cheaper to employ, their physiques were stronger than those of Indians, and they were believed to be more honest than Indians.¹⁹

In the mid-1860's colonist demands for labour tailed off as the Colony sank into an economic depression. There was even a temporary halt

in criticism of the Shepstonian system. In December 1866 the Natal Witness noticed that calls for abolition of the reserves had abated: 'this fancy is now lulled, for a time at least'.²⁰ But by 1868 the labour question was to the fore again. In 1869 the Legislative Council passed a bill aimed at facilitating the introduction of labour from Focambique and Swaziland, but Lieutenant-Governor Keate refused to sanction it. He informed the Colonial Secretary, Granville, that if negotiations were started with foreign African states it would give them the impression that guaranteed employment was available. This, he maintained, might have 'embarrassing consequences'. Moreover, the Government had no information about the extent and the nature of the demand for labour, especially casual labour. Keate claimed that it was only in exceptional circumstances that 'Government interference has hitherto been directly exercised in adjusting a supply of labour to the demand'. In importing Indian labour, he said, 'a point was stretched'.²¹ The authorities were reluctant to contravene the laissez faire principle that the state ought not to interfere in the labour market. Further suggestions were made by the Legislative Council in 1870 for obtaining labour from foreign tribes. Shepstone said in reply that

'it will certainly be wrong to look to the Natal Kaffirs to get us out of the difficulty, for they are themselves producers; we must rather look to the natives beyond our borders, but then there must be peace amongst them' ²²

In 1870 Keate ascertained that 'comparatively few' Natal Africans were absolutely dependent on wage-earning for a livelihood. Most, he said, offered their labour on terms to suit themselves and not the colonists. The colonists wanted long terms of service at small wages, while Africans preferred short periods 'terminable almost at their own discretion, with wages on a more liberal scale' Africans from outside Natal engaged themselves for longer periods at cheaper wages and, therefore, they were preferred by the colonists.²³ Shepstone estimated in 1871 that there were fifteen to twenty thousand foreign African labourers in Natal, some coming 400 to 600 miles to Natal. He asserted that the keen competition for labour

benefited not the labourers but the middlemen who were offered a premium per capita by planters for each labourer supplied.²⁴ The available evidence suggests that the wages paid to labourers changed little between 1849 and 1877. In J. S. Christopher's compendium of information for intending immigrants wages were said to vary between 3/- and 5/- per month, while a cow, worth £2 or £2.10s. was reckoned to be the equivalent of one year's service. In 1877 Trollope found that wages paid by Natal farmers varied from 5/- to 10/- per month. At both dates an amount of Indian corn (mealies) was supplied as well.²⁵ An estimate made by Lieutenant-Governor Musgrave in 1873 showed, in his opinion, that 'a very fair proportion' of the able-bodied African male population was employed by whites every year. In the absence of statistics he based his estimate on the belief that one in seven in most populations would be able-bodied males. If the African population of Natal was 300,000 this meant that 43,000 Africans fell into this category; and, he said, 'it is my firm conviction that many more than half of these are always employed in the service of the whites in some capacity'.²⁶

Little is known about African reactions to the demand for their labour. Clearly the demands would not have been made if Africans had been anxious to take paid employment in large numbers. They valued their independence and self-sufficiency, and took employment only when necessity drove them to do so. It was claimed in 1866 that African men were reluctant to work for white farmers because they regarded cultivating the soil as women's work. The person who made this statement said that he had often heard Africans who worked for colonists called 'women' and 'slaves' because they wielded hoes and axes.²⁷ In 1893 the Zulu/English newspaper Inkanyiso attempted to explain why there was a shortage of African labour:

'Undoubtedly it is the too great tendency to regard the Native ... as a mere machine. He is expected to labour, and to his master's satisfaction, no matter how difficult family ties and duties may make it. Few appear to

remember that the Native is as fond of his home and his family as most men, and are surprised and offended if he finds that a six months' absence from home is as much as he can afford'. 28

Competition between white and African producers in Natal was never the major political issue that it was to be in Northern Rhodesia, Kenya, and elsewhere in the twentieth century. The records reveal only occasional references to it. In 1866, for example, a correspondent writing in the Natal Herald grumbled:

'So long as the native finds a ready sale for all his produce, and the struggling white farmer cannot, so long as shopkeepers and others buy of the natives' produce, which they can purchase of white producers equal in quantity, quality and price, so long will their till be empty, and the home of their own "kith and kin", cheerless and comfortless'.

Moreover, the money given to African sellers was removed from circulation 'to enrich some already wealthy old polygamist'.²⁹ The complaint that polygyny and the material simplicity of traditional life gave African men a competitive advantage over colonists was voiced in 1868 by Thomas Phipson, a prominent colonist:

'The black man either sets to work the girls and women whom he breeds or buys, or he "sebenzas" (for work it cannot properly be called) a few months for the white man, and spends his money in cattle and women; or lastly, he ploughs himself ... and thus comes into the market as a competitor with his civilised neighbour If it be right for the Kafirs to have ground given them gratuitously to cultivate, then it would seem right for the colonist to have the same. If it be wrong for the colonist to have slave labour, it is surely wrong for the Kafirs also. Doubtless the barbarian has a right ... to continue to live barbarously, to wear rags, or skins, or nothing, when at home, to eschew groceries and squat in a beehive hut. But, right or wrong, the mere fact of his doing so tends to drag down to the same level all who compete with him in agriculture'. 30

The labour issue, however, was incomparably more important to the colonists than the question of competition. If Africans had taken to growing marketable foodstuffs and other commodities on a larger scale than, of course, matters might have been different. But the labour agitation

created an atmosphere which would have thwarted any determined efforts to improve African farming methods. The higher African productivity rose the more independent of paid employment they would have been, and the colonist outcry would have been even greater.

Doubtless Shepstone was aware of this possibility and it is probably a contributory factor to his conspicuous failure to promote more advanced farming techniques among Africans. To Shepstone changes of all kinds, including agricultural ones, could not be forced upon Africans, if they were to be enduring. The failure of Africans to take to growing cash crops (see below) must have strengthened his view that the outlook of the traditionalist was not amenable to any experimentation with new crops or new farming methods. If agricultural change was to come it must be the result of some slow imminent process of accepting the desirability of change, and not of the blandishments and exhortations of officials. Shepstone's earlier enthusiasm to improve African farming, as reflected in the 1847 Commission, evaporated rapidly as the lack of attention paid to it in his many subsequent memoranda shows. He was pre-occupied with political and administrative problems, and with keeping the colonists at bay. During his term of office, and afterwards, hardly any improvements of note took place in the economic field: the reserves stagnated.

The agitation over the labour question had its effect on development in the reserves. Shepstone said in 1851 that the lands set aside for African occupation were 'on so uncertain a footing that improvements in agriculture, or the establishing of permanent plantations, could not be encouraged'.³¹ In 1847 the Locations Commission had recommended that the Government take steps to ensure that the reserves were secured to Africans by vesting control of them in trustees.³² Nothing was done, however, until 1860 when Lieutenant-Governor Scott, with Shepstone's full support, resolved to put the reserves beyond the colonists' reach. He proposed that documentary titles should place control of land in trustees on behalf of individual tribes, one of the trustees being the chief of the tribe.

This procedure had been followed in forming the Umnini Trust for the Tuli tribe in 1858. But the Natal Native Trust which was constituted in April 1864 was granted a general title to all reserves and mission reserves in Natal. The Trust consisted of the Lieutenant-Governor and the Executive Council of the Colony for the time being. They were authorised to 'grant, sell, lease or otherwise dispose of the same lands, in such wise as they shall deem fit, for the support, advantage or well-being of the said Natives, or for purposes connected therewith'.³³

The 1847 Commission discussed the question of what kind of land tenure should prevail in the reserves: they considered that it would be 'inexpedient and productive of no good effect' to attempt to force individual tenure upon Africans, as the idea of property in land was 'not yet established in their minds' But the Commission hoped that appreciation of the benefits which individual title could bring would result from the implementation of their recommendations. The Commission recommended that the Government should reserve to itself the right to convert reserve land, or portions of it, into freehold grants to

'such natives whose improved condition ... may render it desirable. This would act as a powerful stimulus to the independence of others, and be a very appropriate reward to confer on those whose diligence has outstripped their neighbours at the commencement'.³⁴

In the 1850's and early 1860's Shepstone fought hard to secure African land rights and to withstand colonist aims of forcing individual land tenure upon Africans. Individual tenure, they believed, would undermine the position of chiefs in particular and the tribal system in general. Some colonists hoped that the grant of unrestricted freehold title would lead Africans to sell their land and be forced permanently into the labour market.³⁵ Shepstone recognised the link between land tenure and social structure: his administrative system was geared to the tribal system, and consequently he refused to countenance any measure that undermined the latter. A witness before the 1906-7 Commission, C. Acutt, gave the Commission revealing information about Shepstone's attitudes to individual

title to land:

'About 1870 he had the pleasure of bringing this matter before the late Sir Theophilus Shepstone, who ... admitted that the idea was right, but contended that the Chiefs would not agree, on the ground that they would lose their power over the people. The suggestion was put before the Musi tribe, and the Chief was quite willing that the people should buy the land, but that it must be held and vested in him. Consequently the scheme failed. Sir Theophilus afterwards told him the Chiefs would not allow it, and his (witness's) candid opinion at the time was that Sir Theophilus himself did not want it'. 36

Subsequently, in 1875, Shepstone expressed opposition to land being bought by tribes or communities because 'it is calculated to provide the very soil in which chiefship and tribal organisation can most readily and firmly take root'. He implied that Africans living on such freehold lands would have a measure of independence which he considered to be undesirable. In 1881 he was asked whether he thought that individuals ought to be granted titles to land in the reserves, and he replied:

'I should think it unjust for a man who chose to come out of his location and obtain a little education, and get to understand the value of personal property, to return and be granted land, especially if the land had been looked upon by the tribe as belonging to them'. 37

He argued in 1861 that the land in the reserves was not amenable to minute sub-division, and he quoted Pine as saying in 1850 that the Colony was incapable of being divided into farms of an extent less than 200 to 500 acres. He foresaw

'Small native communities, in villages, scattered about the locations in favourable spots, surrounded by pasture land, in proportion to the available surface for tillage in each, is the ultimate extent of sub-division ... of which the country is capable'

But when Africans had attained an 'enlightened condition' this would alter:

'Tribal and sectional holdings would be quietly and with the intelligent desire of the people concerned, divided into smaller portions, embracing the rights of fewer persons; these will form villages, where family and even individual titles to building sites and available land will be given. These titles will also secure the right of pasture to the surrounding commonage' 38

The Colonial Secretary, the Duke of Newcastle, accepted this scheme

as a provisional measure only, and stipulated that when individuals were 'sufficiently advanced' individual tenure must be encouraged.³⁹ Neither Shepstone's nor Newcastle's aims were ever realised.

Early hopes of encouraging the development of a progressive African peasantry were not realised. In the 1850's the Government attempted to improve agricultural methods by making loans for the purchase of ploughs. Sometimes the loans were made to missionaries, sometimes direct to Africans.⁴⁰ Later, Africans were encouraged to grow cash crops for export and trade. Thus in 1857 Shepstone informed magistrates that Africans could pay the hut tax in sesamum instead of money in the hope that this might be a stimulus to growing it as a cash crop.⁴¹ Cotton-growing was also introduced among Africans at this time. In 1856 Shepstone reported that it would be desirable for Africans to grow cotton, but that there was a danger of arousing their suspicions. He believed that they might blame this innovation for all future misfortunes. In 1858, however, the Government went ahead with the scheme and charged two officials with the task of supervising cotton growing. One of these was John Shepstone, who was graced with the title of 'Cotton Visitor of Native Tribes'.⁴² Lieutenant-Governor Scott expressed his hopes to the Legislative Council in April 1859:

'By the cultivation of cotton or any of the many other valuable staples suited to the climate, we shall give to the native an industrial pursuit which will awaken in him a permanent interest in the soil; fit him to receive an independent title to the land he cultivates; and thus create in him, not only higher principles of Government, but set in motion strong elements of civilisation'.⁴³

In July 1862 Shepstone claimed that the Government had overcome African prejudice against the cultivation of any new product which was not an article of food. But, he continued, '[s]o long ... as mealies command so high a price, it is not likely that the Natives will enter very largely into the cultivation of cotton'.⁴⁴ The Natal Witness commented that it would be difficult, if not impossible 'to lead an uneducated people into a new line of industry by artificial means. The article they were accustomed to

cultivate gave them no trouble, entailed no risk, and yielded certain and sufficiently remunerative crops'.⁴⁵ One of the obstacles to any experimentation with new crops was described by G. H. Mason in 1862. Cotton seed was given to an African family by an official. The tribal rainmaker, however, declared that no rain would fall until the cotton plants were destroyed. The chief thereupon ordered that cattle should 'accidentally' trample down the plants. 'Of course the chief's edict was obeyed - the crop was destroyed, and a signal extinguisher was put on Caffre cotton growing in that locality'.⁴⁶

In 1851 the Government erected a sugar mill at Umvoti for the benefit of African cane growers and in the hope that it would be a stimulus to cane growing among Africans in the locality. The mill evidently arose out of a suggestion made by Sir George Grey after his visit to Natal in 1855. By the 1870's the mill was beginning to be modestly successful, although the quantities of cane processed were not large. Africans did not take to cane growing to the extent that had been expected.⁴⁷

The reluctance of Africans to grow cash crops did not mean that they were disinterested in trade. Traditionally they had traded in surplus produce, cattle and other goods. When the whites colonised Natal Africans were not slow to take advantage of the new possibilities of trade. In 1849 it was reported that large quantities of maize grown by Africans were exported by them to Cape Town. They brought wool to the markets in Natal and received thirteen or fourteen pence per pound for it.⁴⁸ There was also a flourishing trade between Natal and Zululand, set back temporarily in 1856 by Mpande's ban on all oxen coming in from Natal - a measure intended to prevent the spread of lung sickness - and, subsequently, by the Zulu war in 1879 and increasing poverty in Natal.⁴⁹ In 1881 the magistrate of Lower Tugela reported that trade with Zululand had fallen off very much 'in consequence of the state of the country'.⁵⁰ But in 1885 there were reports of maize and horses from Natal being traded for Zululand cattle. There was also some trade in sheep and goats.⁵¹ In 1894 the

magistrate of Umgeni reported that Africans had bartered for or bought horses from Easutoland.⁵²

Within Natal Africans carried on a considerable trade with whites, Indians, and among themselves. In 1892 the Pietermaritzburg marketmaster informed a commission that the supplies to his market were furnished in about equal proportions by Africans, Indians, and whites.⁵³ Distance from markets was an obstacle for many. The huge Inanda reserve, for example, had no roads. Its inaccessibility made it difficult for produce to be sent out of the reserve: 'Without the means of disposing of any surplus produce, there is at present no inducement for them to plant more than suffices for their own wants' Nevertheless many Africans engaged in trading in and out of the division, going to Zululand for cattle, to the upper districts of the Colony for cash and goats, in exchange chiefly for tobacco. They bartered among themselves, produce being exchanged for goats and cattle most commonly.⁵⁴ From Umsinga it was reported in 1882 that 'European farmers being pastoral do not till the soil much, and depend to a great extent upon the natives to supply them with grain'.⁵⁵ Much of the surplus produce, when it was available, was sold to traders whose stations dotted the African areas. Generally, it was reported that Africans preferred to sell their produce for cash, rather than to barter.⁵⁶ Poor transport facilities hindered the growth of African trade in many parts of the Colony. In 1871 a Commission found that:

'as it is impossible, with present means of land transport, to get this surplus produce to market, that which in similar circumstances occurred in former years will occur again, - part will be neglected and left to rot, because unsaleable; a larger part than usual will be converted into Kafir beer, causing an increase of crime among the natives; part will be held over for consumption in 1871-2, and a smaller breadth of land will be cultivated by the natives for that year; some quantity will also be exported'.⁵⁷

Traditional manufactures were fast dying out and being replaced by imported manufactured goods.⁵⁸ In Weenen Africans had formerly smelted

and worked iron found in the district, but by 1879 the magistrate reported that this had not been done for many years as Africans found it cheaper and better to purchase imported iron goods.⁵⁹ New wants were created by the availability of imported articles. In 1891 the Reverend Josiah Tyler quoted an estimate made by another missionary that a pagan family required an average of £2 worth of imported goods per annum while each mission African required £20 worth per annum. To Tyler this demonstrated that white merchants benefited as education and missionary work spread among Africans.⁶⁰

The ability to trade and barter depended on the existence of produce that was surplus to consumption requirements. In the 1870's and after this surplus became steadily more difficult to create. Food became scarcer and famine an increasingly real danger. In the later years of the 1870's a succession of poor crops was caused by drought in several parts of Natal and food had to be purchased, in some cases by the sale of cattle. In 1879 the magistrate of Weenen reported that 'for some years past' the crops in the division had been deficient. For five years the Africans of the division had suffered great scarcity of food and had been compelled to buy grain from other parts of the country. Some had to be aided by the Government who sold them grain for cash or on credit.⁶¹

De Kiewiet describes the period vividly:

'Drought and fire destroyed the grass, so that to the ravages of lung sickness and redwater was added an unusual death rate from starvation. In the worst districts the natives were ready to part with their stock at the lowest prices. In the light soils of Alexandria district the scarcity of food drove the natives to live on shell fish and wild roots. To the unhappy natives of Umgeni the havoc of the seasons was made more desperate by a plague of myriads of caterpillars. At the end of 1878 the price of maize was fully four times as high in Durban as it was in London, and the Colonial Office received an urgent telegram from Sir Henry Bulwer asking that 2,000 tons of maize be sent to Durban'.⁶²

The famine was narrowly averted by greatly improved harvests in 1880, although in Weenen large quantities of grain had to be purchased throughout the district.⁶³ In 1881 most magistrates reported that surpluses were

resentment. Chief Mungwana and other Africans of the Lower Tugela division complained that the locusts had left their gardens quite bare and denuded the grazing areas. They faced starvation, yet

'We are still called upon by white people to kill locusts and they stand over us to see that we do the work. We will do what the Government tells us but we feel it is hard to be compelled to work in this way when we have nothing to save, nothing to eat and when we see that our efforts are unavailing'. 71

Declining self-sufficiency was accelerated by the failure to adapt traditional farming methods to changed conditions. In 1879 the magistrate of Umgeni said

'No attempt has been made to introduce, or force upon them, any better mode of cultivating the soil, and if any among them have been led out of the beaten track it has been owing to the encouraging and directing efforts of private example'. 72

Another magistrate commented upon the wastefulness and destructiveness of traditional methods:

'They have not as yet learnt the advantage of manuring and cultivating their lands as the Europeans and Coolies do, and to change the nature or kind of crops, but cultivate the same field with the same crop year after year until the soil is entirely exhausted, thus every two or three years necessitating a move to a different locality, breaking up fresh land, until again in its turn this will become impoverished, in time the division, denuded of trees and bush, and the country unable to sustain its inhabitants, who even now complain that they have no room for their gardens'. 73

In 1894 the magistrate of Mapumulo saw a similarly bleak future if existing methods continued. He estimated that each hut in his division cultivated four acres and that four head of cattle per capita were owned by the African population. Conditions were bad: 'Every other year in this Location is one of scarcity or falls short in the crop'. Africans, he said, were too superstitious to manure their lands, fearing that 'some unforeseen disease or plague will break out among their cattle if the manure is removed from the kraal'. He noted the ravages of the land:

'Instead of restricting the cultivation to lands suitable for agriculture, the whole face of the county is disfigured by being broken up regardless of pasture lands,

so that their cattle are penned in and have no grazing ground, the result, in winter, being heavy losses from sheer poverty. This system is annually perpetuated by them without any desire for improvement. The former rich grasses have entirely disappeared and nothing but sour veld or "Ingongoni" remains to depasture cattle on in this part of the Colony. The forests and bush are being denuded of timber and slashed down for garden and cattle kraals, nothing planted to replace what is destroyed, which, of course, in a few years, means dire want and distress'. 74

The authorities took steps to limit the destruction of woods and forests, one such step being to instruct Africans to build their cattle byres from stone instead of wood.⁷⁵ Africans had, in the past, done this of their own accord when faced with a shortage of timber.⁷⁶

The introduction of the plough, which was widely used among Africans by the 1890's, proved a mixed blessing. A greater acreage could be cultivated less arduously, but soil erosion was facilitated. Several comments by magistrates indicated that ploughing was, in general, poorly carried out. In 1894 the magistrate of Umlazi said that

'Cultivation is generally of a slovenly nature: and seldom or ever can the Natives be induced to manure the soil. Even those who own ploughs, in most cases, seem content with ploughing up the ground in a very careless manner, planting their crops in a loose slipshod manner, and doing as little as possible to assist Nature to produce good crops'. 77

The magistrate of Upper Tugela reported that men tended to regard ploughing as beneath them, and left it to the herd boys;

'Consequently the results can never be more than they usually are, more weeds than crops. Harrows being too expensive cattle or goats are used, being driven over and over again until grain is tramped in. This method is resorted to when it is found necessary to replant a field. Turning over fields prior to planting, to destroy weeds never enters a Native's head'. 78

In 1898 the magistrate of Estcourt claimed that

'the land was better tilled when the women cultivated the gardens by hand than now. When they scratch larger areas with a badly set American plough, and never properly hoe and weed their crops as in time of yore sic'. 79

Estimates of the maize yield per acre are scanty and of questionable accuracy. They vary from five muids⁸ per acre (Ixopo, 1879) to three

[⁸ A muid was the equivalent of one bag and weighed approximately 180 lbs.]

muids per acre (Umlazi, 1894).⁸⁰ A white farmer from Mid-Illovo estimated in 1891 that while a white farmer usually produced six to seven muids per acre Africans produced only three.⁸¹ Estimates of the extent of land cultivated also vary with time and locality. The few estimates that appeared in reports are as follows:

Ixopo (1879)	: three acres per hut.
Mapumulo (1894)	: four acres per hut.
Impendhle (1895)	: five acres per hut.
Umsinga (1895)	: two acres per hut.

Estimates of cattle holdings are equally scanty. For Umsinga in 1882 four head per hut was reckoned to be the average, and twenty head per homestead. But, it was pointed out, many homesteads owned fewer than twenty, and many owned more than 100. An estimate for Mapumulo in 1894 also showed four per hut as being the average.⁸² The available evidence suggests that the cattle were not very productive. In 1891 the Reverend Josiah Tyler estimated that the cows possessed by Africans were not noted for giving milk. He claimed that it took as many as six of the average kind to yield the same quantity as 'one good American cow'.⁸³ In 1905 another observer said that the economic value of cattle owned by Africans (before the rinderpest) must have seemed ridiculous to whites who valued cattle for beef, milk, butter and cheese:

'For excepting a little milk for the children, and amasi or curds for the adults, a few trek oxen and an odd fat beast to be sold to the butcher, these herds yielded nothing'.⁸⁴

A very approximate quantitative estimate of the shortfall in food requirements produced can be made by comparing some of these figures quoted with those adduced by Thomas Phipson in 1876. Phipson said:

'By long observation I am aware that an adult Kafir will consume of their staple food (mealie meal), if unrestricted in his appetite, five muids in a year. Supposing him to have one wife and (an average number of) four children, this supposes (for youngsters are hungry and growing creatures) thirty muids [5,400 lbs.] per annum. On ordinary land and with the ordinary mode of cultivation, whether by pick or plough, this quantity of grain will require about six acres of ground to grow upon. But it will not grow there successfully for more than two or three years in succession'.⁸⁵

Taking the maximum area cultivated (according to the admittedly incomplete evidence cited above) and the maximum yield, i.e. five acres and give muids, gives a figure well short of Phipson's estimates. A recent study of African food production and consumption in Natal in 1903-4 shows a similar finding:

'Out of the total African population of 904,000 [the figure includes Zululand] roughly 820,000 lived within the subsistence sector. The value of African crops is estimated on the basis of farm prices ruling in the neighbouring markets. The value thus obtained is £868,000, which represents the average of the 1903 and 1904 values. Crops in 1903 were rather poor, but 1904 was a normal year. The bulk of crops produced was maize and Kaffir corn, which formed the staple diet of the Africans. The average output per head available for consumption was 4.75 lbs. per week - equivalent to 5,849 calories. The required daily intake for a moderately active adult male is 3,000 and for a female 2,400 calories; therefore food crops available fell far below the required minima'. 86

The corollary of declining productivity and poverty was a rise in the number of migrant labourers. In a discussion of labour matters in the Legislative Assembly in 1897 F. R. Moor asserted that

'if accurate information could be obtained of the numbers of Natives who do turn out to work during the year, it would be found that there is a very small percentage of Natives who are at the working age who do not turn out to work during some time of the year'.

The Secretary for Native Affairs expressed his agreement with Moor's reckoning.⁸⁷ Migrant labour became necessary to people's existence:

'the Natives did not in the past year reap sufficient for their own support, and had it not been that a good average of the able-bodied men sought and obtained work at the goldfields and remitted their earnings to support their people at home, in some instances, grave results would have occurred'. 88

This was one example: many other parts of Natal would have shown the same necessity driving people out to paid employment in Natal, on the Witwatersrand and elsewhere. For 1903 it was estimated that approximately twenty five per cent of the total African population took paid employment

each year. According to the number of passes issued the following numbers of Africans left Natal to work in the Transvaal as migrant labourers:

1896	26,487	
1897	20,092	
1898	16,366	
1899	7,582	
1900	13	
1901	16	89
1902	2,628	

(the marked decline was caused by the South African war of 1899-1902)

According to the Natal Government's representative in Johannesburg Africans remitted to Natal during 1897 the sum of £27,204. Part of this amount was to be spent in the following ways:

£7,852	to whites in Natal (presumably repayment of amounts owing to traders and others).
£657	for hut tax.
£550	for rents to be paid to white land-owners.
£774	was expressly earmarked for payees in Natal to buy cattle for <u>lobolo</u> or breeding purposes. 90

In Natal itself figures for 1902 showed that a total of 201,640 Africans had taken employment in the Colony during the year. The figure includes 17,000 Africans from adjoining territories. The largest categories of employment were:

Domestic and other services:	83,000	
Togt or day labour:	18,850	
Agriculture:	29,000	
Military:	13,250	
Railway and Railway works:	31,860	91

As the figures quoted above (see p. 197) show, less than half of the African population of Natal were domiciled in reserves. The large majority of the others lived on colonist-owned lands or 'squatted' on Crown lands. Ordinance 2 of 1855 purported to regulate the residence of Africans on land outside the reserves. It prohibited: (1) residence on unoccupied private lands without official permission; (2) residence of more than three families on private, occupied land unless the owner or

occupier gave full details of any additional families to the Government annually; and (3) residence on Crown lands. But the provisions of the Law were not enforced, probably because Shepstone realised that any attempt to do so would be resisted by Africans.⁹² Moreover, white farmers considered it an advantage to have Africans living on their farms because it meant that labour was more readily available. Africans resident on the farms and employed by the farmers were exempted from paying the hut tax in 1857. According to officials this did little to increase the supply of farm labourers but it was not until 1875 before the exemption was abolished.⁹³

Originally residence on colonist-owned farms entailed an obligation to provide labour only, but, as the numbers of Africans on the farms increased beyond the labour needs of the farmer, a rental was imposed.⁹⁴ According to the 1881-2 Commission there were two systems of tenancy on farms: (1) where tenants paid cash rents but were not obliged to work for the farmer. If they worked for him they were paid at ordinary wage rates; (2) where the tenants paid no rent but were bound to supply labour for wages that were lower than the ordinary rate. The second system was found to be most common in the up-country districts.⁹⁵ These two systems were found on farms which were occupied by white farmers. In many cases individuals and companies owned, but did not occupy, farming lands which were leased to African tenants for cash rents. In 1876 and 1877 Lieutenant-Governor Sir H. E. Bulwer attempted to reform this latter practice but he was unable to overcome the strenuous resistance offered by the largest of these landowning speculators, the Natal Land and Colonisation Company. Bulwer commented in 1860 that it was 'not seldom' that tenants' rentals were the only profits made by farmers. He acknowledged that the system might be convenient to landowners and to the tenants themselves but he condemned it because it did not advance the colonisation of the country.⁹⁶ In 1888 Governor Sir A. E. Havelock said that the tenancy system remained popular among most colonist landowners. He disapproved of the practice

and noted that excessive rents were often charged; but, he said,

'the difficulty, and danger, of interfering in the relations of landlord and tenant have hitherto deterred me from suggesting any action. And the absence of proof that the Natives have, in fact, a grievance which they could not remedy themselves, has reconciled me to inaction' 97

The extent of the tenancy system can be gauged by the fact that in 1874-5 the colonists owned over 6,000,000 acres of which, according to Shepstone, no less than 5,000,000 acres were occupied by Africans.⁹⁸

By 1880, as African demand for land increased, rents were increasing also. Bulwer estimated that they varied from £2 to £5 per hut per annum.⁹⁹ In 1886 Havelock said that in exceptional cases £15 was charged, but the average for the Colony was £2. 5. -. to £2.10. -. ¹⁰⁰ Writing in 1910 Maurice S. Evans estimated that rents were anything from £2 to £6 or £7 and in some cases even higher.¹⁰¹ Africans complained bitterly at the rentals they were required to pay. Mnyango, for example, informed the 1906-7 Commission that

'[s]o excessive were they that all their people - men, women, and children - had to turn out and work, to find the necessary funds, or otherwise comply with the landlord's conditions by rendering service in lieu of rent'. 102

Mgodini told the Commission that those who lived on private land were 'great troubled':

'Not only were the rents high, but, on the slightest pretext, a demonstration was made against them, and their huts were burned to the ground; and, in respect of rent, if not promptly paid, they were sued, and the instalments in hand were swallowed up in costs'. 103

J. W. Cross, the magistrate of Greytown, confirmed this evidence, saying that in the many cases for recovery in the courts, lawyers' costs often amounted to double or treble the rent - which was ruinous to the defendant. He cited complaints by Africans that on being ejected from a farm the landlord would not give them a reference; subsequently they could find no one else to take them on. 'In some districts such natives were boycotted, and sent from pillar to post seeking a place on which to live'. Cross

described the lengths to which farmers would go to ensure that they had sufficient labour:

'Many landlords ... refused to allow their tenants' sons to go away to work, because of the difficulty of tracing them. Natives made this a great complaint. Witness said he had heard men say: "My family is starving at home. I have six boys. Under my agreement three of them have to work for my landlord at a time, and the other three have to replace them at the end of six months. The three waiting at home are kept idle because the landlord will not allow them to go and work, even in the district in which they live". 104

Despite these grievances there were certain advantages for Africans in living on farms. Many had moved there when land shortage in the reserves became acute; others moved on to Crown lands or to the towns and villages. H. Francis Fynn, an ex-magistrate, told the 1906-7 Commission that the main reason for Africans preferring to pay rents on farms was to escape control of chiefs and to evade isibalo.¹⁰⁵ A. P. Scott, a former clerk to the Natal Native Trust, gave the 1903-5 Commission similar reasons. He pointed out, however, that the number of Africans leaving the reserves and going on to farms was practically balanced by the number leaving the farms for the reserves.¹⁰⁶ Presumably, for some the restrictions and controls on the farms occupied by landlords were even more irksome than the disadvantages of the reserves. On the farms which were not occupied by landlords, however, there was more freedom. According to Evans the high rentals were outweighed by the advantages:

'the freedom from calls on his labour, and from the immediate overlordship and interference of a white man, so appeals to the native, that he prefers to pay, or evade payment, of these high rents rather than that the Government should be able to call him out for road party work, or the European owner have claims upon his time as on the farms on which the white men live. It more nearly approximates to what the native ... desires above all else - to be let alone'. 107

Moreover, there were no restrictions on Africans going from this category of farm to paid employment as migrant labourers.

On most farms, whether occupied by landlords or not, the agricultural activities of tenants were carefully regulated. The number of stock that

were allowed to graze was limited, and bulls and stallions were often not permitted. Ploughing had to be confined within demarcated areas. Contraventions of these restrictions resulted in the levying of additional charges.¹⁰⁸ The 1906-7 Commission contrasted the 'shabby hut and squalid surroundings of kraals on farms' with those on reserves. It attributed the difference mainly to uncertainty of tenure and constant liability to ejection.¹⁰⁹

Some ten per cent of the African population lived on Crown lands as 'squatters'. According to Shepstone in 1882 many 'were found there when we came to the country'.¹¹⁰ Ordinance 2 of 1855 had attempted to prohibit such squatting but, like the other provisions, it was not enforced. Africans who resided on the Crown lands paid a hut tax and, in terms of Law 41 of 1884, a rent of £1 per hut per annum (this was increased to £2 by Act 48 of 1903). The imposition of rents in 1884 arose out of the recommendations of the 1881-2 Commission which regretted that 'squatting' on Crown lands had ever been allowed:

'The mischiefs are manifold, such as lessening the supply of labour for farms, unfairness towards private owners wishing to procure Native tenants, and danger to be feared in consequence of subsequent eviction. We do not, however, see why these evils should not be at once corrected by rents being now imposed'.¹¹¹

In 1880 the Crown lands were opened up for sale: Bulwer promised that Africans residing upon them would be warned in advance.¹¹² But this was not always done and on many occasions resentment was caused when purchasers ejected African occupants. The 1906-7 Commission condemned the Government for lack of administrative forethought in failing to provide alternative sites for ejected people:

'Even to this day, it is not thought incumbent upon any official, when Crown lands are sold, to notify to the Government-paying tenants thereon that ownership has passed, and their obligations have been transferred elsewhere. Such things cannot adjust themselves on equal terms with unequal races'.¹¹³

A relatively small number of Africans bought land in freehold. There was no colour restriction in the sale of Crown lands, although many

colonists pressed for one, but for the most part whites, being wealthier, could out-bid would-be African purchasers. Many Africans who bought land on the instalment system initiated in 1880 were unable to meet their contractual obligations. A former Minister of Agriculture, H. D. Winter, told the 1903-5 Commission that during his term of office 85% of African purchasers failed to keep up with their instalments: they received a small portion of land in lieu of paid instalments.¹¹⁴ In an effort to stop 'kaffir farming' (i.e. leasing land to African tenants) the Government imposed a condition on purchasers of Crown land that they should not receive rents from 'squatters'. But the Lands Commission of 1902 found that the condition had been generally ignored:

'The result is that instead of the Government receiving the Squatters' Rent from the Natives on these Crown lands, the new owner draws a revenue from the Natives, which, in cases, is more than sufficient to pay the instalments of the purchase price'.¹¹⁵

Land was often bought by tribes or communities. Legal difficulties were frequently created by these group purchases. The 1881-2 Commission recommended that tribal purchases of land be stopped because colonial law 'knows nothing of tribes'.¹¹⁶ It had happened that the chief or person in whose name the land was held took a dislike to a member of the syndicate, who had contributed towards the purchase, and ejected him. In the absence of any written contract there was nothing to prove that he was a member of the syndicate. In 1902 S. O. Samuelson, the Under-Secretary for Native Affairs, recommended that unexempted Africans should not be allowed to buy Crown lands.

'Tribal troubles are often caused [by Africans buying Crown lands]; for instance, when a member of one tribe buys Crown lands which have been for years occupied by other tribes. He turns the old occupants off, and there is much disquiet'.¹¹⁷

This was undoubtedly so,¹¹⁸ but Samuelson omitted to mention that 'much disquiet' was caused also when white purchasers of Crown lands turned off African occupants.

Africans were eager to purchase land. As the magistrate of Klip River said in his report for 1885:

'Those who own land put great value on it. Mostly all [sic] the Natives would purchase land if they had the means to do so, not only for the ordinary benefits derivable from the possession of land, but also from the fact that they are considerably averse to supply labour to farmers and other on whose lands they are located'. 119

But in the same year the magistrate of Newcastle reported that Africans were acquiring landed property and 'already the European colonist fears he may one day be elbowed out. There exists a strong feeling against the acquisition of land by Natives'.¹²⁰ On being asked what his attitude was to Africans acquiring land in freehold by the 1903-5 South African Native Affairs Commission F. R. Moor replied

'... for many generations the Native has to be governed autocratically by the dominant white race, and in order to do so, to carry on the form of government he has seen fit to impose, we must have control over the land. If you give up the control over the land you break down the tribal or family system I feel that any condition of land tenure that would give the Native an idea that he is in any way equal to the white man, either socially or politically, will breed profound mischief if ever attempted in South Africa'. 121

In 1907 there were 1,548 registered African landowners in Natal (including three in Zululand) owning among them 191,466 acres. Half of these landowners were in Pietermaritzburg County, while nearly half of the land owned was in Klip River County.¹²²

The evidence presented in this chapter has underlined the failure of the Natal Government to promote the economic development of the African population. In the reserves and on other lands they sank slowly but steadily into a condition of poverty and economic stagnation. The number of migrant labourers rose in proportion to the decreasing ability of people to make a living by traditional methods. Poverty and its concomitant, migrant labour, had considerable effects on traditionalism, as subsequent chapters will show.

An Assessment of 'Sontsewu'

In May 1875 Shepstone announced to the Legislative Council his intention of retiring from his post.¹ Two years before this he had said that he was old and sick of the 'perpetual and objectless strife' which he encountered in carrying out his duties. Gloomily he noted, in a reference to growing colonist influence over policy, that the protective concern which had led the British Government to annex Natal was daily being weakened: 'active control is being by degrees withdrawn and ... before long it is possible that the direction of the interest of which I have hitherto been the representative will pass into other hands'. In thirty eight years of service, he said, the total leave he had taken amounted to less than twelve months, and during the last five years of his service he had been financially no better off than in the first. '... from the nature of my appointment and my qualification for it ... I can hope for no promotion, no advance in my emoluments, whatever my services may have been'² The Langalibalele episode had not broken or even tarnished Shepstone's reputation. It was the unfortunate Pine who bore the brunt of the opprobrium directed at the Natal Government, even though it was probably Shepstone who had master-minded the trial arrangements (see p. 158).

Shepstone was unquestionably the most famous African administrator of nineteenth century South Africa. His influence lived on after him in Natal and elsewhere in South Africa. For thirty years Shepstone and 'native policy' had been virtually synonymous in Natal. He had devised a system and then jealously guarded it against the buffeting it received. The source of his great power in Natal African administration is easy to trace. Shepstone's term of office of thirty years saw a total of eight Lieutenant-Governors and one Administrator (Wolseley) come and go. Scott served the longest period which was eight years. With the conspicuous

being sold, but in Lower Tugela the crops were poor and Africans were forced to purchase grain as 'the means of avoiding starvation'.⁶⁴ From 1882 onwards, however, reports of crop deficiencies and the necessity to purchase grain feature regularly in the magistrates' reports. It is instructive to follow the fate of African farming in the Lion River district as it appears from the magistrate's reports. In 1882 it was reported that one half of the crops had been available for sale; in 1885 one third was available; in 1895 'the produce raised by Natives is in very many cases insufficient for their own support, and they are dependent on their white neighbours and other sources for food supplies'; in 1897 a surplus was produced and sold but, according to the magistrate, a shortfall in food requirements was likely to occur as most of the cattle had been killed by the rinderpest.⁶⁵ In the latter year the magistrate of Umvoti reported:

'It is doubtful if the Natives now produce enough food for their own consumption; in good seasons they may do so, but in most years they have to buy from Europeans and Indians. I can remember when this was not the case, and Europeans bought the greater part of the grain they consumed from the Natives'.⁶⁶

1896 was a year of crisis: locusts stripped down crops over wide areas of Natal and rinderpest, according to one estimate,⁶⁷ caused Africans to lose 95 per cent of their cattle. To add to the hardship there had been a severe drought for the preceding two seasons. Ironically, floods up country in 1894 had ruined crops growing on river banks and from Upper Tugela famine was reported, Africans having to be supplied with grain largely from Basutoland, the Transvaal and the Orange Free State.⁶⁸ The disasters of 1896 threatened further famine and the Government was forced to import large quantities of maize.⁶⁹ Even where cattle didn't die of rinderpest many died of starvation. In Napumulo, for example, 'many hundreds of cattle died of absolute poverty'.⁷⁰ Locusts and rinderpest, of course, affected both African and white producers. To eradicate the locusts chiefs were ordered to furnish labourers. This caused great

exception of Pine in his first spell in Natal Shepstone was able to say in 1873 that 'Governors of this Colony have always been chiefly guided by my opinion'.³ African administration was seen as an esoteric, difficult and potentially hazardous field and one can easily imagine that the Lieutenant-Governors of Natal were content to be guided by Shepstone, and reluctant to initiate changes unless suggested by him. There was an element of truth in Ridley's allegation in 1873 that Lieutenant-Governors Scott, Keate, and Musgrave were 'tools of Theophilus Shepstone'. Ridley claimed:

'They came to a colony where the current business occupied all their time, and were called upon to take action in native matters before they had any idea whatever of the native question. Placed in this position they were simply compelled to do as Mr. Shepstone requested. They depended upon him for what information they obtained in native affairs, and were, as a matter of course, bound to support his policy'.⁴

Shepstone was widely recognised as an authority on African law and custom; he spoke Zulu and Xhosa; and he was believed to possess great influence among Africans in Natal and elsewhere. He said in 1871: 'As a rule I am in constant communication with the most powerful tribes up to the Zambezi nearly'.⁵ No less did Shepstone possess influence in the Colonial Office in Whitehall, both among the permanent officials and upon the different Secretaries of State for the Colonies. He wrote, correctly, in 1879 of the 'confidence with which I was favoured by all Her Majesty's Secretaries of State for the Colonies under whom I have served'⁶ His personal influence was buttressed by his position as head of a separate department of the bureaucracy. He had always insisted that Africans were a separate and different people and that they should be administered accordingly. The Native Affairs Department was an imperium in imperio. Whether Shepstone would have liked to or not he could not devolve responsibility onto others because the staff did not exist. Until 1853 he was the sole permanent member of the Department, whereafter he was given the assistance of a clerk and two African messengers. A second clerk

was appointed in 1871 to compile a register of marriages and divorces.⁷ The threads of responsibility were held by one official. Criticisms were often voiced that the system was too dependent upon the personal influence of its head.⁸ Bishop Colenso said in 1873 that he had previously advocated the transfer of Shepstone's personal authority into the hands of other officials. Shepstone was said to have been in agreement with the proposal.⁹ After his retirement, however, the Natal Witness commented:

'Having carefully kept all the threads of policy and administration in his own hands, and jealously excluded all interference from any quarter either above or below, to whom, now are they to be handed over? The Native question governs Natal; Sir Theophilus Shepstone has governed the Native question; Sir Theophilus departs; the Native system falls to pieces; and Natal is - where? Certainly where she ought to have been, and where she has only been brought through the apathy of an Imperial Government which, as far as the Colonies are concerned, has always played into the hands of those who, by whatever means, have saved the Imperial Exchequer'.¹⁰

By all accounts Shepstone was secretive, silent and stubborn. In 1879 Sir Bartle Frere gave an incisive sketch of him:

'He is a singular type of an Africander Talleyrand, shrewd, observant, silent, self-contained, immobile. Forty years ago he might have been great in Continental diplomacy. Here he has had to be the Native Department of a small Colony, to manage an ever-growing population of Zulu refugees

Had he been well directed and supported, Shepstone had the capacity, if I may judge from a few early papers, to have organised them into some sort of community. But he was quite alone Hence he was driven, more and more, to trust to his naturally excellent memory, and to shut himself up in an irresponsible isolation, as the only man who knew anything about native affairs.

Like many of his countrymen, he is inclined to resist inquiry or control, and to treat in a hostile spirit all the information and all the suggestions about his department which do not come from himself. Hence it is not easy to help him, and his reticent habits make him very dangerous in troublous times'.

In another passage Frere wrote:

'Were I Governor of Natal, Shepstone is a man I should wish to have at hand to refer to for information and advice, which, when you get it out of him, is sure to be sagacious and worth having. He would rule a Zulu country well, after White-Zulu fashion, but would reform and report

nothing unasked, and would tolerate no partner in his realm'. 11

It is this combination of bureaucratic power and personal characteristics that gave Shepstone his dominant position in Natal for so many years.

According to John Shepstone '[t]he replies Sir Theophilus invariably gave to those who asked him what his native policy was, [was] that he pursued no native policy but took advantage of circumstances, in order to assimilate ours with theirs or vice versa whenever necessary'. 12 Sir John Robinson, the first Prime Minister of Natal, said of him: 'Supported as he usually was in his attitude of passive resistance to sudden change by the Governors and Secretaries of State of the day, Mr. Shepstone went on his way doing as little as possible in the direction of innovation or reform, and only yielding when he could hold out no longer'. 13 Historians have acknowledged that Shepstone was an able administrator, even a brilliant one, but they have criticised him for his lack of imagination as a policy-maker and for his failure to prepare Africans for the inevitable disintegration of their traditional society. Thus L. K. Thompson has written: 'whilst Shepstone controlled he did not civilise'. 14 Throughout his career Shepstone lamented that the progressive measure advocated in 1847 had not been implemented. By 1851 he was saying that the time for action along those lines had been lost, as more Africans entered Natal and consolidated themselves in chiefdoms:

'I have thought much of our position in South Africa as a Government and ... I cannot help feeling great regret that the scheme submitted nearly five years ago by the Commissioners has not been adopted, and under present circumstances I fear cannot be adopted with any likelihood of success. I have also been impressed with the necessity of considering some other that might with safety be substituted for it. The present Kaffir war [i.e. on the Cape frontier] and the evident sympathy of colour that exists among the Black nations have contributed to render the question of much greater importance than at first sight it assumed'. 15

He repeatedly expressed irritation that the British Government should expect him to govern the African population on a shoe-string and, at the same time, criticise his failure to change them.

In theory Shepstone was never opposed to change, but he repeatedly emphasised that it must be gradual: 'I think it well to keep the object of improvement, and, as far as may be, assimilation, in view as an ultimate goal; the danger lies in going too fast'.¹⁶ His stress on the danger of administrative experiments and attempts to hasten what he considered ought to be a slow process made him inclined to lose sight of this long-term goal. Nevertheless in 1892 he made scathing criticisms of some of the reforms of 1875 which, he argued, impeded administrative flexibility in coping with social changes among Africans.

'The least thoughtful among us must know and see the accelerated pace at which change is now sweeping onward; that, therefore, no fixed or permanent plan is practicable; that whatever system or principle may be adopted as an outline of action, the condition of perpetual change will constantly demand administrative changes corresponding to that condition, guided by the main object of so improving and advancing the natives that their existence in the presence of the white man may be safe and profitable to both. Short cuts which ignore the great gulf that separates the social and political ideas of the two races must sooner or later bring about disaster. This is the only system that my experience and observation lead me to believe is practicable: but there must always be present the authority, able and ready, to make these changes when they are required. A system based upon the above principles was in full operation until the enactment of the Law No. 26, 1875. That law put a stop to all improvements not brought about by a specified process; this process could never be set in motion [the reference is to amendments to the Code of Native Law], consequently all assimilative advance has been arrested from that day to this'.¹⁷

To Shepstone's mind codification of customary law had eliminated the relative flexibility of the previous system. The creation of the Native High Court, by depriving the Secretary for Native Affairs of judicial power, had further weakened his power to effect changes in the law.¹⁸

In discussing Shepstone's attitude to change it must be remembered that he was the son of a missionary and remained a devout Christian all his life. Two of his closest friends were Bishop Colenso (until 1873)

and the Reverend Daniel Lindley.¹⁹ It is improbable that these men would have remained the friend of a man who opposed their life's work. Nevertheless, Shepstone was notoriously unenthusiastic about measures such as the Exemption Law or the provision for Christian marriage. Indeed, he doubted the genuineness of many of the conversions of Africans to Christianity. His friend Rider Haggard quoted Shepstone as saying frequently that 'he believed that the Zulus should be taught to work and that their minds should be opened before attempts were made to Christianise them'.²⁰ Ostensibly Shepstone regarded missionary endeavour as important; he did not oppose the granting of educational facilities for Africans, and nor can he be entirely blamed for the small amount of money which was set aside for this purpose. But the fact is that the annual reserve fund of £5,000 (to be spent on African development) was regularly not fully spent, and by 1871 an estimated balance of £30,000 had accumulated! Moreover, Shepstone made no more imaginative suggestion for using this sum than building accommodation for visiting chiefs and a court house in Pietermaritzburg.²¹ This suggests that financial stringency was not the only reason for stagnation under Shepstone. To be sure, the annual unspent amounts were small, and even the accumulated £30,000 would not have gone far in any ambitious scheme; but the fact is that the money was allowed to accumulate. It is also noteworthy that his many memoranda on native policy, particularly in later years, show a conspicuous lack of attention to educational and economic development. This is not to say that Shepstone held the view, typical among colonists, that measures aimed at teaching Africans trades, or inducing them to modernise their agricultural methods were 'undesirable'. Nowhere in his public or private statements is there any evidence that he held such views. The reluctance of Africans to plant cash crops and their early resistance to education (see p. 206 and p. 53) convinced him that forcing changes upon Africans was impossible and dangerous. Shepstone's view of change reflected his conservatism: change must not come from external direction or force; rather it must be

the result of an immanent desire on the part of Africans themselves. He favoured the development of communities rather than of individuals.²²

Shepstone consistently argued that a greater measure of force would have to be made available if radical measures of change were contemplated (see p. 171). In the absence of large military resources he believed that there was no alternative to abstaining from policies which may have united the different tribes into a common opposition to the Government.

Probably Shepstone had contradictions within himself: the devout Christian and supporter of missionary activity who pointed to the kholwa settlement at Edendale as the African community he approved of most;²³ this did not fit with Shepstone the conservative who was caught in the toils of his own administrative creation, seeing his system as an end in itself, and losing sight of long-term goals.

Shepstone's lack of creative ideas in forming policy is shown in the sphere of race relations. Natal was a multi-racial society, but Shepstone's ideas on how best to order race relations were singularly barren. Strong forces were at work making whites and Africans (and later, Indians as well) ever more interdependent as the common society evolved. Shepstone was consistently sceptical as to the viability of a multi-racial society. In 1851 Shepstone wrote to Pine that his

'experience of the habits of this people, and the public evidence, which the history of Natives gives of the difficulty of governing them, when they come into contact with the white man, either Dutch or English, makes me feel that the duties imposed upon me are both difficult and delicate'.²⁴

Shepstone saw it as his duty to regulate points of contact between whites and Africans as far as he possibly could; and it would be true to say that he was largely responsible for preventing the African population being reduced to virtual serfdom by the Natal colonists. According to his brother, John, Shepstone considered it necessary to protect Africans from

'an indiscriminate mixing with the white element, especially as regarded [sic] the women and children who could learn no good from the white man. His

object was to prevent, as far as possible, the demoralisation of both races The people themselves did not wish to mix with the white man in the way they have done' 25

A practical illustration of his views is provided by his reaction to a proposal to intersperse white and Africans together in the lands formerly occupied by the Hlubi and Putile people:

'I have never felt anxious to see individual white farmers settled among masses of Natives, it seems to me like courting collision, differences and disputes are bound to arise, and what was in reality a mere personal quarrel, might in consequence of the position of the parties to it, precipitate serious disaster'. 26

In discussing Shepstone's views on race relations it is important to relate his administrative system to these views. A remarkable debate occurred in 1891-2 between President F. Reitz of the Orange Free State and Shepstone. Reitz had argued that the main objects which civilised South Africa should bear in view' were:

'(1) to get rid of the tribal system as being an imperium in imperio of a most pernicious kind; (2) to abolish chieftainships; (3) to apply to all men alike, irrespective of colour and race, the rule "by the sweat of thy brow thou shalt earn thy bread", and with a view to this end to break up all locations, great and small; (4) to suppress by law all such heathen rites as are undoubtedly and flagrantly immoral and degrading; (5) to discourage polygamy and the selling and buying of women which it involves; and (6) to adopt the principle and maintain it steadfastly, that there shall be no "equality" between the aborigines of South Africa and the people of European descent who have made the land their home'.

In his reply Shepstone noted that Reitz had condemned those English philanthropists who accused the South African republics of permitting slavery, but, he asked

'[w]hat is the essence of slavery but the power of one human being to so control the life of another as to deprive him of the right of exercising free will, even in the manner of earning his living? Wherein do the recommendations of the President fall short of this?'

Reitz had raised also the spectre of racial equality. Shepstone's comments are worth quoting:

'The President shows a great deal of anxiety, and expends some rhetoric on this subject of equality; but the truth is

that from the days of Jan van Riebeck until now, no sign of a struggle or demand for equality has occurred. The coloured races have accepted the superior position of the European as a race, and accept it now. Wars have taken place at different times; each war has had its special object or its special cause; but in no case has political or social equality been the aim.

It must be remembered also that the human intellect cannot be fettered; when aided by education it will rise to the level that is due to it, whether covered by a coloured skin or a white. To prevent the growth of that formidable thing intellectual equality, the President, to be consistent, should "adopt the principle, and maintain it steadfastly" that there shall be no educational establishments for natives, no mission or industrial teaching among them, beyond what may be needed to teach them to "handle the pickaxe and the plough", or to become "domestic servants in towns and villages".

President Reitz instances the dangers that are said to be now threatening the United States of America from the coloured population that were once slaves; he cites this state of things as the one to be avoided in South Africa; he addresses this example for want of a better, presumably, to enforce his advice to break up all locations, to abolish chieftainships, and the tribal system, which he looks upon as the root of all mischief. Unfortunately for his argument, the danger in the United States which he cites as a warning to us, has grown somehow out of the very condition that he wishes to establish as an antidote to it in South Africa.

The descendants of the African race in the United States had no locations, no chieftainships, no tribal system; they had for generations been "scattered and settled down amongst the farmers, and as domestic servants in the towns and villages of the dominant race" exactly in the way that President Reitz wishes our immense native population to be "scattered and settled down" amongst us. Yet out of this, his ideal state of things, in which no equality was permitted or thought of, a danger has arisen serious enough to cause anxiety to sixty millions of people of European descent!' 27

What Shepstone was saying is highly significant, particularly in the light of the use later South African governments have made of traditionalism. By shoring up the traditional system, Africans, Shepstone hoped, would be kept in a traditionalist cocoon which impeded the growth among them of a political consciousness incorporating a desire for racial equality. As the cocoon broke down so political demands of this type would be increasingly made. (It must be remembered that at the time Shepstone wrote there was

already in Natal a small but vocal class of educated African who pressed for a greater measure of racial equality). Shepstone feared what an American political scientist, William Kornhauser, has recently described as the 'mass society'. The mass society, according to Kornhauser, develops when, for one reason or another, people spill out of the broad social groupings, including classes and associations to which they belong, and society is atomised. 'Where people are not securely related to a plurality of independent groups, they are available for all kinds of adventure and "activist modes of intervention" in the larger society'.²⁸

In the Natal system the tribe, that disintegrating husk of a traditional social order, performed the role of an association: if Africans were firmly rooted in chiefdoms that perpetuated their disunity they would be less amenable and less 'available' to any political movement that might seek their support in demanding racial equality. Traditionalism, in other words, was a stabilising device not only for ordinary bureaucratic purposes, but also in relation to the 'new politics' which were emerging (and of which Shepstone was aware). The new politics was the harbinger of African nationalism.

Shepstone, as was seen above (p. 41), was strongly opposed to the idea of racial equality. He considered the Cape non-racial franchise to be 'a mistake'.²⁹ In 1880, when confederation of the South African states was being discussed, he grudgingly conceded that Africans might be given limited franchise rights:

'There is no doubt that the exercise of the elected franchise by members of African races is as a rule accompanied by much that is objectionable and demoralising to all concerned but it seems to be recognised as a necessity that the mischief must be incurred to satisfy the principle that a population is entitled to be represented in a body that taxes it and decides its destinies I am quite sure that the exercise of any such general franchise by the Natives of Natal would produce the most serious and perhaps dangerous confusion. I do not make this remark because I consider the Natives of Natal to be incapable of understanding and appreciating the advantage of being represented in the Governing body; they understand this perfectly - so well

indeed that rogue ? the word in the document is difficult to decipher partizanship would in all probability turn every general election into a serious general disturbance; and in a colony like Natal such risks cannot be prudently incurred'.

He acknowledged that it would seem unjust in a future confederation to concede franchise rights to Cape but not Natal Africans. He rejected the use of educational attainments as suitable franchise qualifications, but suggested that 'the possession of land by individual right or immovable right would be the most desirable, certainly the safest qualification which a Native could possess'.³⁰

Despite his views on the undesirability of racial equality, the cruder manifestations of colonist racialism appalled him. In 1874, for example, colonists in the Stanger district petitioned the Lieutenant-Governor after Africans had bought nineteen out of 58 plots of Crown land that were auctioned in the area. The colonists asked that transfer of the land be refused because its possession by Africans 'will cause great annoyance to the Whites and prevent other Whites from purchasing or building in the same village, and further, because great annoyance has been caused in the Cape Colony by the blacks mixing with the White in villages, and white people are not allowed to purchase lots in Kaffir villages in this Colony'. Shepstone's report on the petition bristled with anger at what he termed an 'insult', and in an addendum added to later, he emphasised that there was no colour bar in the sale of Crown lands.³¹

Shepstone had little or no conception of a viable basis for a multi-racial society. At the back of his mind always lay the chimera that the mass of the African population could be transported to some place beyond the borders of Natal. His removal schemes of the 1850's were revived in the 1870's after the Langalibalele affair, but when their impracticability was realised each in turn was abandoned. He thought it inevitable that Africans must deteriorate as they became more involved in a multi-racial society and abandoned their traditional culture. In a document among his

personal papers Shepstone compared the Africans of Natal with the Jews:

'Read Jewish history and you have the general outline of Zulu life. It will be a poor day for the Zulu when he no longer is sui generis, but becomes mixed and intertwined with other people. Then in morals, mind and character he will go downward, when no longer governed by his law which is his life. Where are the Jews today?' 32

Unquestionably Shepstone felt more at ease in dealing with conservative Africans, like the Indirect Rulers of British Africa in later times. It is possible, too, that the extent of his contact with them caused him to assimilate some of their values. Indeed he liked to think of himself as 'principal induna' to the Supreme Chief; and, if a critic (Francis E. Colenso) can be believed: 'His manners were those of a paramount chief, his habit of thought evidently running in the same groove ... and I confess the scene appeared to me to be a solemn farce, and nothing more It seemed to me that I was in the midst of an assemblage of savages only, whose modes of thought and ideas were different from anything to which I had been accustomed. I could hardly believe that I saw before me the man who has for so many years controlled, in England's name, the destinies of the native races of Natal. I felt, rather, that I saw the Zulu despot in the midst of his savage retainers, and to me it has long been inconceivable that England's honour should have been entrusted, since the birth of this her colony to one who at heart was but a Zulu chief'.³³ Rider Haggard expressed the same view in more polite terms: 'He was a curious, silent man, who had acquired many of the characteristics of the natives amongst whom he lived'.³⁴

An important part of any assessment of Shepstone ought to be an analysis of how the African population, whose destinies he controlled, reacted to him. Unhappily for the historian, information on this point is scanty. At several points the authoritarian nature of the Natal administration has been indicated: the line between exercising a right to free speech and 'contumacious' or 'subversive' conduct was a blurred one; and possibly this is a partial cause of the paucity of evidence on African

views of Shepstone. Unquestionably Shepstone had created for himself a store of good will among Africans in the early days of Natal by affording to them protection from the Zulu power. When he died in 1893 the African newspaper Inkanyiso reported that Africans were singing: 'He brought us out of the forests and made people of us, he made homes for us when we were but fugitives and wanderers, he was our shield in every danger'.³⁵

Similar sentiments are expressed in his isibongo [praise poem].³⁶ Many Africans who gave evidence before the 1906-7 Commission harked back to the days of Theophilus Shepstone whom they regarded as a fair and just ruler. Njome, for example, said

'Natives had every cause of satisfaction under the regime of Sir Theophilus Shepstone. In those days, each Chief was kept informed of whatever was going on, and would call his people together and discuss these affairs amongst themselves. This practice he regarded as a great advantage to the Government, and he considered it should be reverted to. Sir Theophilus Shepstone would never allow private landowners to strike them with impunity, and he had even warned them that if they did so the Natives might retaliate. Natives were also told to report any cases of injustice to him and let him deal with them'.³⁷

Shepstone never regarded Africans as 'ignorant savages'. He had a real feeling for their traditional culture and sympathy for their efforts to withstand the forces that were undermining it. He warned the Legislative Council in 1857 that Africans were 'keen observers of political events'. Those who knew English followed events in the newspapers and became 'the ready interpreters of them to their fellows'.³⁸ In view of the military weakness of the Natal Government Shepstone felt obliged to try and carry the African population with him in any legislative measure. He explained to the 1881-2 Commission:

'It was always my custom to tell the Natives the wishes of the Government, and they were allowed to freely express their ideas. I always found them very reasonable. What they feel very keenly is that Laws should be made without their knowing of them until they are passed. I think they should always be consulted when any action is taken regarding them. I do not say all their objections should be allowed, but they should be listened to. I do not think there is a more reasonable people in the world if they are only reasonably treated'.³⁹

He claimed in 1881 that Africans had acquired confidence in the system by which they were governed:

'It was a system under which they felt that they could be, and were in daily contact with the executive of the country, not only as a dispenser of justice among them but as effectively occupying the position of Chief Paramount, where resided every supreme function over them. The effect of this was to tempt chiefs residing far and near, or their delegates, to be in attendance at the seat of Government, to pay their court and homage to the supremacy that resided there, to discuss the political questions of the day in open "durbar", and to listen and to take part in discussing the principles upon which difficult cases were decided'. 40

Despite the evidence on Shepstone's methods of government and his concern about African land and other rights, it is possible that African goodwill towards him diminished as the years passed by. Mrs. Colenso's letter provides several fragmentary bits of evidence. In 1866 she wrote of African attitudes in general: 'They are becoming more insolent too, as the old men die out who found a refuge here from bloody tyranny, and the young men grow up whose pride is galled by the white man'.⁴¹ The Langalibalele affair seems to have been a climax in Shepstone's relations with the African population. Langalibalele's behaviour itself was indicative of suspicion and fear. The ruthlessness and rapacity of the Government's action created widespread mistrust among Africans, already resentful of the hated marriage tax. Prestige had accrued to Shepstone and the Natal Government because life and property were more secure in Natal in the 1840's and after than in Zululand. But at the time of the Langalibalele affair, according to Mrs. Colenso, this feeling changed (see p. 170). In 1875, when Bishop Colenso managed to trace a number of African witnesses to give evidence at the inquiry into the Matyana episode, Mrs. Colenso commented: 'It is wonderful that so many natives (19) at this distance of time should have persevered in one consistent story in spite of the terror they were under of Mr. Shepstone's despotic power'⁴² Shepstone's power over people was widely known among Africans. It was reflected in his praise poem, which also made mention of his craftiness.⁴³

Allegations were made that Shepstone promoted his cooks and other servants to 'chieftainships': 'They are known among the kaffirs as Shepstone's dogs'.⁴⁴ Another fragment of evidence was provided by Chief Tinta of the Umtungwa tribe in a remark he made to the 1881-2 Commission. The Chief was opposed to the alterations made in the law relating to ukuncena in 1869. He had expected his elders to support him since they had previously agreed to do so. But they didn't, and the Chief said it was because they were afraid of Shepstone.⁴⁵ Africans blamed Shepstone for perverting the lobolo custom, and turning it into a mercenary transaction. A recent anthropological survey of a Natal reserve quotes an old African as saying wryly, 'Of course Sontseu (Sir Theophilus Shepstone) told us to buy our wives!'⁴⁶

The main grievance among Africans at the end of Shepstone's career as Secretary for Native Affairs was that they had insufficient land.

Shepstone could not be blamed for this. The extent of the reserves fell far short of the recommendations made in 1847. Shepstone regretted that

'the Home Government never attempted to locate these people in such a way to retain, in a permanent way, their share of the country which ought to have been done at the time Natal was annexed'.⁴⁷

He was conscious of the pressure that was building up on the land as the African population grew. When Wolseley toyed with the idea of imposing a tax on Africans living on Crown lands to squeeze them off and open up more lands for whites Shepstone commented unenthusiastically: 'There is no land for them to go to in the Colony; the locations are full, and private owners cannot accommodate them; they must therefore either pay or resist'.⁴⁸ In 1881 he criticised the Natal Government for offering the Crown lands for sale:

'The serious nature of the effect of this measure upon the natives can be rightly understood by considering their condition with regard to land; there are it is true large locations set apart for their use; but extensive as they are, they are too small to accommodate the population. That this is no mere opinion is shown by the fact that large numbers of natives pay extravagant rents to white proprietors, the annual amount of which is in many cases

more than double the value of the tenements or huts for which the rent is paid Another consequence of the inadequacy of the locations has been that rightly or wrongly, the overflowing native population have squatted upon the Crown lands that have now been offered for sale'. 49

Shepstone believed that Natal was too small to accommodate the entire African population, and he agreed with the proposition put to him by a member of the 1831-2 Commission that it would be 'advisable to send some of our Natives beyond our border where we could obtain land'. He warned, with astonishing prescience, that 'we have now in the country all the elements which are likely to bring about all the elements of serious agrarian disturbances'. 50

Shepstone's major failure as an administrator was in the sphere of development. Under his rule the reserves stagnated, and the African population sank into poverty; only a pittance was spent on education. However much he may have stressed the inevitability of change in his clash with Reitz in 1892, he did little to foster it during his tenure of office. He pleaded financial stringency when challenged on the issue, but, as was suggested above, this was not the only reason. It is possible, though it cannot be proved, that Shepstone's failure to 'civilise' and his belief in the non-viability of a multi-racial society are aspects of a single viewpoint. If development measures had been successfully applied on a large scale, the areas of competition between white and black would have increased in number; and, on Shepstone's reckoning, the conflicts that this competition generated would have been too great to be contained within one country.

Shepstone remained an important figure after his retirement from the Department of Native Affairs. His leading role in the annexation of the South African Republic by Britain in 1877 was the manifestation of an imperial zeal which always characterised him. He was ever anxious to extend Natal's borders. As early as 1854 Shepstone wrote that he believed

'it is the power of the Government of Natal to annihilate the Zulu Government by a simple order'.⁵¹ The administrative structure which he set up in the South African Republic contained many of Natal's institutions of African administration: reserves were to be properly demarcated for Africans; customary law and chieftainship were to be recognised; and the Governor or Administrator was to be appointed as Supreme Chief over the African population.⁵² Shepstone had also some effect (it is impossible to tell precisely how much) upon Cape native policy in the 1880's and after. It was shown above (see p. 33-4) that the Cape and Natal adopted significantly different policies in earlier years. But when the Cape Government annexed the Transkeian Territories in 1877, 1884, and 1894, politicians and administrators were forced to modify their integrationist or assimilationist approach and bow to the vitality of traditionalism in these new areas. Incautious efforts to tamper with tribal institutions in Basutoland (a dependency of the Cape from 1871 to 1882) had taught them that attempts to promote change should be tempered with discretion.⁵³ Recognition of the need for a modified approach was spelled out clearly by the Cape Government Commission on Native Laws and Customs in 1883. It is very likely that Shepstone's views weighed heavily with the Commissioners. He spent six days giving his evidence, which covered every aspect of Natal's native policy. Some passages of the Commission's Report follow Shepstone's views very closely. Thus, the Commission made the following recommendation with regard to polygyny:

'We must express our conviction that it would be for the welfare of the native people of this country if polygyny could be speedily abolished, and that its disappearance would materially aid the labours of Missionaries, and conduce to the prosperity of the country. On the other hand we recognise that institutions which have become rooted in the social and national life of any people are not easily overthrown by direct enactment. They are never so overthrown unless there is a preparation of opinion and a certain willingness on the part of the people to accept such changes, or unless the Government promulgating such enactments is in possession of sufficient force to give effect to these laws, and is also satisfied both as to the justice and necessity of

using such force. None of these conditions exist at the present moment'. 54

Policies similar in most respects to Shepstone's were later associated with the name of Lord Lugard in British Africa. Like Shepstone's system Lugard's 'indirect rule' was initially a pragmatic response to administrative necessity, which later became elevated to the status of a philosophy of colonial government. As with Shepstone the indirect rulers' major failure was in the sphere of development. They too became wedded to traditionalism for its own sake. 55

University of Cape Town

XII

The Colonists after Shepstone

It seems a paradox that the colonists of Natal, after attacking the Shepstonian system for so long, should gradually come to accept it and, indeed, elevate it to the status of an inviolable orthodoxy. The descendants of the great protagonists of 'civilisation' and 'improvement' of Africans in the 1850's and after had no answer when John X. Merriman told the Natal members of the 1903-5 Commission on Native affairs: 'You have not elevated the Natives in Natal; you have not raised them; you have not educated them; they are barbarous, and you have designedly left them in a state of barbarism'.¹ Moreover, the native policy of the Natal Government after 1893 was Shepstonism stripped of the dynamic element which its founder claimed it possessed: in Eric A. Walker's words it was 'an amalgam of embalmed Shepstonism and acquisitiveness'.²

It is difficult to trace with precision changes in so nebulous a concept as public opinion. But the typical colonist view of the 1850's and 1860's that vigorous measures should be taken against traditionalism definitely changed: this can be seen by analysing the policies of the responsible government era when, subject to certain safeguards which were seldom if ever enforced, colonist representatives possessed full control over African affairs. The change of opinion in the lifetime of an individual is strikingly seen in the autobiography of Sir John Robinson who was prime minister of Natal from October 1893 to February 1897:

'Supported as he usually was in his attitude of passive resistance to sudden change by the Governors and Secretaries of State of the day, Mr. Shepstone went on his way doing as little as possible in the direction of innovation or reform, and only yielding when he could hold out no longer.

Thus it has come to pass that after fifty years of British rule the native population of Natal has swollen in numbers from 100,000 to 500,000, and yet in its general conditions and aspects it remains very much the same people that were found in the Colony half a century ago. Yet by no means

altogether so For Mr. Shepstone's inertia was qualified by legislative activity, and though he was slow to move, in the end he did advance, in the direction of a more vigorous and enlightened policy. The conjunction of these two influences in the years between 1860 and 1880, while it prevented actual retrogression or absolute inaction, was eminently conservative and salutary in its effects. Whatever changes might be introduced were carried out with care and caution - were deliberate and tentative, not violent or radical. Though I was usually on the side of a progressive policy [italics added], looking back to those days in the light of subsequent experience, it seems to me now that the peace and order that have so conspicuously marked the history of Natal have been greatly due to this admixture of official conservatism with colonial progressiveness. While barbarism has been curbed, and while civilisation has made some headway, native animosities have not been aroused, nor native discontent fostered'. 3

Equally revealing was Robinson's description of the African reserves as 'the happy abiding-places of untutored savages'. 4

The change in colonist views occurred slowly and imperceptibly. It was not so much a sudden discerning of previously hidden virtues in the Shepstonian system as a gradual acquiescence in the status quo. Hostility to Shepstone lingered on after his retirement from the Native Affairs Department. In 1881, for example, Shepstone applied to the Natal Government for a small increase in his pension. The recommendation that it be granted was passed by the Legislative Council on the casting vote of the Speaker (whereupon Shepstone refused to accept the increase). 5 No single reason explains the acquiescence in Shepstonism: it was the outcome of several factors, each inter-related and each reinforcing the others. To unravel these factors is the task of this chapter.

A more cautious note entered colonist criticisms of Shepstone's policy in the 1870's. In a Legislative Council debate in 1871 J. N. Boshof, a long-standing opponent of Shepstone, expressed doubts about the feasibility of legal assimilation:

'It might be said that Responsible Government would abolish native law, but would it be easy to do this? He feared not. The natives were now too numerous, too separated from the whites'. 6

The same combination of caution and regret was reflected in the Legislative

Council's reply to the Lieutenant-Governor's speech in October 1873:

'Our daily experience enables us thoroughly to confirm the assertion that there is danger and folly in attempting prematurely to govern, savage men by laws made for highly civilised nations'. The Legislative Council regretted that customary law had still to be recognised even after thirty years of British rule, but 'it is not our wish to deal retrospectively with this question'. They expressed the hope that the Government would not neglect 'those measures of improvement which may accelerate the time when the natives may be fitted to come under a milder and more refined system of law'.⁷

Recognition of the persistence of traditionalism and the hostility of most Africans to change grew among the colonists. It was realised that there was truth in Shepstone's repeated warnings that forced change could provoke a revolt. In June 1878 the Natal Witness commented:

'The real difficulty with regard to Native legislation lies in this - that the whole manner of thinking and regarding things among the natives is so entirely different to that prevailing among the Europeans, that it is almost or wholly impossible to provide laws which shall include them both To compel the whole Native population to come under European Law might have its own advantages, but the measure could hardly help being attended with serious injustice, while the law would have no great hold upon the Native mind, and would require to be backed up by a far stronger exhibition of physical force than would be either politic or possible ... polygamy must be admitted and regretted, though it is obviously no part of the duty of the Government to interfere in purely moral questions'.⁸

Even J. W. Akerman, another critic of Shepstone, was forced to acknowledge that attempts at change should be tempered with caution. In 1879 he said in the Legislative Council that 'every Member would pass a bill tomorrow to abolish polygamy forthwith, if they did not see the danger'⁹

Accompanying these views was a sense of unease among colonists; a dislike of the apparent results of social change among Africans. It was suggested in an earlier chapter (see pp. 59-60) that there was a fundamental contradiction in colonist aspirations: they wished to 'civilise' Africans but they disliked and feared the fruits of the 'civilising' process.

As early as the 1850's and 1860's the mission-educated African, the 'missionary kaffir', was the butt of much hostile comment from colonists.

The Natal Witness claimed in 1857 that

'it is notorious that as the native advances in civilisation, his courage, audacity, and general force of character ripen very rapidly. When the native's training takes place at the mission station, and the savage throws his new strength into a wrong direction, then blame is cast on those who are doing among the heathen, what is being done in the ragged schools of England' 10

It was commonplace for colonists to suggest that Africans were 'more apt at learning civilisation's vices than its virtues'. It was assumed that kholwa Africans became less deferential to whites as the frustrations of a colour-caste society bore down upon them.

Social changes were shaking the foundations of traditionalism; chiefs complained of losing control over their people; kinship ties were weakening and heads of families complained that they were not respected as before by their children, and that their wives were permitted too much freedom under Shepstone's innovations. The social controls in traditional society were breaking down (see pp. 322-333). The continuing disintegration brought no advantage in the supply of labour to colonists. The Natal Native Commission of 1881-2 said:

'There appears now to be a greater difficulty in procuring Native labour; nor can the same dependence be placed on the labourers as formerly. Wages are much higher than they have ever before been, but this does not seem to produce a better or more reliable class of labourers'. 11

The report and the evidence of this Commission cast revealing light upon colonist views at the time. The Commission consisted of fifteen members and ten of them submitted minority reports. The wide divergence of views among the Commissioners and the colonist witnesses suggests great uncertainty as to the lines future policy should take. The Shepstonian system had been in existence for over thirty years and the passage of time had given to it a seeming immovability: for better or for worse the Colony was saddled with it. Colonists had grown weary of

battering their heads against it, and radical protest seemed futile. Moreover, the African population had tripled since the 1850's and was now estimated at 375,000.¹² The colonists were conscious of being greatly outnumbered. Proposals for vigorous policies seemed more impracticable and more dangerous than they were when the African population was smaller. The need for new policies was not recognised. Consequently the report and the minority reports and the large majority of colonist witnesses did not make radical recommendations for change; rather they were concerned to suggest modifications within the framework of the existing system. Regret was expressed that earlier proposals had not been implemented. The Commission said, for instance:

'We neither recommend that the Locations should be added to nor that they should be taken from We lament that the Locations were not originally so arranged as that the inhabitants should have been in a less degree separated from the white population than they are, and less congregated in masses'.¹³

Equally revealing was the evidence of A. G. Spies, a member of the 1852-3 Commission. He qualified his recommendation that chieftainship be abolished 'cautiously and gradually', saying 'I think they are now so accustomed to this system, and the Government has allowed its use so long that it would be very difficult to make any alteration in it'. He said that it was not practicable to abolish polygyny 'owing to the Government having legalised and countenanced it for so many years'.¹⁴ Even Walter Macfarlane, one of Shepstone's chief opponents and chairman of the 1852-3 Commission, although deploring traditionalism in all its forms, conceded that until more magistrates were appointed chiefs could not be dispensed with, nor customary law be superseded.¹⁵

The Commission declined to recommend vigorous steps against polygyny and lobolo. Polygyny, it said, could not be regarded, among pagans, 'as among those crimes against humanity which have to be put down with a strong hand' The Commission looked instead 'to its gradual extinction by such means as greater spread of Christianity and of civilisation'

No further recognition should be accorded to polygyny by statute. The Commission argued that the function of lobolo had changed and the transaction had 'assumed the appearance of a sale and purchase of the intended wife by her father and proposed husband respectively' But 'we do not propose in the least that lobolo should be abolished' Instead, it was recommended that after a stipulated date the colonial courts should decline to hear suits arising out of lobolo agreements. In regard to chieftainship the Commission said that chiefs' powers did not work 'injuriously for the Government, or to any serious extent for any of the white inhabitants'. In view of the heated arguments in the past about the alleged wrongs perpetrated on African women, the Commission's findings on this subject have an ironic ring:-

'Great complaints are made by Native men on account of the facility which is afforded to women for going to Courts and complaining of their husbands We think that it has been shown that very bad results arise from allowing of divorce as is done at present We cannot from what we have heard doubt that in these matrimonial quarrels the wife is generally the more to blame. We do not believe that Native husbands are disposed to be cruel while they do - and rightly - expect cheerful submission' 16

These remarks evoked a furious minority report, couched in the language of the 1850's, from J. W. Akerman, Speaker of the Legislative Council, who dissented from the majority's report recommendations, saying that the state of affairs complained of was regrettable 'but to me appears only as one of those events inseparable from a transitional state between abject submission and the liberty of a higher grade of life'.¹⁷

In discussing the link between African franchise rights and the exemption system it was argued that adherence to traditionalism provided the colonists with a convenient pretext for withholding political rights from Africans (see p. 59). Seven members of the Commission used the same argument to justify a recommendation that Africans be prohibited from buying land in freehold:-

'We object very strongly to the recommendation ... that Natives should be encouraged to purchase land in freehold

while still under Native Law. We consider that inasmuch as under Native Law - the practice of which is allowed to Natives as a special indulgence - the freehold tenure of land is utterly unknown, no Native who elects to remain under that law should be permitted to become a freeholder in land'. 18

By the 1880's there was abundant evidence that traditional African society was disintegrating. Many Africans lived in the towns and villages of the Colony; by 1880, for example, Durban had an African population of 3,567 men, 150 women and 100 children.¹⁹ To many colonists these embryonic urban communities were unfortunate examples of what would occur if Africans were removed from the restraints of traditional society. It was thought that the decline of traditional restraints would lead to lawlessness. A correspondent writing in the Natal Witness in 1880 described the squalid conditions in the municipal barracks in Pietermaritzburg where many Africans lived:

'With dread one looks forward to what is likely to be the career and ultimate fate of these unfortunates. Brought up - or rather dragged up - amid such depraving influences, can it be wondered at if from such hot-beds of infamy shall spring up future transgressors of our laws'. 20

The magistrate of Pietermaritzburg reported in 1880 that 'the bulk of the Native women have abandoned kraal life, and have adopted prostitution and petticoats'. In 1881 he said that the stern discipline of the rural home had, in the urban setting, degenerated into 'unbridled licence'; their sobriety had given way to the 'wildest dissipation'; hard and constant labour had been replaced by 'a state of idleness which must lead to mischief'. Marriage ties were ignored. 'Native Society [is], in the absence of heads of knals, Indunas and Chiefs, a dead letter; these women are simply emancipated from all control'²¹ The magistrate of the Inanda Division gave it as his opinion that there were two classes of Africans, one of which, exemplified by the professional wagon-driver, had absorbed all the vices of the whites. 'And this is why the cry is so frequently heard of "Give me a raw kraal Kaffir in preference to the educated one". This one, if ignorant, is respectful and fearful, the other

is presuming and insolent with an unwelcome admixture of artifice and rascality'.²² In 1882 the magistrate of the Upper Tugela Division reported the 'distressing effects' upon young men of six months at the Diamond Fields, while the assistant magistrate of Umsinga wrote scathingly of the 'semi-civilised' African, contrasted with the traditionalist, 'I feel strongly for so fine a race inevitable marching along to its own destruction'.²³

From the colonists' point of view the supply of labour by Africans was insufficient. Indeed, they continued to complain about its inadequacy until 1910. But by the 1880's the labour question, although important, was no longer the central political issue. The colonists had not been able to smash the reserves and force Africans out of work, and looked instead to India and to tribes beyond Natal's borders as sources of labour. If in the 1850's and 1860's the traditional system had been regarded as a bottleneck inhibiting the flow of labour, by the 1880's it was apparent that certain aspects of traditionalism facilitated the flow of labour. Lebolo requirements, for example, induced young men to take paid employment. Writing in 1862 the Reverend Lewis Groot noted that men were beginning to earn their own lobolo cattle by working for whites, rather than depend on their fathers or guardians.²⁴ In 1874 Dean James Green estimated that 'it requires four years of unremitting industry to enable a young man to marry'. Green said that the money equivalent of lobolo was at least £30, and £9 per annum would be a high average at which to place a young man's earnings.²⁵

In 1871 the Commission on relations between masters and native servants had found that service contracts were in most cases entered into by family heads 'on behalf of and with the consent of their dependents'²⁶ It stood to reason that if family ties were loosened and the head of the family's authority declined the would-be employer would have to enter into a number of contracts with individuals rather than with a single individual who spoke for an entire joint family. The difficulty of the employer was explained by a correspondent who complained in June 1890 of the shortage of farm

labour. He said:

'the headman has lost all power over the working boy and girl. The only ones he has any control over are the girls and herdboys up to thirteen years of age; above that age the boys career around the country for days at a time, beer-drinking, and giving way to other indulgences that they never dreamt of at their age under former native rule'. 27

In 1909 a Commission ascribed the short periods of service usually rendered by Africans partly to the head of the family's loss of authority:

'... owing to the intervention of European methods of justice and administration, by means of Magistrates, the Kraal head has lost the patriarchal authority formerly possessed by him Consequently, the older boys, as well as the younger men, are out of hand, and to a great extent do as they please'. 28

When the colonists pressed for responsible government in the early 1870's and, again, in the 1880's and after, the issue of native policy loomed large. In February 1880 the Administrator, Wolsley, had expressed his doubts over the colonists' ability to manage African Affairs. He feared

'that rash attempts to interfere with the habits and customs of this fine and warlike race [i.e. Africans of Natal] would, in all probability, engender a war, with which the white population of Natal, and probably the white population of all South Africa, would be unable to cope'.

In response to this the Legislative Council passed a motion in which it was claimed that the history of the Colony, and the proceedings of its Legislative Council had shown 'an extreme reluctance to interfere at all with Native customs' But, the motion continued, the time would come when the laws that governed both whites and Africans 'must be brought into close harmony'.²⁹ Speaking to the motion John Robinson said:

'There was a time when the House attempted to ameliorate the condition of the Natives but in consequence of the opposition of Downing Street and its representatives in this Colony, the Council saw that it was useless to make any such attempts ... a sense of hopelessness showed itself in abstention from any efforts in that direction'. 30

The responsible government issue was shelved after 1882 to be raised again in 1887. The fact that responsible government was a distinct possibility undoubtedly made the colonist members of the Legislative Council

tread carefully in the sphere of African affairs. The advocacy of rash moves would have made it difficult, if not impossible, for the British Government to justify the granting of responsible government. No major innovations were introduced in the 1880's. The uncertainties and the possibilities of this twilight period brought the passing of major legislation in African affairs to a standstill. The continuity of the Shepstonian tradition was buttressed by the presence of Theophilus's brother John as acting Secretary for Native Affairs from 1876 until January 1884, and Theophilus's son Henrique who was Secretary for Native Affairs from 1884 until 1893. Of both it might well be said that they were 'more Shepstonian than Theophilus himself'. John Shepstone, in his later years, became a leading segregationist and contributed much to the theoretical apologia for Natal's approach to the racial question.³¹

An indication of the Legislative Council's indifference to African affairs was given in 1886 when a bill to regulate Christian marriages by Africans was thrown out. The absence of a proper legal footing for those marriages had been, it will be recalled, a major strand in earlier colonist criticisms of Theophilus Shepstone (see pp. 115-6). The bill provided for a much-needed reform, but it was rejected. The Governor, Sir A. E. Havelock, pointed out that there had been no particular objection in principle to the bill; the Legislative Council had been in session for a long time, progress through the legislative programme had been slow and some members were impatient while others were indifferent.³² African administration was a complex and potentially hazardous field in which few politicians could claim even the slightest expertise. A desultory debate on native policy took place in 1889. A few spoke in authentic anti-Shepstonian terms, but for most members 'let well alone' seemed the safest course. As O'Meara put it:

'I have had some considerable experience with regard to Natives, and I venture to point out that the less this House has to do whatever, or the less interference they have on the part of the Natives of this Colony, the more respectable the Natives will be '.

F. R. Moor, a prominent politician and Prime Minister of Natal from November 1906 to 1910, criticised the Secretary for Native Affairs for 'inaction' and members for 'funking the whole Native question'.³³ In 1892 R. C. Samuelson, a well-informed and trenchant critic of the Natal Government, asked: 'To be plain, is there any native policy at all? Has it not been, and is it not, rather a floundering about in a sea of ignorance as to the real interests and the true welfare of our natives?'³⁴

In 1889 Havelock acknowledged that progress in changing Africans had been slow even though the cost of administration was small. The African mind, he claimed, was 'peculiarly conservative and non-receptive'; while the Government was reluctant to initiate progressive measures partly because the cost of rapid transition would be high and partly from the 'belief that a gradual and spontaneous development is a more healthy form of progress than one artificially stimulated'. But now that Natal's financial condition had improved, continued Havelock, the time had come for advancement. The measures he announced were hardly radical: more magistrates and officials were to be appointed; some were to be stationed in the reserves for the purpose of 'checking evil practices' and giving advice on cultivation and checking the destruction of timber.³⁵

By now responsible government was in the offing. The Colonial Secretary, Lord Knutsford, advised the Natal Government that if it were granted the British Government would reserve the right to disallow legislation dealing with African affairs. He said that bills having the following effects would be unlikely to receive the Royal assent:

1. The exaction of compulsory labour by proprietors of land or other private persons;
2. Restrictions on the freedom of Africans to enter into contracts of service;
3. Increase in the restrictions of existing pass laws;
4. The abolition of customary law and the placing of Africans under the ordinary law;

5. Reduction of reserves;
6. An increase in the rate of the existing hut tax.³⁶

The colonists were deeply divided over the responsible government issue.³⁷

J. Liege Eulett, a wealthy sugar farmer and a member of the Executive Council, presented his reasons for opposing the grant of responsible government.

He spoke of the

'disinclination of the Legislative Council in the past to grapple with the undisguised faults in native administration, and to do nothing but find fault with the present system of government in its relations with the natives, but without propounding a remedy or laying down a program of desirable action'.

He claimed that a large number of the supporters of responsible government did so 'on the ground that the natives will be forced to work for the Colonists'.³⁸ But Knutsford dismissed these and other arguments saying that

'safeguards against unjust or imprudent measures are included in the scheme; and it may well be doubted if even those public men who have been the most severe critics of the present Native policy will, when they attain to a position of greater responsibility and less freedom, be disposed to press forward unduly any fundamental changes'.³⁹

Knutsford convinced himself that his prediction would turn out correctly, and during the negotiations preceding responsible government he withdrew nearly all of provisions designed to protect non-white interests upon which he had previously insisted.⁴⁰ Since Carnarvon's reform of 1875 the British Government had steadily withdrawn from any active role in initiating changes in Native policy in Natal, and the Natal Executive Council, with its two unofficial members, was unwilling to instigate major changes without carrying the Legislative Council with them.⁴¹ Knutsford (Colonial Secretary from January 1887 to August 1892) admired Shepstone and considered his system to be the best one for Natal. In 1892 he was sent a copy of Shepstone's trenchant defence of Natal's system in answer to Reitz's criticisms (see pp. 228-9), and he replied that he had read Shepstone's 'excellent letter with great interest and sympathy in his views'.⁴²

Shepstone's controversy with Reitz in 1892 sparked off a discussion on

traditionalism in the colonist press, which provides some insights into white opinions on the eve of responsible government. The Natal Mercury (of which John Robinson was the editor) defended Shepstone:

'We may be ready to admit that tribalism is pernicious, and that chieftainship should be abolished as copybook maxims But it does not follow that the abolition of either tribalism or chieftainship is a policy that can be adopted tomorrow It cannot be denied that whatever may be inherent evils of tribalism and education, both systems ... have proved compatible with more than forty years of peaceful rule'. 43

When a reader criticised the editor for endorsing Shepstone he replied that this was not so: the Natal Mercury had always stood for a policy of cautious advance. 'It may be taken for granted that under the present order of things no vital change is either probable or possible'.⁴⁴ A prominent colonist, H. E. Stainbank, wrote to say that

'civilisation by "law" is impossible; neither would it be judicious to attempt it. Interference by law with domestic habits is a most dangerous thing to attempt Reformation must begin from within, not from without'. 45

The Times of Natal considered that Shepstone's 'knowledge of natives and native administration has tended to narrow his views rather than to broaden them'. The tribal system was 'evil' because, in contrast to what Shepstone had claimed, tribes united to shelter criminals, particularly cattle-thieves.⁴⁶ The Natal Advertiser was resignedly critical:

'So long as we are kindly solicitous about the non-disturbance of their customs and laws the natives will remain an ever-increasing mass of certainly useless, probably dangerous, barbarism in our midst'. 47

Two years later, however, the Times of Natal had changed its tune:

'we unhesitatingly assert that any attempt to break down the "tribal government" will be attended with danger to the community Most colonists ... will be inclined to concur ... that in advancing the native in the up-to-date civilisation he suffers injury in nearly every possible respect'. 48

The reluctance of Natal politicians to interfere with the traditional native policy can be seen in the parliamentary debates after 1893 when responsible government was granted. In 1890 Robinson had castigated the Native Affairs Department for being 'paralysed by the fear of Downing Street,

the Aborigines' Protection Society, professional agitators. The natural tendency in to drift'.⁴⁹ Six months after the advent of responsible government Robinson, now Prime Minister, had changed his views. In a discussion of the 'native question' he said that

'it is a question which involves, before all things else, patience, calmness, and deliberation. We do not ... intend to propose to this House violent changes or sudden measures. We wish to acquire that experience which alone can enable us to submit to this House questions of that character'.

One member, H. Fell, expressed surprise that a defence of the status quo should come from Robinson, 'a man who has ever advocated change, and who has ever deprecated what was going on as regards native matters'.⁵⁰ In 1896 Robinson answered a criticism that there was insufficient information about African affairs with a note of complacency:

'I think this House is to be congratulated, and the Colony is to be congratulated that there is so little occasion to give information regarding native affairs, because it shows that the Native population is generally contented, that they are at peace, that they are loyal to the Government, and that they give the Government very little reason for consideration or reflection'.⁵¹

The laissez-faire attitude survived changes of ministry. In 1897 F. R. Moor, Secretary for Native Affairs in H. Escombe's brief premiership, told parliament that the essence of native policy was to emphasise to Africans that law and order must be maintained: 'we let Natives understand throughout the land that there will be a policeman on the other side of the hill'. He said it was impossible to change Africans rapidly:

'Changes that have to take place will take place over a large period of time, and will be evolved rather than created. They will come naturally from the process of civilisation amongst the people themselves, and the probability is that by some such simple process as the extending of the Clothing Act and requiring Natives to go clothed through the land, that in that way you will make more forward progress as regards the Natives than by any cut-and-dried policy which might be laid down' ⁵²

In view of these attitudes it is not surprising that little legislative attention was paid to African affairs in the years following the advent of responsible government. Only minor modifications of existing laws were

passed. Natal's legislators were far more concerned with economic development, with relations between the different South African states, and with the 'Indian menace'. Anti-Indian agitation reached a climax in 1894 with the enactment of law aimed at preventing Indians from exercising the franchise. The terms of the original law were unacceptable to the British Government, but a law with substantially the same effect was placed on the statute book in 1896.⁵³ Indians were regarded by the whites as a greater and more immediate threat than Africans. 'There is a difference in habits of life between the Asiatics and Europeans which makes it impossible for them to compete on equal terms ... whether it be in agriculture or in trade'⁵⁴

The defeat of the Zulu in 1879 had only indirect effects on Natal's native policy. Zululand had been firmly placed under white rule; and there was no longer any fear of an invasion which might evoke the support of Natal Africans in a revolt against the Natal colonists. The destruction of the Zulu military power caused colonist fears of traditionalist revolts to diminish. In 1882 William Kermode wrote that for fifty seven years, with the exception of a few episodes, the Africans of Natal had been 'perfectly docile, orderly, and loyal; and now that the power of the surrounding hostile tribes has been completely broken, there certainly is no probability of disaffection'.⁵⁵ With this abatement of fear the colonists increasingly realised that maintaining the tribal system was the cheapest way of governing Africans: traditional discipline was useful, and it could now be safely inspanned to assist in maintaining law and order. The annexation of Zululand to Natal in 1897 served to entrench the Shepstonian system even deeper. As one legislator put it: 'it is gratifying to me to find that the Home Government, after four years no doubt closely watching our action in this Colony as regards the Natives, are so satisfied with that action that they are willing to entrust to us the management of the Zulus'.⁵⁶

In the colonists' view the 'native problem' was changing in character.

They recognised that the tribal system was administratively useful; and they claimed that the traditionalist African was a more docile labourer, and more amenable to authority. But the khulwa was held to pose threats of a different kind, and he became the main target of colonist condemnation. Behind all the rhetoric directed against the évolués class of Africans was a fear of political and economic competition. The Funamalungelo Society and a vernacular press, which attacked the Natal Government vigorously, were indications that the leadership of African opposition was passing into new hands: it was no longer the rebellious chief who could threaten the colonists' security so much as the opponent who could fight the whites on their own ground. The Zulu nation had fought for the retention of their own state system; the rebellious colonial chief tried to assert his independence of the bureaucratic framework into which he had been absorbed. But the opposition of the Funamalungelo or, later, Natal Native Congress politician was in a different key: he did not wish to opt out of the political system by which he was governed, and neither did he reject western culture. Rather, he wanted to share political power with whites, to have greater opportunities to assimilate modern culture, and, most of all perhaps, to be recognised as someone who had broken away from traditionalism. In 1877 the Natal Witness had said, with memories of Langalibalele still fresh, that to 'preserve the tribal system is to preserve for the native a competing power with British rule'⁵⁷ But by 1896 F. R. Moor, the Secretary for Native Affairs, could say

'It has been the policy of the present administration to, in every way in its power, keep up and maintain the tribal system, and with the chief at its head I thoroughly believe in the tribal system. And more than that, I believe that without considerable danger it would be impossible to alienate these people from their tribal system'.⁵⁸

Hand in hand with the belief that the perpetuation of traditionalism inhibited the rise of African political and economic competition went the belief that Africans were incapable of genuinely assimilating modern culture, and that they were racially inferior to whites. R. D. Clarke (president of

the Natal Society) asserted in 1894 that 'a regulation European will always be superior to his naturally less gifted competitor'. But, he continued,

'it will not be good for [the African] to lure, much less compel, him to break away from his moorings of status and primeval barbarism, and then arbitrarily cut short his career should he show too much adaptability, and threaten to become a formidable competitor in the civilised walks of life'. 59

Exactly the same contradictory stances were adopted by another pamphleteer,

F. S. Tatham (a member of the Legislative Assembly), writing in the same year.⁶⁰

In 1902 the Secretary for Native Affairs, F. R. Moor, told the Legislative Assembly that the African's government must be 'consistent with his environment'. He dismissed contemptuously any

'talking about bringing these people to a higher level, to a better civilisation. Why, we are running in the teeth of the laws of nature, and of the teachings of history in every direction!' 61

What was occurring in colonist racial ideology precisely confirms W. O.

Brown's observations:

'The European prefers the native to remain native, realising that a collapsing native culture means Europeanised natives who will inevitably demand status in the European system. The white man wants the services of the native but resents him as a coparticipant in a social order. Dominant races have a vested interest in the perpetuity of the cultures of weaker races' 62

James Stuart, an official in the Native Affairs Department and an authority on traditional African culture, became one of the leading apologists for this 'vested interest'. For him the basic question was whether Africans 'shall begin to adapt and belong to our own civilisation' or be treated as members of 'another civilisation radically different from our own'. In advocating the latter course he proposed the creation of a Council on Native Affairs whose whole raison d'être would be

'To manage Natives according to their own laws and customs - the tendency would always be that way, even though the old laws and customs may have become modified through force of circumstances - and to manage in this way, means to keep the Native in his place [italics in the original]. The Council would make it its business to resist with the full weight of authority, all such preposterous notions as equality between Europeans and natives. Equality is a state of affairs which,

at the present stage of evolution, should not even be dreamt of. It is an unnatural condition between people so utterly dissimilar in civilisation The more active we are in educating the Natives and causing them to discontinue their hereditary customs and habits, the more we prepare them ... for imbibing the undesirable influences of the African Methodist Episcopal Church [an American Negro mission]' 63

Abundant evidence on the utility of traditionalism to the colonists can be found in the evidence presented by them to the 1903-5 Commission and the 1906-7 Commission. Running through the evidence like a leit motif is the perceived threat to white domination posed by the rising évolué class of Africans. F. R. Moor's statements to the earlier Commission put the colonist viewpoint bluntly. On being questioned on the supposed political threat from Africans he replied:

'I do not look for any general political movement, unless we give them a common grievance. Natives, as a people, do not pull together, especially in Natal, where we have got them split up into the various tribes. There is a great deal of inter-tribal jealousy always existent'.

A commissioner then asked if education would not cause Africans to lose their 'tribal instincts' and unite as a common force. Moor replied:

'I do not think the Native can lose his tribal instincts as long as we keep them alive. Until we do away with the tribal system the Native will always have in his mind that he is a member of a particular family or tribe'. 64

S. O. Samuelson, the Under-Secretary for Native Affairs (i.e. the permanent head of the Native Affairs Department) in Natal from 1893 to 1910, spoke of the inevitable conflict that must follow if white and African 'progress and advance ... followed the same lines' For him:

'The really prudent and foreseeing policy was to preserve, whenever it could be done, the nationalities and characteristics of our natives. It was ... a much safer and wiser course. Denationalisation was impolitic, suicidal and destructive National and tribal disintegration would quickly be followed by racial amalgamation There was evidence of this process and this result in the towns. Let us stem back and keep off the process of disintegration, both in ours as well as the interests of the natives themselves'. 65

The wheel had turned the full circle. At all times the colonists' attitude to traditionalism depended on what they conceived their interests

to be, regardless of how Africans might be affected. In earlier times, when traditionalism retained considerable vitality, they were hostile to it: when it was disintegrating before their eyes they became its devotees. For those whites who were genuinely concerned to see that Africans were treated with justice and who saw them as actual or potential co-participants in a common society, the metamorphosis was entirely the reverse. People who were liberally-minded in this sense, like Bishop Colenso and David Dale Buchanan, had argued for tolerance of African traditionalism. Of course, the link between liberalism and tolerance cannot be pushed too far: many missionaries combined a concern for African land claims and political rights with an extreme intolerance of their culture. But in the early 1900's the handful of whites (and some missionaries among them) who were liberals saw traditionalism as an encumbrance which Africans must slough off if they were to adapt to modern conditions. R. C. Samuelson, for instance, concluded a withering denunciation of Natal's native policy with the clarion call

'Fellow-Colonists, you cannot permanently repress the native or any other of the King's subjects, you might as well try to stop the sun shining or the sea flowing. The natives have left their old state, and do what you like you cannot replace them in it'. 66

In the twentieth century white liberals have tended to take the same view of traditionalism, even though, like Samuelson, they may have considered it 'good and effective' in earlier times before its bases had been undermined. Segregationists have advocated that Africans 'develop along their own lines', with a heavy emphasis on perpetuating traditionalism. A correlation between general political attitudes and views on traditionalism were clearly in evidence in Natal in the early days of the century.

This chapter has dealt with colonist policies and attitudes in general terms; succeeding chapters will show the actual working out of these policies.

XIII

The Exemption System after Shepstone

The reluctance of the Natal Government to countenance any measure that undermined traditionalism can be seen in the development of the exemption system. When the legislation was passed in 1864 some had optimistically hoped that many Africans would avail themselves of the opportunity to be placed under Roman-Dutch Law and that the authorities, in keeping with the stated aims of policy, would make every effort to encourage them to do so. In fact nothing of the kind happened. In reply to a question in 1875 Shepstone said that not a single application for exemption had yet been received.¹ The Natal Witness commented sharply on the complexity of the procedure laid down in the statute and accused Shepstone of dishonesty because he did not want to see any great number of Africans exempted.² In 1875, 270 Christian Africans addressed to the Administrator a memorial complaining of their uncertain legal status and other matters:-

'We fled from the Zulu country because of fearing Kaffir Law and came to place ourselves under the Dutch Government, but their treatment to us was bad. And when the English Government arrived, we placed ourselves under it, and the missionaries taught us, so we rejoiced. But now the Government wishes to drive us back again by saying that we ought to serve our old law which drove us from Zululand through fear How can a man become to be of the English? If we have foreigner, we give him a place for living, and give him some corn, and borrow him a cow to milk; from this cow he makes some butter and then buy a goat; and when these goats increased, buy a cow of his own; and when these cattle of his own are increased, kill one of them and take an insoonyama (sweet meat) and carry it to his chief, not take the insoonyama from the other side of the beast. We give here among the English 7/- to Government, and £1 or £5 to the owner of a farm per year, which is your insoonyama. When a foreigner have a cause, we try his case by our law, not by a law of where he came from, that it may be seen that he is ours. And you try his case by a law of where he came from? If a man become to be of you, Englishmen, what he ought to do? Are you to do this to the Dutch, Germans, Scotch or Romans? We do not believe that you do so to these, as we often see them going with you to courts'.

The memorialists asked 'to be informed under what law we are really to stand' and remarked that 'we so much like to be treated as people than dogs'.³ In reply to the memorial the Administrator, Wolseley, described its tone as unmannerly and suggested that the solution to most of the grievances was for the memorialists to become exempted from customary law.⁴ The Natal Witness dismissed Wolseley's reply scornfully, pointing to the formidable array of bureaucratic obstacles in the exemption process. The onus would always be on the African to prove that he was exempted. 'In short, wherever he goes, he will never be safe without he has a certificate and a witness with him'. It noted that 'blessings' of the exemption law had never been proclaimed among the African population by the authorities.⁵ When the Aborigines Protection Society complained to Carnarvon about the complexity of the exemption procedure and Carnarvon replied that it did not appear to be 'other than simple', the Natal Witness hooted derisively, and asked whether he knew that the exemption law 'was intended by its promoter (according to his own statement) [Shepstone] to be a dead letter?'⁶

Only in April 1876 were the first letters of exemption granted to an African. Thereafter the numbers granted amounted to a small trickle. In 1877 a review of the application for exemption showed a variety of reasons being advanced for requiring it. Some wished to protect their widows from being forced into ukungena relationships and from being deprived of the husband's property by his kin. 'He has seen that in the case of a married woman, whose husband was under the ordinary law of the Colony, she was not worried in any way and she had a share of the deceased's property as well as his children' Emancipation from customary law was seen as a way of acquiring the 'respectability' upon which Victorians laid such emphasis. One applicant wished 'to secure for himself and family the rights of citizenship, and to raise his children to a better position, with which view he is already providing for the education of the eldest boy'. Others, including an evangelist and a transport rider, felt that their occupations required exemption. An unmarried applicant wished to 'free

himself from the subjection to his father which forms a part of Native Law'. Another said he had always resided among whites and 'does not wish to be subject to Native Law as he does not understand it'.⁷ All the reasons advanced reflected the inadequacy of customary law for the évolué group of a changing society.

In April 1878 notice of the first exemption of an unmarried African woman was published. The Natal Witness, admitting that the majority of colonists were probably weary of the wrongs of African women, took the opportunity to comment on the subject once more. It recognised that Christian women were placed in an invidious position by remaining subject to customary law in marriage, but it doubted whether the old demand for Christian marriage per se, to confer exemption was feasible. 'To pass such an enactment as this would be to make the state a proselytising power, and to make religion a test of political citizenship; and how could this be done, especially in a community in which all religious organisation is purely voluntary, it seems difficult to understand'.⁸

The requirements for exemption were onerous; equally onerous for the applicant was the attitude of the authorities in dealing with applications. In 1878 the Reverend William Adams alleged that 'frivolous objections' were put in the way of a woman to prevent her from obtaining exemption. He accused the acting Secretary for Native Affairs, John W. Shepstone, of being deliberately obstructive.⁹ The Attorney-General also reviewed each application and, in another complaint, Adams asked

'[w]hy ... is the Attorney-General set to find out flaws of the most trivial nature in the petitions for exemption - flaws carefully economised so that the petition may be sent back for amendment as many times as possible, to the weariness of European and Kafir alike? Is this to encourage petitioners?'¹⁰

Adams gave some indication of the Government's evident reluctance to treat exempted Africans differently from unexempted Africans where possible when he cited the refusal of the Government to make a grant to Adamhurst School which he had founded.

'Eleven of the children are exempted, and when a grant was refused for the Kafirs in the school, an application was made on their behalf, as being under the "ordinary laws of the Colony". This was also refused, though the Council of Education were in favour of granting it. Thus it would appear that, as regards their social status, exempted Kafirs are intended to remain, like Mahomet's coffin, between heaven and earth, having neither the privileges of a Kafir nor the rights of an Englishman'. 11

Further evidence of the authorities' attitude was shown in 1879 when an official directive stated that exempted Africans were not entitled to possess guns and ammunition. 12

In 1880 no less than Florence Nightingale, in her capacity as a crusader for women's rights, wrote on behalf of the Aborigines Protection Society to the Colonial Secretary, Sir Michael E. Hicks Beach, objecting to the 'degraded status' of African women in Natal and proposing the abolition of the 'women selling legislation'. She requested also a simple means whereby Africans could become naturalised. In a despatch to Wolseley Hicks Beach recognised that exemptions could not be granted indiscriminately but he recommended that the power to grant them be vested in magistrates to avoid the existing cumbersome process which, he was sure, daunted many Africans from applying. He advised against 'any violent interference' with traditionalism, but said that he 'should be pleased to see a vigorous prosecution of the policy which found expression in the Native Administration Law No. 26 of 1875, viz. a gradual assimilation of native law to civilised and humanised ideas'. 13 In reply the Governor, Major-General G. Pomeroy Colley, forwarded a report by the acting Secretary for Native Affairs, John W. Shepstone. Shepstone dismissed the objections to the exemption law, denying that its provisions had deterred Africans from applying. Nor did he expect

'that greater facilities in any law which might be passed would materially, if at all, increase the number of applicants, because it is a very small percentage of the native population of this Colony that can understand or appreciate the new position, and unless a native comes forward of his own free will, and desires to be relieved from the operation of his own law, he is best and safest as he is'.

He dismissed also Florence Nightingale's and Hicks Beach's criticism of customary law, suggesting, not very tactfully, that neither of them possessed sufficient knowledge of the subject to speak with any authority. He pointed out, as far as lobolo was concerned, that the father of the woman gave her gifts and incurred expenses on her betrothal and marriage which often exceeded in value what the husband transferred to him. Colley agreed with Shepstone, saying that there would be no objection to making exemption much simpler. He would not, however, be optimistic about the results because Africans were conservative and tenacious of their traditional laws and customs.

'... the advantages of our laws are of a kind more patent to the educated than to the uneducated mind. The Native has already discovered that our processes are more complicated, more costly and more uncertain in result than are his own'.

Assimilation under the 1875 legislation should be very gradual.¹⁴

The exchange between the Natal and British Governments produced no alteration in the exemption law nor in the attitude of the authorities towards individual applications. The Shepstonian system, with its emphasis on gradualism, had been fully re-instated. It was quite apparent that the Natal authorities regarded the évolu  class of African as anomalies, even excrescences, who complicated the seemingly logical and tidy system of administration. Indirect administration was geared to tribal structures and made little or no allowance for those who wished to move out from the cultural confines of traditionalism.

The 1881-2 Commission said that the exemption law appeared to them

'to have been framed as if the Legislature was then unwilling that Natives should be exempted from Native Law or that in other words, they should be brought under the ordinary law of the Colony If there be, as we think there is, now a general desire among Whites that Natives should come under the ordinary law of the Colony, we recommend that Law No. 28, 1865, should be repealed, and a new law in a new spirit framed'.¹⁵

It was pointed out to the Commission that few Africans knew of the law's existence because it had never been publicised widely among them. Most Africans who sought exemption did so at the instance of a white. Stephanus

Mini and three other Africans from Edendale told the Commission that there was a general disinclination among Africans to become exempted because it tended to split up kinship groups. They suggested that exemption should be granted to entire African communities. Other African witnesses said that few wished to be exempted because it meant abandoning the lobolo custom; and, it was said, there was little advantage to be gained by exemption.¹⁶

The Governor-in-Council considered the recommendation of the Commission but decided to do no more than to make the provisions of the law more widely known among Africans by circulating a paper of instructions to missionaries, African schools, magistrates and justices of the peace.¹⁷

The Natal authorities defined the scope of exemption as narrowly as they could: the exempted African was exempted from customary law only and not from various statutes that imposed on a discriminatory basis restrictions on all Africans. These statutes included ones relating to fire-arms, gunpowder, hut taxes, cattle stealing, liquor and squatting. In 1838, however, a law 'To extend and define the meaning of the word "Native"' was passed which inadvertently altered this. As the Secretary for Native Affairs explained in 1891, through an oversight in drafting the legislation certain words were left in its provisions which had the effect of freeing all exempted Africans from these statutory disabilities.¹⁸ Attempts to rectify the error in 1890 failed, but in the succeeding years much the same statutory restrictions were reimposed by individual pieces of legislation. In 1891, for example, exempted Africans were deprived by law of the right to obtain liquor. The Secretary for Native Affairs was 'strongly of [the] opinion' that many of the applicants wished to be exempted because they could then obtain liquor. Missionaries, according to the Governor, Sir C. B. Mitchell, advocated that the facility to buy liquor should not be granted to exempted Africans.¹⁹ The African newspaper Inkanyiso angrily demanded evidence to substantiate allegations in the Legislative Council that liquor was behind the desire of many Africans for exemption. It said:

'The mistake which the Government, in its anxiety to

protect the Native, is in danger of making is this, that it refuses to trust those whom it has acknowledged to be fit to exercise the privileges of civilised men'. 20

In 1890 a group of exempted Africans petitioned the Government asking for medals that would distinguish them from unexempted Africans. The Government agreed to the request and said that the medals would be made and sold to those who wished to purchase them.²¹ But in September 1891 Inkanyiso reported that only a few exempted Africans had bothered to apply for them. According to Inkanyiso the medals were too big and the cost was too high. But more important, exempted people, were loath to buy them because of the legislation which had whittled away their privileges. As a correspondent put it:

'... we cannot accept them because they either mean nothing, or they will mark us out as a people who have been tried and found wanting. But have we? Are we Exempted Natives fond of the bottle? We can drink as often as we please, but are we drunkards? No, we want to be respectable. We do not wish to become like brute beasts Many of our people, who began with good and right intentions, have been driven to a life which troubles the white man and hurts his children, because instead of being encouraged, we have been despised and looked down upon with contempt. Don't let the Government think we are ungracious for not applying for the medals we asked for. We would have gladly taken them, but as we are not trusted, what are we to wear them for?' 22

The ambivalence of the Government towards exempted Africans was illustrated in another instance cited by Inkanyiso in 1891. Christian Africans on a mission station elected one of their numbers as headman. Although their choice was endorsed by the missionary the Government refused to recognise him because he was exempted. Inkanyiso commented: 'If as exempted Natives we are not to be trusted, why exempt us? If as educated Natives we are all excluded from the Government service, why educate us?'²³

For many of the colonists exempted Africans were part of that potentially dangerous class of 'mission kaffirs' in whom they saw potential political, economic and social rivals. By the 1880's many Africans were expressing an interest in the parliamentary franchise and also resentment against various discriminatory practices. Stephanus Hini and three other

Africans from Edendale, for instance, when asked by the 1881-2 Native Commission about African political representation in the Legislative Council replied: 'That is a thing we hunger for. We ask "who is there to say a word for us?"' Even pagan witnesses requested political rights, diminishing the force of the typical colonist belief that it was 'mission kaffirs' only who were casting covetous eyes upon the white man's rights. Chief Teteleku, who appeared with nine of his followers, told the Commission:

'I feel myself in regard to intelligence inferior to none in the land, and had I not been black I should probably [have] been able to hold a leading position, and the question that suggests itself is whether it is because I am black'.

The Chief said he would be glad to represent African interests in the Legislative Council whereupon he was asked by a Commissioner, 'But by remaining a separate people you shut yourself out from this privilege entirely?' To this he replied: 'It may be so, but in the Council Native Laws are also discussed. They are all white people there, and to whom do you appeal for information?' When another Commissioner remarked that educated people would be 'the big people' ten years hence, the Chief replied: 'If they have gained so much knowledge, why are they not represented in the Legislative Council?' He said he could see no reason why he could not have the vote while still under customary law.²⁴

Unquestionably the link between exemption and the African franchise coloured colonist views of exemption, even though by 1891 only 851 Africans were exempted,²⁵ and by 1905 only three had managed to become enfranchised.²⁶ The cultural differences between whites and Africans served as a convenient rationalisation for refusing to share political power with Africans. Only 'civilised' men could be entrusted with the vote and Africans were uncivilised. A prominent colonist, J. W. Akerman, summed it up in 1880 saying that 'our Natives live under their own laws, and are therefore semi-aliens, and have no claim to exercise the franchise'²⁷ The requirements for exemption and for voting together constituted a greasy

pole which only a tiny number would ever climb. As a member of the Legislative Council, Manning, said, 'We need not fear any large addition to the voters' roll from the Kaffir population. We see that the present qualifications required ... have prevented any great number seizing on the opportunity afforded them'.²⁸ In 1894 Sir John Robinson remarked in the Legislative Assembly, 'I think we may lay down as an axiom that the franchise right is a race privilege'. He asserted that 'the principle and practice of representative government were evolved in countries where race unity exists'. 'Race unity' did not exist in Natal: ergo fully representative political institutions could not be contemplated. Robinson expressed thankfulness at the legislation of 1865 which restricted Africans from exercising civic rights.²⁹

In his observations on Natal in 1877 Trollope had doubted the strength of these electoral barricades:

'... the embargo is of its nature too arbitrary; - and, nevertheless, would not be strong enough for safety were there adventurous white politicians in the Colony striving to acquire a parliamentary majority and parliamentary power by bringing the Zulus to the poll'.³⁰

Trollope was probably thinking of the English Reform Act of 1867 and the attempt of the Conservative leaders 'to dish the Whigs' by enfranchising the urban working classes: 'Far from conservatism being blotted out, it would discover new support in the lower strata of the population'.³¹ A group of Natal politicians might hope to consolidate their power by lowering the franchise qualifications. That nothing like this occurred was partly attributable to the relative homogeneity of Natal's white population and the absence of deep cleavages among them. The overwhelming majority did not wish to see their monopoly of political power weakened by African or Indian voters.

However remote the prospect of a substantial number of African voters might have been, white politicians played on the phantom. Their arguments were paraded in 1894 when the Government proposed legislation to relieve exempted Africans from vagrancy laws after an exempted African had been

convicted of a breach of the curfew regulations in Durban.³² 'I have noticed with regret that the number of applications for letters of exemption has very considerably increased, and I think that, as far as possible, Natives should be restrained from applying for letters of exemption' 'My objection to vote for this Bill is that I do not see, if we grant them this how we can logically refuse the franchise, the right to enter canteens, and the right to carry firearms'. 'My contention is that when this Exempted Natives Law was brought about it was for the purpose of setting aside polygamy and ... lobolo it would be a most dangerous act, in so far that it will be driven home; and within a very short space of time, within the course of a few years, those self-same Natives will be placed on your voters' lists'.³³ The bill in question was given a second reading by only two votes, whereupon it was discharged, because the majority was considered too small for a measure relating to African affairs.³⁴

Although discontent prevailed among many Africans, both pagan and Christian, it was a group of exempted Africans who founded the first 'modern' (in the sense that it pressed for equal rights with the whites) quasi-political organisation. This was the Funamalungelo (literally 'demand civic rights') Society started by John Kumalo in 1888. Kumalo was an exempted African from Estcourt who was

'struck with the idea that it would be a good thing if exempted Natives established some kind of an association where they would get to know and understand one another; as well as learn something of their position as exempted Natives; and above all to improve themselves so as to attain the highest state of civilisation'.

From Estcourt the Society spread to Driefontein Mission in the Klip River district and then to Edendale.³⁵ The feelings of exempted Africans were succinctly stated in an editorial in Inkanyiso in 1895 called the 'Position of Exempted Natives':

'Under the present system [of exemption] the Native gives up many undoubted advantages, and in all probability severs friendly and even family ties, abandoning customs which have been almost a part of his nature. He sacrifices the profit of the Lobola system, and sacrifices also the absolute authority which the traditions of his race confer

on the head of the family. He forfeits also that care of his social and public interest which our government give the unexempted Native to an almost fatherly extent What ... does he in reality receive? He can never take a part in the Government of the Country which belonged to his race ere the white man ventured across the sea, nor can he have any reasonable hope of his children ever being allowed to do so. He has to submit to the degrading Curfew law, under the penalty of being hunted like a thief, and treated like one if detected in its breach. He sees Asiatics of the lowest type allowed the free use of liquor, but he, who has probably the strength of character to be moderate, may not have even a glass of beer without the risk of being treated like a felon It is not on the abstract principles of temperance or indulgence that objection is taken to such a restriction. It is because it assumes an inferiority in the most galling manner, and brands the Native as one who can have no freedom of thought or action, but must be coaxed or petted like a child, or coerced like a slave It is not wise ... to educate a man out of barbarism, and then to show plainly that he must remain an inferior almost chattel all his life, no matter his personal moral character, or his intellectual ability. It is neither wise nor christian like to preach the doctrine that all men are equal before the God of the white man, and then, when the Native has accepted his faith, at the sacrifice of feelings handed down to him from generations, to treat him as a moral and a social pariah'. 36

The évolué class, including exempted people, was small. A member of the 1881-2 Commission, defining the class as those 'who, professing a certain amount of civilisation, reside in houses or hovels isolated from any central control, and who pay no tax to the Government on their dwellings', estimated their number to be approximately 7,500 in a population of 375,000 Africans.³⁷ However much they compensated for their size by their articulateness in voicing grievances, the Natal Government ignored them, and did its best to avoid treating them as a special category. Administrators spoke in general terms of Africans, ignoring the very significant differences among them and the discontents of the kholwa class. In 1891 the Governor, Sir C. B. Mitchell, spoke of the 'easy method' for obtaining exemption. He was not aware, however, of 'any general desire on the part of the Natives to be governed by European Law, on the contrary, they are intensely conservative, and resent any attempt to alter the customs of their forefathers'³⁸ It suited Mitchell's book to think

in terms of traditionalist Africans only but it was dangerous to generalise about Africans. Inkanyiso suggested in 1891 that Africans were being unduly cautious in seeking exemption.

'They cannot all at once realise the benefits to be derived from becoming subject to English Law, it takes time to learn this. Moreover however much we should rejoice to see all who embrace Christianity withdraw themselves, as soon as possible, from the operation of Native Law, such a step is not absolutely necessary. Christianity and Civilisation are two entirely different things, and the former at any rate, does not depend on the latter Perhaps the natives feel this. However, we are confident that large numbers would avail themselves of the privilege of exemption from Native Law, if those who are in a position to do so, would explain the advantages to be gained thereby'. 39

The advent of responsible government in 1893 made little or no difference to the exemption system. Exemptions continued to be granted sparingly. In 1895 the granting of exemptions was temporarily suspended as the entire system was being considered by the Government.⁴⁰ No changes, however, were made. A petition, praying for relief from discriminatory law affecting exempted Africans, was presented by the Fumamalungelo Society but it met with no response. The petitioners said that they had

'in many instances severed family ties and renounced such privileges as those of Lobola, headmanship of families and others which were considerable pecuniary benefit, and which tended to enhance their position and importance amongst their people'. 41

Applicants for exemption complained bitterly about the lengthy delays. Typically it took eighteen months to two years or more for an applicant, if he were successful, to receive his letter of exemption.⁴² Each individual application was considered by the Cabinet. In 1898 the Governor, Sir W. Hely-Hutchinson, noted in a despatch that 'the present Ministry [under the premiership of Sir H. Binns] appears less disposed to recommend compliance with petitions for exemption'.⁴³ It is clear that each applicant was given a lecture on the disabilities of the exempted person in an attempt to dissuade him from continuing with his application.⁴⁴

Exempted Africans were further dismayed in 1905 when the Native High Court decided that a man was not exempted because he was born after his

father had been exempted. In February 1905 the Funamalungelo Society met, and it was agreed to raise £25 to test the case before the Supreme Court and, should an adverse decision be given, to take it to the Privy Council.

'The whole fabric of Native advancement becomes violently threatened through this matter' exclaimed Hlanga lase Natal in an editorial. The Supreme Court, however, upheld the Native High Court's decision and nothing came of the intention to take the case to the Privy Council.⁴⁵

The court case was the climax of African disillusionment with the exemption system. Its benefits were slight, although applications continued to be made and, in most cases, were rejected. In 1904 Ipepa lo Hlanga commented:

'We understand now that applicants are refused as often as they send in their petitions and upwards of thirty names have been rejected wholesale quite recently - among these were native ministers of the gospel. It beats all common reasoning to be able to understand why many of these natives were refused letters of exemption, especially ministers. If it is the intention of the government not to allow any more natives to be exempted from Native Law, why keep the matter secret. The abolition of [the] exemption law will be quite welcome rather than that things should be carried on in this way; and unless there be a change for the better the only alternative for those already exempted, in deference to the interests of other natives, is to appoint a deputation to wait on the government so as to see whether it would be advisable to repeal the law' 46

Further anger was caused by the refusal of the Government to allow exempted Africans to buy land on mission reserves. It was claimed that their status was different from that of other Africans. But when sections of Zululand were allocated for sale exempted Africans were refused the right to buy land allegedly because they were Africans.⁴⁷

Natal's system of African administration was geared to the tribal hierarchy and there was no place in it for the evolue African. He was an anomaly and an excrescence. The authorities took pains to isolate exempted from non-exempted people.⁴⁸ The magistrate of Ndwedwe voiced a typical administrator's view in 1903, complaining that exempted people did not fit tidily into the administrative structure. Most of the older exempted

Africans, he said, were law-abiding and well-behaved but

'It is the younger generation (not all of them, of course) who cause trouble and annoyance. They are free from Native laws; for instance they can carry and strut about with knobkerries and other lethal weapons, including fire-arms, at Native dances. They are not punishable for the seduction of Native girls. They are exempt from services on public works, and payment of hut tax for their houses This class of Native is free from the liabilities and responsibilities of the Native, is under the laws of the white man, yet the white man's great burden, rent and taxes, trouble him not'. 49

In giving evidence to the 1903-5 Commission and the 1906-7 Commission many leading colonists spoke out strongly against the exemption system; few found favour with it. Running through the evidence was the assumption that exempted people (of whom there were approximately 5,000 in 1904⁵⁰) constituted the most dangerous threat to white supremacy because 'They tell us that they are as good as any white man'⁵¹ Considerable hostility was directed at the Natal Native Congress (the name subsequently adopted by the Funamalungelo Society) and the 'Ethiopian movement' (the term used to describe the independent African church movement). It was pointed out that many of the men involved in these organisations were exempted.⁵² A typical view was that of T. R. Bennett, magistrate for the Umgeni Division, who told the 1903-5 Commission that it would be 'most suicidal' to put Africans under the same law as whites. Asked in what way it would be suicidal he replied: 'They would get quite out of hand, and you would have them demanding the franchise, and demanding all kinds of things'. He said that the exemption law was 'about the greatest mistake ever made'.⁵³ Nearly all the ^{Rhodesia} African witnesses before the Commissions wanted a greater measure of cultural and legal assimilation and strongly criticised the Natal government for failing to provide this. James Mlawu told the 1906-7 Commission that 'exempted natives resembled a bucket filled with water, the water representing the privileges extended to them. But there was a hole in the bucket, and, as time went on, more holes were pierced in it, and the water gradually vanished'.⁵⁴

Despite much of the evidence from colonists, the 1906-7 Commission

declined to recommend abolition of the exemption system and, by implication, condemned the Government for its past attitude to granting exemption.

'We have not generously enough met their cry for education, assistance, and advice, and, for some years, the desire of many to emancipate themselves from Native Law has been studiously discouraged'. The Commission looked to the 'silent and unobserved disintegration' of traditionalism and saw in exemption 'one of the most powerful political devices for the disintegration of tribalism'. It recommended that the criteria for exemption should not be exacting, suggesting that ability to read and write English or Zulu, good character, and 'conformity to civilised customs' should be all that was required; furthermore 'the benefits conferred should descend to children'. The granting of exemption, the Commission recommended, should depend on compliance with legal requirements not upon the discretion of officials.⁵⁵

The Governor, Sir M. Nathan, commended the Commission's views to the Natal Cabinet. He suggested that polygynists and those convicted of serious offences should be debarred from exemptions. Exemption, however, should not be cancelled for criminal acts. But it ought to be cancelled for a particular individual 'on proof of continued reversion to native life or custom'.⁵⁶ Although the Law Department had advised that it would be ultra vires Law 28 of 1865 for any qualifications to be laid down (because 'the discretion given by the law must be exercised without any such rule'), the Minister of Native Affairs recommended that the Commission's suggestions be adopted. The matter was then referred to the Advisory Board on Native Education which was asked to say what educational qualifications it recommended for exemption. The Board replied that if the various statutory disabilities on exempted Africans were to remain, ability to read and write 'intelligently' in Zulu or English would suffice; but if the Government decided to relieve exempted Africans from these statutory disabilities the qualification should be at least standard six of the ordinary school course.⁵⁷

All these recommendations, however, came to nothing, and the official attitude of discouraging exemption remained firmly entrenched. In 1909 a memorandum for the guidance of magistrates on exemptions was sent out by the Native Affairs Department:

1. The petition [praying for exemption] must be legibly written and be free from corrections and erasures. The names should be correctly and distinctly written throughout.
2. The name and maiden surname of the petitioner's wife, if he is married, should appear in paragraph six.
3. The petitioner should be informed:-
 - (a) That letters of exemption will confer relief from the operation of the Code of Native Law and its amendments only, and not from special laws enacted in respect of natives.
 - (b) That exemption as aforesaid is only conferred on the persons named in the letters and not on any children who may be born after the issue of the letters.
4. The petitioner should be asked to signify whether under the conditions stated, he still requires exemption from Native Customary Law.
5. In transmitting a petition the Magistrate should report the petitioner's reply to the interrogation [italics added] contained in paragraph 4 thereof and state whether the petitioner is of good character and whether he is capable of exercising and understanding the ordinary duties of civilised life.
6. It should also be stated whether the petitioner occupies a house in respect of which he is exempt from the payment of hut tax or not.
7. Magistrates are requested, either before transmitting a petition, or when a petition is referred for report to make the fullest enquiry as to the fitness of the petitioner to be relieved from the operation of Native Law'. 58

The account of the development of the exemption system started with the extreme reluctance of Theophilus Shepstone to countenance any measure that undermined traditionalism. Under responsible government this reluctance was translated into positive hostility to any measures that might undermine the traditionalism in whose stabilising and incapsulating effects Natal politicians and officials placed such great faith.

XIV

Missionaries after Shepstone

The main theme of this chapter is the steady erosion of whatever common sentiment had existed between missionaries and colonists in the 1850's and 1860's (see pp. 48-9). The missionaries wished to educate, convert and change Africans, all of which the colonists steadily came to oppose. As the colonist image of the 'mission kaffir' as an undesirable and potentially dangerous element developed, it was inevitable that opprobrium would be directed at those responsible for this phenomenon. The Langalibalele incident too, although in no way attributable to missionary activity, was believed by missionaries to have heightened racial feelings and prejudice against mission work.¹

The missionaries reacted angrily to colonist accusations that they were 'spoiling' Africans.² If mission Africans were as bad as colonists said they were, claimed the Rev. H. D. Goodenough (of the American Board Mission) in 1890, then an undue proportion of African gaol prisoners ought to be literate. He cited an investigation by a clergyman who had ascertained that of forty Africans in Pietermaritzburg gaol only two could read and none was baptised; out of fourteen in Verulam gaol only one was a kholwa. Moreover, he asserted, there was no evidence to show that kholwa Africans were lazier than pagans.³ The Rev. S. C. Pixley conceded that 'some of the heathen habits were very good for making the natives good servants, and perhaps caused some of them to be more obedient than the Mission kafirs'. Africans who came from the mission stations were the 'worst classes' because the 'better classes' remained at home. Moreover, 'some of the men at the Mission Stations had learned that they could have property and own wagons and thus they would not make good servants'.⁴ The edge of colonist hostility to missionaries was sharpened by their covetous view of the mission reserves and glebes (totalling 153,273 acres by 1886). Many of

these reserves, in the colonists' eyes, were valuable tracts of land which could be lucratively cultivated by white cane growers. An address from the Legislative Council resulted in the appointment of a commission of inquiry, which reported in 1886. The Commission pointed out that the original object of mission reserves was that Africans should be encouraged or enabled to acquire individual titles to land, but, with the exception of four reserves, none were made. Missionaries, said the Commission, generally seemed opposed to doing so. This was true. The largest missionary society in Natal, the American Board Mission, had resolved in 1868 that land on mission reserves be granted on leases instead of in freehold to Africans, for the reason that some of the principal converts at Umvoti had 'relapsed' into polygyny and could not be removed from the khelwa village because they occupied freehold land. 'It was felt that it had a bad influence upon others, that these men having once renounced heathenism, and then relapsed into heathen habits, could defy, as they did, even the Governor to remove them'.⁵ A member of the Commission subsequently claimed that this was not the only reason for the missionaries' opposition. He believed that the grant of freehold title made the African become 'vividly alive to the fact that he was master of his own efforts' The implication was that missionaries resented any such independence among members of communities under their pastoral care.⁶ The Commission concluded its report by saying that, with the exception of Nonoti, Table Mountain, and Umlazi, the reserves had been utilised to a certain extent for mission work but that the objects aimed at when the first grants were made had not been attained.⁷

The sequel to the report was the introduction in 1888 of a bill which empowered the Government to resume control of lands upon which no mission work was being undertaken. Control of resumed lands would vest in the Natal Native Trust. The elected members of the Legislative Council objected to this provision and moved an amendment that resumed lands vest in the Crown. If the lands reverted to the Trust 'that simply means a

still further number of Native locations'. But Crown lands could be sold, as H. Binns pointed out; and it would be very advantageous if the lands were made over for white settlement.⁸ The bill was passed with the amendment but the Colonial Secretary, Lord Knutsford refused to recommend that the Queen assent to it.⁹

In the very month of responsible government, July 1893, Goodenough censured the Government for its attitude:

'there is a very general opinion prevailing among those who are working to promote civilisation, education and Christianity among the natives, that not only does Government not assist to the utmost of its power such work, but is often positively hostile to it'.

He cited the Government's reluctance to grant exemptions and their neglect of African education. The sum spent on white education from public funds, he calculated, was 15/- per capita per annum for the whole white population, while for African education the sum was less than twopence per capita per annum for the African population. He claimed that the Secretary for Native Affairs was extremely reluctant to authorise the building of schools if there was even the slightest opposition from pagan Africans in the locality.¹⁰ Another American missionary claimed in 1891 that all that had been spent on African education by the Government in that year was 'little more than the fine paid by one tribe to the Government a few days ago for a faction quarrel'.¹¹ The missionaries were the only agency providing education for Africans (with the aid of a small government grant). Fears were voiced in 1894 that the official animus against missionary activity would lead to a reduction in the African education grant. Ida C. Wilcox wrote in scathing terms to the American Board Mission principals in Boston, with this fear in mind:

'One of the great sources of revenue is from the native tax. The theory seeming to be, get from them all you can, give them back as little as possible, and keep them as long and as low as possible by the administration of a law practically heathen, called a Native Code'.¹²

Comments such as those quoted above indicated that relations between

the missions and the Government were deteriorating rapidly. Both were intensely suspicious of one another and neither hesitated to voice their suspicions in the bluntest terms. The American Board Mission was by far the most outspoken. Legislative provision was made in 1895 for the mission reserves to come under more direct government control. The intention was that the Governor as Supreme Chief should be vested with power to deal with affairs in the mission reserves. Speaking in the Legislative Assembly, the Attorney-General, H. Escombe, reviewed some of the difficulties which arose out of the cleavage between Christian and pagan Africans. Chiefs complained that evangelists undermined customary law and tribal discipline, while missionaries complained that chiefs obstructed their activities. He cited the case of a girl who wished to attend a mission school but was prevented from doing so by her pagan father and his chief. The mission concerned made representations to the Government which upheld the father's right to act as he had done. Escombe admitted that it was difficult to reconcile the views of parents and missionaries in cases like this. He said that the Government was conscious of the need to permit religious freedom, but it would not undermine parental authority.¹³ The provisions of the law, however, were not enforced, apparently because of opposition from the American Board Mission.¹⁴

The rise of the independent African church movement worried both Government and missionaries. 'Ethiopianism', as the phenomenon was loosely termed, reflected a ferment in African society that was questioning all aspects of white domination. In 1880 the American Board Mission noted that Africans were challenging the strict prohibition on lobolo; 'some of those in our churches, who were once regarded as pillars, are clamorous for its [lobolo's] continuance'.¹⁵ In 1886 the Mission reported that apostates were disseminating heresies such as

'religion has to do with the heart and does not concern the outward life; the Ten Commandments are the rule of life, but as they say nothing about polygamy, lobolisa, beer-drinking etc. the practices are not forbidden and may be indulged in without sin'.¹⁶

By the 1890's the murmurings had grown in volume and in 1897 the American Board's annual report mentioned 'a distinct and pronounced spirit of independence, which has grown rapidly during the past two years and has already acquired considerable momentum'. The report quoted 'a successful and trusted native pastor', who was in charge of one of the Mission's oldest stations, as asking 'why should this work and Church of which I have charge be reported to the Board in America, when it is not contributing to the work in this place even to a pin's worth?'.¹⁷ To the American Board this new spirit was a mixed blessing. For years past it had been their policy 'to train up a Native Agency, and to push off the responsibility upon them as fast as possible'.¹⁸ They asked themselves whether the 'Ethiopian Church and kindred phenomena found in all our societies' had been the result of their 'misguided zeal':

'The question is, do they show that it is a mistake for us to throw upon the natives the responsibility of managing their own affairs? On the contrary, it is a law of nature that energy must find a way of expending itself. Dam up a mountain stream, and if you do not provide a mill race or an irrigating ditch where the rushing current can find an outlet in a useful way, then it is certain to burst the dam and find an outlet for itself in a way that is liable to do much damage. So there is a certain energy in our native brethren, which manifests itself in a desire for leadership in one way or another. Do not say it is a peculiarity of the natives that they all want to be chiefs. We all have it'.¹⁹

To another American missionary the phenomenon was 'an encouraging indication' although it raised difficult problems. 'It shows an awakening from the sleep of ages and a willingness to assume responsibility which is quite foreign to this people'.²⁰ The Reverend F. B. Bridgman considered hope to be one of the grounds underlying the movement:

'It is shown in the desire to be somebody, to do something, to initiate, to enjoy the sense of proprietorship in homestead, business, school and church Ethiopianism is the compound of the religious, social and political aspirations of a race fast arising out of barbarism In one aspect it is the reply of the Native to the unfriendly, almost hostile attitude of the Colonist'.²¹

Natal politicians paid no attention to such perceptive sociological explanations. Their hostility to the kholwa sprang from a belief that

conversion gave Africans an independence for which they were not fitted.

F. R. Moor was asked by the 1903-5 Commission whether he thought that the Christian African was a more moral person than the pagan, and he replied:

'I do not think so, but I am not prepared to say that that is because of his Christianity or his professed Christianity, but it is because he has been given greater liberty and licence, and the man has not sufficiently evolved from a condition of barbarism to exercise that self-control which is necessary for the higher life'. 22

In these circumstances 'Ethiopianism' was an unmitigated evil to be extirpated at all costs. To utter the slogan 'Africa for the Black Man' was seditious and could lead to imprisonment or deportation.²³ The rise of 'Ethiopianism' made the Natal government look with even more disapproval upon mission work. In particular the American Board's policy came in for severe criticism. In 1902 the Lands Commission made the following remarks:

'Those controlling the American Missions believe the time has come when, under Native ministers, the Natives should be left to control themselves. Commissioners have come to the conclusion that this is an entire mistake, and believe that the true interests of missionary work can only be properly served by a qualified white missionary being resident at and controlling each Station' 24

In 1902 the Natal Native Trust laid down that no new churches were to be built and no evangelists allowed to reside in a reserve unless the station were placed under the personal charge of a resident white male missionary. In some cases the Trust refused to renew leases for work of long standing unless this condition were met. In carrying out this policy, according to the American Board, at least four buildings were destroyed, all of which belonged to European missionary societies, some of which had been in use for many years.²⁵ The intention was to curb the independent church movement and its political overtones but the American Board retorted that the measure was self-defeating. 'Instead of acting as a check on the Ethiopian spirit the injustice of the ruling gives thoroughly loyal natives good ground for feeling aggrieved'.²⁶ The Board complained that if the

policy were enforced it would cause the closure of fourteen important stations and outstations; it would prevent all expansion of their work; and it would 'strike most severely at our policy of making native churches self-supporting as rapidly as possible'.²⁷

But this was not all: in 1903 the Government debarred African clergymen from acting as marriage officers and imposed a tax of £3 per annum on all households in mission reserves.²⁸ The restriction on African clergymen affected the Congregational Union and the American Board most of all. The Board was sympathetic to restrictions on 'irresponsibly and irregularly' ordained preachers but, as it pointed out, the indiscriminate restriction would force many Christian Africans to marry by customary rites.

The tax on households

'caters to the popular cry, "make the natives work", and should it smash our churches, we have reason to think that the present Ministry, at least, would not be displeased'.²⁹

In 1906 the Board's annual report mentioned that the tax had been a cause of bitter grievance:

'There have been many cases of individual hardship - men fined almost as much as the tax because they did not have the money in time - widows compelled to part with their last goat to get money to pay this tax'.³⁰

The response of the Board's headquarters in Boston was to write a sharply worded letter of protest to the Governor of Natal:

'This prohibitive policy demanding white superintendents of all native work, as a condition of its inception or continuance, has never been before confronted by this board during its more than ninety years of history. No British Colony has hitherto attempted to curtail the work of this Board by such a restrictive measure. No country in the world, not even Turkey or the Chinese Empire, imposes any such prohibitive conditions We cannot fail to interpret the acts of the Natal Government in imposing the excessive taxation upon native huts upon these [Mission] Reserves, in the opposition to our Churches by the disqualification of our Native Clergy as Marriage Officers, and by the obstructive attitude to Mission enterprise upon Locations, as interposing fatal hindrances to the progress of our work and so violating the written and unwritten understanding entered into between this Board and the Natal Government fifty years ago, and upon which understanding this Board has invested in the Mission over \$1,350,000'.³¹

The Natal Government remained obdurate, saying that it wished 'to show its

strong disapproval of the Ethiopian movement, and to maintain the ascendancy and domination of European Churches³² In May 1907 the acting Prime Minister, C. O'Grady Gubbins, accused the American Board Mission of having fomented 'Ethiopianism':

'Ministers feel very strongly that the absence of personal supervision and charge of certain stations of the American Zulu Mission in the Mapumulo and Ndwedwe Divisions, has contributed very largely to the condition in which the Natives of those Stations are found at the present time. It has been the policy of the Government from as far back as 1892, with regard to Mission work and religious activities on Location Lands, to insist on the condition that any and every Station established on such Lands, and leased from the Natal Native Trust, should be under the personal charge and supervision of a resident European Missionary.

The object of this policy is to secure the best influences and counsels for the Natives resident in the Locations, to strengthen the hands of the European missionary in his endeavours to guide, direct and control the religious, educational and moral life of the Native, to check the development and spread of separatist tendencies, and to maintain the ascendancy and supremacy over the Native which it is the bounden duty of the Government to carry out in the interests of the European race and the ultimate welfare of the Natives themselves'.³³

The clash between churches and the state was inevitable: diametrically opposed courses were being followed. Indeed, the Government seemed to believe that it had no obligation to foster missionary activity. In speaking about alleged hindrances to mission work S. O. Samuelson, the Under-Secretary for Native Affairs, informed the 1906-7 Commission that 'a change had taken place in original instructions to Governors respecting religious protection and toleration' In the Royal Instructions of February 1882 the Governor was 'to the utmost of his power to promote religion and education among native inhabitants' But the Instructions of July 1893 superseded these and subsequent ones, and they contained no similar clause. No reason was given for the omission, but Samuelson implied that it was deliberate, and that now no such duty was incumbent upon the Governor.³⁴ The missions wished to change Africans and the American Board, at least, wished to devolve responsibility upon them. The Government opposed change and considered it foolish to encourage any desire for

independence. It was a white supremacist system, and African aspirations 'to be somebody, to do something, to initiate, to enjoy a sense of proprietorship ...' were dangerous because they were incompatible with membership of a class for whom helotry was intended.

James Dexter Taylor's account of colonist opinion towards missionary work and race relations in general in the early 1900's is worth quoting fully. It was a common belief, according to Taylor, that the chief teaching of the missionary was social equality. '... the mere fact of the improvement of the native's social conditions renders him more and more hateful'.

Notwithstanding the demand for African labour, Taylor said that he knew of

'a quiet, respectable station boy who could not get a job in Durban even in the factories till he took off his shoes and stockings. Men of culture and social position "cannot bear to see the natives with hats and shoes". That the natives are beginning to use second-class railway carriages causes an outcry. For a missionary to shake hands with a native is a shocking social sin. Elementary education on European standards is felt to be a certain step in the dissolution of social barriers. Even some who have a half hearted interest in the religious idea of saving the native's soul do not wish to see him making advances in the social scale, while the church-goer writes to the paper about the inconvenience of having Kaffirs get in his way on the side-walk as he walks to church on Sunday morning Much of the prejudice against the missionary is based on the mere fact that he chooses to identify his life with natives and native interests'

The colonial attitude of general condemnation of mission work is founded on the colonial idea of the native, what he ought to be and he ought not to be in order to fit into the white man's plan for the white man's welfare and because he thinks mission work is in his way he condemns it. There is hardly a whisper of what is best for the native apart from the consideration of his usefulness to the white man'.

Pastors testified, according to Taylor, that it was 'a common thing for members of the congregation to leave the house if missionary subjects are mentioned'. Taylor asserted that 'the Department of Native Affairs as constituted since the beginning of responsible government is known to be not in sympathy with native education'. Moreover

'Everything that tends to weaken the tribal system is looked upon as loosing the native from control. Natives are no longer allowed to become exempt from native law. Undoubtedly the hesitation to sell land to natives and to form stable communities arises from ... political jealousy.

There is little doubt that the suspicion with which the Ethiopian Movement is regarded is carried over to some degree to all mission work'. 35

Another outspoken missionary, B. Bridgman, warned of impending racial conflict:

'The anti-black tirades in press and on platform on the one hand, and the anti-white agitation on the other may some day be the furnace, the cascillating, blundering policies of Governments may provide the hammer, and the struggle for racial supremacy may be the forge upon which the aboriginal tribes shall be welded. The repression of life is hazardous. Let the Colonies withhold from the native the education and the opportunity for self-improvement and advancement in civilisation which he craves and which is his right, let them try to suppress legitimate religious activity and it will not be "Oom Paul" but John Bull himself, who "sits on the safety valve" of South Africa's destiny'. 36

The last twenty years of the century saw a burgeoning of missionary activity. In 1879 there were only eight societies established in Natal. By 1903 there were twenty six having among them 170 home-stations and 436 outstations. The gospel was preached every Sunday in at least 1,000 places. Even earlier in 1895, a missionary asserted that there could be few Africans in Natal or Zululand 'who have not at least had an opportunity of hearing of Jesus Christ' It was estimated in 1879 that there were 800 Africans to each Christian in Natal but by 1903 'we can place but 500 to be evangelised by each christian worker among the natives, not counting other christians or those who work only among the white population'. Natal was 'filled and crowded' with mission stations.³⁷ By 1906 it was estimated that there were at least 40,000 African church members and fully 100,000 adherents.³⁸

Criticisms were made of the station system but generally missions continued to use it. In 1884 the Natal Missionary Conference discussed whether converts should remain in their homes or come to a station. There was disagreement. Josiah Tyler said his policy was to say to converts 'Come among us for awhile, and when you show moral strength to withstand

temptation, return to your own people'. But others argued that no rigid rule could be laid down as everything depended on the individual convert.

Canon Greenstock attacked the station system:

'I am convinced that great evils from allowing natives to congregate on Mission lands, where they are allowed to squat, on condition of attending church; - this is a distinct premium to hypocrisy. Criminals often escape to Missions, and by their presence bring an ill-name on Christianity. Converts are drawn away from their natural surroundings, when, if thoroughly sincere, they might shine as lights in the thick darkness, and the heathen come to think it impossible to be a Christian and still live on a native location. The Missionary is apt to be satisfied with ministering to the few gathered around him, to the neglect of the tribe at large; and thus our religion fails to have a national influence. Under settled governments, where there is protection for the lives and property of converts, the formation of "stations" ... should be steadily discouraged'. 39

The usefulness of African preachers was widely recognised: 'Whatever may be said against the native preacher, however little he may know of theology, he has a power of dealing with the heathen which we have not'. 40

In the 1880's and after a more optimistic tone pervaded missionary reports. It had been uphill work for missionaries until that time, but they were benefiting now from the changes which they had been instrumental in bringing about. The annual report of the American Board for 1882 noted a marked decline in pagan resistance to education and missionary instruction: 'This marked call ... is highly important, as indicating the doors thrown wide open, which have for these many years been only ajar'. In the following year the report claimed

'We are getting a stronger hold upon the people and they are getting nearer to us The feeling of opposition which was once strong and fear lest the truth should find entrance among them, lest their friends or children should become Christians, is mostly a thing of the past'. 41

By 1904 the Board considered that the 'first stage' of their task had been completed:

'Churches are organised and schools established on all of our stations and at many other localities besides. The schools have native teachers. The Churches have native pastors and carry on missionary work in their own vicinity'. 42

In view of the intensive penetration of Natal by other societies some

American Board missionaries even raised the question of leaving Natal.

'Were the Zulu ready to shoulder every responsibility and the government doing all it could to help them, they could be left. They are no longer babes. But they are youths, headstrong at times. But they need still a loving guiding hand especially in temperance, social purity, foreign mission and other work. Our days here may be numbered for these youths are developing and at times it seems as though they were anxious for us to leave them, and desired us only as intercessors with the government'. 43

Despite the apparent break-through, 'back-sliding' remained a perennial problem to the missionaries. The Reverend C. W. Kilbon spoke of the many temptations faced by the kholwa class:

'The conditions of their former life are like serpent coils, still about them, and from which they seem unable to extricate themselves. Their friends and kindred in heathenism entice them back, false brethren among the converts pervert their minds; until we find a slipping back in a variety of ways, by the body of the converts'.

It was not, he said, a complete relapse into paganism but a compromise with it.⁴⁴ In addition there were backsliders 'who yet remain as bad leaven in the midst of our Christian communities'.⁴⁵

African converts encountered difficulties in making the transition from pagan to Christian family life. According to Kilbon the 'kraal idea' of unequal status between husband and wife carried over into Christian marriage, particularly if lobole had passed for the woman.

'The chances are bad of a couple united by lobola ever recognising their equality of standing in the family, and that reciprocity of love absolutely indispensable in the ideal Christian home. They will feel it incongruous to eat at the table together, to walk side by side to church, and to sit in the same seat, and look over the same book together when there. The proper reciprocal relations between husband and wife rarely exist in our native Christian homes'. 46

Missionaries complained about converts who mixed pagan with Christian marriage rites. They objected to the dancing and feasting before and after marriage. The Reverend S. H. C. Ranson was pained by 'the singing of Christian hymn-tunes with vile words'. The Reverend W. Holford reported that the bride's father would often say at the close of festivities 'now I have given you my daughter', as if cattle had passed. 'In this

utterance the son is scarcely considered, and the sentiment expressed is of a heathen cast and prejudicial to the Christian character and purpose of the marriage'. Lobola-ed wives in Christian marriages were still expected and required to be the 'hand-maidens' of their mothers-in-law. This, Holford said, led to much quarrelling and tension between newly-married couples.⁴⁷ The American Board, which strictly prohibited lobolo among its members, was continually faced with the problem of enforcing the rule. Not only was their opposition to it from Africans but 'they can find one excuse or another to put off a marriage till all the lobola has been paid according to the custom'.⁴⁸

In general missionaries remained hostile to traditionalism, although there were notable exceptions in regard to particular institutions. Daniel Lindley's biographer records that by 1869 Lindley had come round to the view that the 'radical purists' of his mission were wrong in their denunciation of lobolo.

'The ukulobola ... has been, on the whole, a great blessing to the people. If today one word from my mouth would instantly annihilate the custom, I would not speak that word'.⁴⁹

Both Lindley and Aldin Grout had previously offered to resign from the mission rather than enforce disciplinary measures against members who observed the contract.⁵⁰ In company with Lindley and Grout other missionaries questioned the wisdom of radical attacks. Henry Callaway, who by no means shared Colenso's views on polygyny, told the Diocesan Synod in 1871 that 'if they encouraged the dissolution of polygamic marriages, they would encourage great immorality, because there was a marriage vow among the natives'.⁵¹ The Reverend D. Rood revealed in 1878 that he had undergone a change of opinion:

'The older I grow the more cautious and conservative I become. In past years I have argued in favour of the Government sweeping away polygamy, and the selling of daughters with a stroke. I now think it would not be wise to attempt this. I doubt whether we can find anything in history to favour the forcing by the arm of the law a change in society so great and radical as this would be'.⁵²

In 1830 'Two Teachers of a Large Station' (the pseudonym of missionaries who, perhaps significantly, were reluctant to reveal their names) said, in a letter to the Natal Witness, that 'change should not be a radical one, for experience has shown it to be the safer course for us, when interfering with the customs and time-honoured laws of a strange race, to do so with great caution',⁵³

The mainstream of missionary thought continued in a rigid assimilationist mould even if it had become apparent to most that the task of impressing a new culture upon Africans was harder than it might have seemed in the beginning. The American Board Mission clung grimly on to the 'Umsinduzi Rules' which had been established in 1879. The rules prohibited polygamists from becoming members of the churches; prohibited participation in lobolo contracts; forbade widowers and widows from living with women or men, respectively, outside of the bonds of marriage; forbade participation in or encouragement of 'beer-drinks' (even attendance at a party or a wedding party at which beer was drunk was a violation of the rule); forbade the consumption of any intoxicating beverage and the smoking of hemp. It had not been easy to get the meeting at which the rules were introduced to accept them:

'Two days were spent in careful exposition of these Rules by the missionaries, and in hearing and answering objections, urged against their adoption, by delegates and others. Some of the practices now legislated against found their earnest advocates among the various speakers The Rules were taken up, seriatim, voted upon and passed; though on the subject of Loboliso, there were some prominent votes on the wrong side'.⁵⁴

The rules, particularly the prohibition of lobolo, were unpopular with many African members and, as the American Board was well aware, they weakened the relative appeal of the mission compared with that of independent African churches which readily synthesised traditional practices and Christian doctrines. Enforcement was difficult; devious ways of evasion being hard to detect. Each alleged contravention had to be carefully investigated and the missionaries could not spare the time that this involved. In addition, there was scope for a wide range in the rigour with

which the rules were enforced.⁵⁵ Nevertheless, in 1906 the Mission's annual letter claimed that there was 'no longer any contest over the rules'.⁵⁶

Given the general missionary disapproval of lobolo and, particularly, polygyny, the proper approach to be adopted remained a vexed question. The Natal Missionary Conference (which held its first meeting in 1877) debated the problem on many occasions. In 1877 the discussion on lobolo reflected disparate views and, however desirable unanimity of approach among missionaries might be, it was recognised that they would lay themselves open to charges of inconsistency were a stringent rule adopted. The resolution adopted recognised lobolo as an evil and urged its eradication from the churches as soon as possible.⁵⁷ It was agreed at subsequent conferences that whatever lobolo might have been it had become 'a mercenary transaction'.⁵⁸ In 1883 the conference discussed what steps should be taken against church members who observed the custom. Again no unanimity could be reached. The extreme viewpoint was expressed by Dalzell whose rule was to expel communicants who received cattle; but he allowed a communicant to lobola the daughter of pagan parents because they were beyond the church's control. Chalker considered it too severe to expel members. He wondered if it were not possible to arrange that marriages in which lobolo passed could be discredited as much as possible. Greenstock argued that the dowry custom had obtained among the ancient Jews and he did not think that there had been any church rule against it. He could not agree with the American Board's view that lobolo could be eliminated by force: Africans should be educated out of it. After a lengthy analysis of the pros and cons of lobolo Kilbon said that most of the alleged advantages were 'grounded in heathenish ideas', while these objections to it seemed well-founded to Christians - 'yet they fail to induce our native Christians with few exceptions, to give up the practice and defence of the custom'. He continued:

'There is a feeling that we are prejudiced in favour of our own customs; their customs are good for black people and ours may be good for white people; why are we not satisfied to let them have theirs and we enjoy ours?' 59

African converts were puzzled at the differences among the missionary societies in dealing with proscribed practices. Robert Plant, the Senior Inspector of Native Schools, wrote in 1905:

'can we wonder if the uninformed judgement of the native regards all this divergence of teaching as evidence either of essential differences of religions, or of a wilful desire to rob him of valued privileges? And since his inclinations side with the permission accorded by other churches, although he often outwardly accepts membership of the more rigid and ascetic organisation, he adopts a series of deceitful practices to keep from the eye of the authorities of his own church the indulgences which he allows himself, until the ruin of his honesty and truthfulness becomes a thousand times worse for his character than the wicked snuff, or pipe, or kaffir beer could ever have been'. 60.

No doubt the Government's undisguised preference for pagan over kholwa people added to their confusion.

Interest in the lobolo question died down and flickered up once again in the 1890's. At the conference in 1890 a motion was adopted that the Government be approached to take steps to outlaw the custom. The voting showed that unanimity was as distant as ever: thirteen voted for, and eight against the motion.⁶¹ In 1892 the Conference reviewed the results of a questionnaire on lobolo that had been sent to 220 persons comprising ministers, missionaries, magistrates, administratives of native law, and members of the Legislative Council. Only thirty two replies were received (one from a magistrate, two from members of the Legislative Council and twenty nine from ministers and missionaries). The response indicated the declining interest in the subject. The respondents were asked to say whether or not, in their view, lobolo promoted the following:-

- (a) industry in unmarried men. Five replied 'yes', a few 'no', while the majority responded with a qualified 'no'. 'They work a little with the hope of lolling afterwards indefinitely'.
- (b) idleness in married men. All answered 'yes'.
- (c) illicit connexions resulting from delays in the lobolo transactions. Thirty answered 'yes'. Nearly all of the respondents answered 'yes' for the following:-

- (d) proprietaryship replacing fathership over daughters.
- (e) unwillingness to allow daughters to attend school.
- (f) sense of ownership over wives.
- (g) sense of helplessness and hopelessness in women.
- (h) stagnation and indifference to 'civilising influences'.
- (i) hostile attitudes to the Gospel.⁶²

If missionaries equivocated slightly in their attitudes towards lobolo, polygyny continued to receive near-unanimous condemnation.⁶³ The thorniest problem was presented by women who became converts while married to polygynists. 'Their situation is most trying. If the man refuses to let them go they are held by native law. If they break away they must leave their children and become practically outcasts in life'. The American Board was sympathetic to the women's position but insisted that they could not become church members because

'it is ... almost inevitable that the protest which [American Board churches] have made, and should make, against polygamy would be obscured and seriously weakened, if there should be any relaxation in the practice of excluding from Church membership those who are in polygamous relations'.⁶⁴

A clash of view on this point occurred at the Diocesan Synod in 1871:

Callaway argued that a converted woman married by customary law to a pagan had no right to part from her husband; but Dean James Green of Pietermaritzburg differed sharply:

'It was the duty of the missionary to show the woman her degraded position as a concubine, and at once to tell her that such degradation was contrary to God's Law'.⁶⁵

A committee of the Natal Missionary Conference sparred with the issue in 1885 but were unable to reach agreement. The Reverend Canon Greenstock said that she should persevere in her efforts to obtain her liberty 'but her involuntary mode of life should not be allowed to bar her from Christian privileges' If she were sincere she ought to be baptised. But the Reverend E. Robbins insisted that she separate from her husband before being baptised. He claimed that polygyny could be abandoned without giving up the duties which had arisen from the marriage: 'The husband may

continue to provide for his wife after he has put her away, and the wife may continue to care for her children after she has left her husband'.⁶⁶

The last of the Natal anti-polygyny tracts appeared in 1888 under the authorship of Dean Green who, possibly, was still working some of the anti-Colenso bile out of his system. Having disposed of polygyny to his own satisfaction as a 'Malum in se', Green proceeded to deal with the objection that wrongs were done to discarded wives, children and husbands. Tribulation, he argued, was an instrument of salvation:

'Some sacrifice must be required of the man to test his sincerity; some suffering must be endured by the women to awaken them; some burden must be thrown upon the Church to prove her love; something at the beginning must seem to be imperfect, for so it is in all the works of God'. 67

The last united missionary protest against polygyny in the period with which this thesis is concerned was made by the Natal Missionary Conference in 1893. It was agreed to approach the Government and

'draw their attention to the fact that the practice of Polygamy tends to the continued debasement of the natives, and ... urge that the time has now come after fifty years of British rule for some check to be placed upon the custom'. 68

Missionaries and the provision of Christian marriage for Africans

The 1881-2 Commission recommended that proper legal provision be made for Africans wishing to marry according to Christian rites; and that the requirement that the wife's father resign his rights in lobolo for her be abolished.⁶⁹ In 1883 the Natal Missionary Conference requested the Legislative Council to act, saying in the memorial that the operation of the existing law brought Christian marriages into disrepute, inflicted serious injustices upon Christian women and acted as a powerful hindrance to the spread of Christianity. They requested that the ordinary laws of bigamy and divorces should apply. The Legislative Council conveyed the memorial to the Governor, Sir Henry Bulwer, requesting him to draft

legislation.⁷⁰ Bulwer replied that it would cause difficulties if unexempted Africans were permitted to marry by Christian rites. He suggested that the difficulties might be overcome if no marriage licence were issued to Africans unless both parties were exempted. But this did not satisfy the missionaries who pointed out that requirements for exemption were very onerous and 'they urged that to oblige natives to give up the whole of their customs, and to adopt a legal system of which they knew little or nothing would be a restraint on Christian marriages between Africans'. Bulwer replied that it would be unjust to a pagan man to hold him bound by the obligations of a religion in which he did not believe. He said that he was prepared to make the exemption law less exacting. The missionaries then pointed out that they were referring to Christian marriages between Africans: they wanted the bigamy law enforced to prevent 'back-sliding'. Moreover, they said, Christian Africans often wished to remain subject to customary law for many reasons. In an ironic reversal of the usual Government and missionary stances in these matters Bulwer reluctantly assented, pointing out that 'what remains of the Native Law in Natal is to a large extent inter-woven with the custom of polygamy'. He expressed a wish to be made acquainted with the view of Christian Africans themselves before giving the matter further consideration.

In January 1835 Bulwer received a petition signed by 1,538 Christian Africans. It read:

'We submit to all the Laws of this Country and we do try to listen; but one thing is a trouble to all of us. This is it:-

When a believer takes a wife by the Law of Marriage, he promises that he will not take another during the time of the life of her he marries.

We, who are parents, understand that when our daughters are married before the Missionary, that their husbands shall not take more wives while the first lives. But some do not keep their promises. They marry wives before the Missionary; then, afterwards, take other wives by the law of the heathen people. It appears that the first wife is deceived; the husband has not kept his words. This is very bad to us; it causes quarrels amongst the children of the Christians and teaches the people falsehood.

We cry to you our Great Chief, that you will stop this⁷¹

Bulwer acknowledged that the petition reflected the wishes of a great many Africans but he did not believe that application of the bigamy law would solve the problem. It might prevent men taking more wives but 'at the cost of the evil of concubinage and prostitution'. However, he conceded that the evils complained of were so great that some effect must be made to stop them. He gave instructions that a bill be drafted in which the interests of persons wishing to marry by Christian rites would be guarded by ensuring that the consequences of Christian marriage were explained to parties before they were married. But the missionaries objected to the clause providing this because it gave the magistrate 'an irresponsible power' to 'satisfy himself that the parties understood the nature and obligations of the marriage contract. The missionaries objected also to the provision that a clergyman was liable to a fine if he married Africans without obtaining the licence provided for in the bill. Bulwer, however, insisted that these provisions be retained and, with the opposition of the missionaries and 'those who thought it impolitic to interfere with the Natives at all and therefore wanted no Bill at all', the legislation fell through.⁷²

A second bill was sent to the Legislative Council late in 1886 but, for reasons given above (see p. 248), it was rejected. A third bill was submitted in 1887 and passed. The new law dealt only with the invariable consequences of Christian marriage and had no reference to property rights. Several members pointed out that no provision was made for the widow's welfare after her husband's death. Hartley asked

'Whilst she lived a supposed Christian life with her husband under the operation of Christian Law her husband may have acquired property. When he dies why should she be abandoned under Native Law when she ought to inherit her husband's property, having been married by Christian rites?'

But both the Secretary for Native Affairs and the Attorney General assured the House that the husband's heir was bound to support the widow. To Stainbank no problem was presented:

'it simply means, if she has no property, that she is very likely to take to service, and if it produced female servants it would be a very good thing'. 73

The Law did not remove the parties from customary law except in regard to marriage. A husband who took another wife by customary rites would commit bigamy. Other clauses provided that a person who had previously been married by Christian rites could not contract a marriage according to customary law; the children of a Christian marriage were prohibited from entering into customary marriages.

The Natal Missionary Conference set up a committee to watch the working of the law. From the limited response to a questionnaire sent to the missionaries it seemed to the committee that it was working satisfactorily and that magistrates were not placing any obstacles in the way of licences being granted.⁷⁴

Missionaries and African education

In 1883 the acting Secretary for Native Affairs admitted in the Legislative Council that only one per cent of the 350,000 Africans in Natal were being educated, and that their education was being carried out by missionaries only.⁷⁵ Law 1 of 1884 placed African education under the control of the Council of Education which had been responsible since 1877 for the administration of white education. A Government inspector of African education was appointed in 1885. In his first report the inspector said that in 1885 there were 3,817 pupils attending the seventy schools receiving Government grants: 2,137 of these were boys, 978 of whom were under twelve years of age and 1,159 of whom were over that age; the comparable figures for girls were 987 and 693. The report noted the growing desire for education among Africans and cited the case of three pagan chiefs who had asked for schools to be established among their people. A high proportion of the pupils, however, were the children of pagan parents and they were often removed from schools on the slightest pretext.⁷⁶ The fears of pagans were shown, when, in 1887, the magistrate of Umsinga reserve

called a meeting to discuss the possible starting of a mission and a school in the reserve. The pagans objected, saying:

'They had no children to send to school. Their wives would be drawn away from their husbands, and mothers would be drawn away from their children, to go and wear dresses and become women of the lowest type, thereby bringing trouble and misery upon their families. The children tending the gardens and watching the stock would neglect their work and run away to school, so that the crops would be destroyed. Children who were educated and became Christians despised their parents'. 77

These sentiments were not without foundation: education widened the generational cleavage and brought conflict into individual families.

Plant said in 1905:

'One direct result of education upon the children is just what the parents have feared it would be. They soon develop a dislike for the ordinary way of kraal living. I think I shall be correct in saying that seventy five out of a hundred children who have attended a school for three or four years regularly never settle down to the old heathen life'. 78

The legislation of 1884 stipulated that industrial training be provided in government-aided schools. This was defined subsequently in the following terms:

'No training can be regarded as industrial that does not provide for the teaching of trades or agriculture, or some productive labour that would enable the student to earn a living'.

The definition showed clearly the Government's aim that educated Africans must be 'useful' to the dominant race. In 1885, however, only three schools were reported as providing industrial training as officially defined.⁷⁹ In 1887 the Government established an industrial school in the Zwartkop reserve (near Pietermaritzburg) but it was not a success and closed down in 1892. Among the reasons cited for its failure were poor management, the opposition of influential chiefs in the reserve and the lack of support from local Africans.⁸⁰ This was the only school established by the Government for Africans in the period which this thesis spans.

African education was a burning subject in colonist debates on racial matters. Not only was schooling said to make Africans less deferential to

whites, but it produced a class of economic competitors. An extreme opponent of African education was F. S. Tatham who proposed (but subsequently withdrew) a motion in the Legislative Assembly in 1894 calling upon the Government to withhold all financial support from the mission schools.⁸¹

The Reverend F. N. Tucker summarised colonist objections to African education in 1895:

'(1) That to teach trades to natives will be detrimental to the interests of Europeans labour market and of little use to the native himself'.

'(2) Or that it is useless to attempt to educate the native at all, otherwise than in agricultural pursuits, as he was better, more reliable and honest in his uncivilised state'.⁸²

The Government's response to the colonist clamour was to modify the basis upon which grants were given. The Superintendent of Education said in his report for 1895 that no African school received a government grant

'if the products of the industrial work done in that school are allowed to be sold or disposed of in such a manner as to compete with general trade, or if the school be in any way responsible for or associated with the printing and publishing of any Native newspaper'.⁸³

The latter restriction was aimed at St. Alban's College, Pietermaritzburg, in which Inkanyiso was produced. The College was widely believed among colonists to be a hotbed of sedition. The restriction prevented John L. Dube's Ohlange Industrial School from receiving a grant in later years. Not only was the principal black but Ilanga Lase Natal emanated from the school as well. Colonists believed that the school fostered 'Ethiopianism' and its pupils were refused admission to government examinations.⁸⁴

As many of the comments quoted earlier in this chapter showed the missionaries were deeply distressed by the official attitude towards African education. They considered the grants to be far too small and the prevailing colonist prejudice to be unfounded. The Reverend F. N. Bridgman complained in 1897 that the Government was not doing all it could for even the primary education of Africans: 'It is ashamed to hinder the missionaries in their work, but it does not choose to assist them to any

great extent'.⁸⁵ In 1906 the Reverend F. Mason used stronger language, asserting that the Government's attitude towards African education had for some time past 'seemed to be little less than positively hostile'. As an example of deliberate obstructiveness Mason cited a circular minute dated 10 August 1906 which stated that no grants would be given to schools unless each had its own building. Use of church halls for school purposes was not to be permitted.⁸⁶

The official attitude was particularly galling to missionaries because everywhere Africans were asking for educational facilities, and education was a powerful ancillary to evangelism. Resistance among pagans, however, did not evaporate completely. In 1890 the Reverend E. D. Goodenough singled out as a special problem the education of the girls of pagan parents:

'Everywhere we have found a desire on the part of the girls to learn, and everywhere, too, a determination on the part of heathen fathers that their daughters shall not learn'.

Goodenough blamed this parental attitude upon polygyny and lobolo: educated girls, he said would not marry pagans and the 'market for their disposal thus becomes contracted'.⁸⁷ Despite this, more than half of the 12,484 African pupils who were enrolled in the 178 African schools receiving government grants in 1909 were girls (5,178 were boys and 7,306 were girls). This figure represented the average enrolment; the gross enrolment was 15,334 of whom 9,276 were pupils below standard one and 6,058 were pupils in standard one and above.⁸⁸

The 1906-7 Commission censured the Government for its neglect of African education.⁸⁹ Only minor reforms were made in response, one of which was the establishment in 1907 of the Native Education Advisory Board whose members were mostly missionaries. The chief aim of the Board was to keep in touch with African opinion on educational matters. It could do little to satisfy the main demands of Africans and missionaries for more facilities and more occupational opportunities for educated people.

In the debates that followed publication of the Commission's report the Prime Minister, F. R. Moor, conceded that education must 'assist in

gradually alienating Africans more from kraal life' But most colonists would have agreed with H. D. Winter (who had been Minister for Native Affairs when the rebellion broke out in 1905) when he warned of the danger in allowing kholwa to be represented on any future Native Councils: 'I have no objection to meeting the heathen Chiefs, but I have a strong objection to a Council which consists of Natives who understand, who read and write, the English language as well as I do myself'.⁹⁰ The reasons for attitudes like this, as preceding chapters have suggested, lay deep in Natal's social structure: it was easier to dominate an uneducated, traditionalist population, and easier to justify this domination. It followed from the same premises that education ought to be geared to the system of racial stratification. In 1908 the Governor, Sir H. Nathan, conceded that it was not unreasonable for whites to fear the educated African as a competitor but it seemed to him that

'one must either freely help on the native or one must keep him back; and that to help him on by encouraging individualism against tribalism and in other ways recommended by the [1906-7] Commission and to keep him back by denying to him facilities for education, is the surest way to make him discontented'.⁹¹

This chapter has outlined the rôle of missionaries in the latter part of colonial Natal's history. Their rôle was a significant one, as agents of change among Africans and as critics of policies that steadfastly opposed change. Their intermediary position in the racial conflict made them targets for brickbats from both sides. The colonists accused them of undermining the racial structure of society; many Africans, kholwa and pagan alike, saw them as instruments of racial and cultural domination.

Chieftainship after Shepstone

The Native Administration Law of 1875 was intended by some, at any rate, of its framers gradually to abolish the powers of chiefs and to supplant them with white officials.¹ As indicated in an earlier chapter, chieftainship had been profoundly affected by incorporation into the administrative hierarchy, and its legitimacy was steadily ebbing away. Both these processes were accelerated in the years after Theophilus Shepstone. Chiefs became even more enmeshed in the administrative system while their followers became increasingly alienated.

Particularly after 1870 the number of 'tribes' increased. Chiefs obtained permission to move from one reserve to another and left behind a section of the tribe over whom a headman was placed. Headmen gradually assumed the status of 'chief'. John W. Shepstone told the 1861-2 Commission that he did not think there was a single tribe in the Colony that was intact. 'Some of the tribes are scattered about amongst other tribes'. He had tried to halt the process which, he told the Commission, increased administrative difficulties because each chief expected the same privileges from the government. He expressed uncertainty as to whether the multiplication of tribes enhanced the peace of the Colony.² In 1879 he recommended that when appointed chiefs died the tribe should be allowed to disperse and join others, or 'some native in whom the Government has confidence should be placed in charge'. No son of an appointed chief should be allowed to succeed his father because this created claims that were difficult to set aside and 'would be the means of men succeeding to the position of a Chief that were in no way fit for it'.³ He rejected the claim of Ntshidi, of the Mapumulo tribe, to succeed to the chieftainship even though he had been the late chief's nominee. He rejected also Ntshidi's second claim to appointment as a chief co-equal with the other.

Africans, he said, had no right to 'importune' the government and the appointment of chiefs rested solely with the Supreme Chief who would not necessarily recognise the choice of the tribe. Moreover, Shepstone continued, 'to divide a tribe in two parts to satisfy a disappointed claimant ... is decidedly impolitic, perpetuates enmity, and increases the number of chiefs in this Colony of which we have too many already'.⁴

In 1880 John Shepstone proposed 'that some decided measure should now be adopted to prevent any further increase' in the number of chiefs. He proposed that the Colony be divided into thirty districts, each under a 'trustworthy native' who would be styled the 'Government' or 'District' Induna. The Induna would be a paid officer of the Government under the immediate control of the magistrate or administrator of native law of the division.⁵ Nothing, however, came of this proposal and the formation of new tribes continued apace. In 1904 the Under-Secretary for Native Affairs reported that the 'natural process of the formation of new tribes by sub-division is continued, and the multiplication of tribal units has proceeded under British rule apparently without check'. There were then 312 tribes in the Colony, the largest being the Curu, numbering approximately 25,000 people, under the hereditary chief Silwane. It was reported that many tribes extended over several magisterial divisions, with members of the same tribe often living under different conditions of land tenure.⁶

The proliferation, dispersal and intermingling of tribes was, on the one hand, conducive to promoting the inter-tribal rivalries upon which the 'divide-and-rule' theory of administration rested, but on the other hand, it led to a considerable amount of 'faction fighting'. The reserves were over-crowded, and disputes between chiefs over claims to land became endemic.⁷

After 1896 the Government

'initiated a policy of endeavouring to make absolute boundaries [between previously overlapping tribes], and of such a character, the natural features of the country being taken into consideration, that where they have been established they are likely to bear fruit in peace and harmony reigning in these parts' 8

In 1898 the Secretary for Native Affairs instructed magistrates to check as far as possible 'indiscriminate residence of members of any tribe on lands distant from the Chief' The object was to limit chiefs' jurisdiction to certain defined areas. Chiefs were to be forbidden to remove into other divisions 'with the object of enlarging their tribes'. The aim of the measure was to terminate 'the present very undesirable condition of things under which a Chief may have members of his tribe in any part of the Colony, however remote from him'.⁹

Evidence of the declining authority of chiefs continued to accumulate. The magistrate of the Inanda division said in 1879:

'The chiefs, as ever, are doing nothing towards improving their own condition, or that of their people. While eager to preserve a power they are conscious is slipping from their grasp, they seem to have no other motive for its possession than to display it in the exercise of a mere external and brute authority, for the furtherance of their own personal aggrandisement'.¹⁰

In terms of the Code of 1891 the chief was responsible for the 'general good conduct of his tribe' and for the

'prevention of crimes and offences, of the production, sale, and use of "Isityimiyana", or of any other intoxicating liquor whatever, Native beer (utywala) excepted; of evasions of taxing or licensing laws, of the sale of poisons and love philtres, and of the practising of witchcraft or divinations'.¹¹

A regulation of the Natal Native Trust provided in 1903 that chiefs were to be warned 'that they will personally be held responsible, if any of their tribe be found in illegal possession of a firearm'.¹² In addition to those and other responsibilities for tribal control, chiefs were required to carry out a variety of administrative duties, including calling up men for the isibalo. All this was expected of chiefs, but their powers of criminal jurisdiction had been stripped away from them in 1875. Their people were scattered and many were migrant labourers. Chief Lauma told the 1906-7 Commission that

'the power of the Chiefs should be increased so as to enable them to more effectively govern their tribes. At present their people treated them with contempt, and would not

listen to what they said. Yet they had no power to punish them. They were upbraided by the Europeans for not keeping their tribes in better order, yet as a matter of fact they were virtually in a state of helplessness'. 13

Chief Stephen Mini complained that the police undermined chiefly authority because they

'did just what they liked in their districts, and arrested their people without any reference whatever to them as Chiefs, and yet the latter were responsible for the good of the tribe'. 14

Chiefs complained that their men were allowed to leave Natal as migrant labourers without their knowledge. 15 They complained that men left the tribal localities for the towns and remained there 'being afraid to return for fear of having to serve on the roads'. 16

The isibalo system was affected by the declining authority of the chiefs and, itself, contributed to that decline. In 1877 it was reported that difficulty was being experienced in getting sufficient labourers under the system 'notwithstanding the pressure made to bear frequently upon the Chiefs by imposing fines for non-compliance or a partial supply'. John Shepstone acknowledged that one cause of this was the diminished authority of chiefs 'arising from natural and unavoidable causes'. He later recommended that the system be abolished: it was a great irritation to chiefs because 'it sets them at variance with their people'; and it was irksome to the labourers who resorted to subterfuges to avoid service. 17 (In 1903 the Secretary for Native Affairs said that Africans were avoiding isibalo by producing documents to show that they were in employment. Future applications for being excused were to be forwarded to the Native Affairs Department for consideration, together with a report from the magistrate and the chief's messenger who served the order). 18

Shepstone's recommendation that isibalo be abolished was ignored, probably through pressure from other Government departments who relied on it for their labour requirements. In a defence of isibalo in 1891 the Assistant Colonial Engineer claimed that 'the wants of the native, of the present generation at least, are so few, that he has no real need to work,

and therefore he cannot be relied upon for voluntary labour'.¹⁹ In 1890 R. M. K. Chadwick, a Natal lawyer, wrote to Lord Knutsford urging that isibalo be abolished. He pointed out that the Supreme Chief fixed wages at 10/- or 15/- per man per month while in the ordinary market a labourer could command 20/- to 40/- per month. The fixing of the wages, claimed Chadwick,

'is done without consulting the labourers, who are ordered out to work at these rates and should any demur they are immediately punished. This has become to the natives thoroughly hateful, and it is looked upon by them as a slur'.²⁰

But the Natal government refused to pay heed. In replying to Knutsford the Governor, Sir C. B. H. Mitchell, said that isibalo was desirable because it was economic and efficient and because it accustomed Africans to obeying the orders of the Supreme Chief. Africans lived free on the reserves and isibalo was the 'ordinary and accustomed Native tribute to the Supreme Chief who supplies the land'.²¹ The Code of 1891 empowered chiefs to fine up to £2 any man who disobeyed an order of the Supreme Chief (Section 52).

Chiefs spoke bitterly of the isibalo to the 1906-7 Commission. Chief Mafahlani complained that

'Today, demands were made upon them month by month. They did their best to induce the boys to go out and earn money to pay the Government taxes, but, when a requisition was served upon them for road party work, there were no boys left on the location with which to meet the Government's demands. Chiefs were disliked, and even hated, on account of the pressure they had to bring to bear on their people to turn them out to work'

Chief Mkwantshi said that Africans 'were very much averse to road parties, and the Chiefs were obliged to seize boys by force and send them to work'.

Chief Dubula mentioned that chiefs, in desperation,

'often come down on some unfortunate man, who was perhaps unwell, and, in order to save appearances with the Magistrate, compelled him to turn out'.

Further complaints were made that the wages were too small and that the food given to road parties was 'insufficient and of poor quality, the result being the boys had to spend their own wages in order to supplement it'.²²

The need to furnish quotas of labourers under the isibalo system gave chiefs a power that could be used to tyrannical effect over their subjects. John Shepstone told the 1881-2 Commission that he had heard of cases where chiefs promised young men immunity from isibalo for rendering them some small services. He said, too, that cases occurred of men being forced out of lucrative employment by a chief and sent off with road parties. Similar evidence of chiefs being biased as to whom they called out was presented to the Commission by other witnesses.²³ In 1904 the magistrate of Mapumulo said in his annual report that people who appealed against chief's decisions ran the risk of being singled out for isibalo.²⁴ R. C. Samuelson obtained evidence that chiefs would speak to izinduna at the magistrates' courts and ask them not to take their men before the clerk of the court to obtain passes to go out and work; they feared that they would not be able to meet their isibalo quotas when called upon to do so.²⁵ Missionaries also complained about isibalo. In 1899 the Reverend W. C. Wilcox told the Natal Missionary Conference that any pagan chief could remove a boy from a mission school:

'when the heathen Chiefs find any of their young men are beginning to seek light and life in the school or catechumen class they endeavour to stop it by sending them off to work on the road. The Chiefs know well that the more knowledge and light their people get the less disposed they will be to submit to such tyranny'.²⁶

James Dexter Taylor of the American Board corroborated this evidence in 1903, and cited also the case of an African pastor, in regular employment, who was sent off to a road party.²⁷

Many criticisms were made of the quality of justice dispensed by chiefs over the period. The chiefs resented the loss of judicial powers they had sustained in 1875 and pressed to have them restored. Apart from a loss of power and prestige, the loss of jurisdiction means a loss of revenue in times when the tributes paid by tribesmen to chiefs were visibly declining. As Tomuseni, a headman representing a chief, said to the 1906-7 Commission.

'their Chiefs were not now able to make anything out of their people in a legitimate manner in the trying of cases. All matters were now brought before the Magistrate - even trivial cases, which should undoubtedly have been settled by the Chief'. 28

Not surprisingly chiefs frequently exceeded their judicial powers. The 1881-2 Commission found it necessary to recommend that the 1875 prohibition on chiefs' criminal jurisdiction be made more widely known among them than it was.²⁹ In 1895 the magistrate of Weenen reported that chiefs were very jealous of their judicial functions and resented their decisions being reviewed by higher courts. He noted that some persistently exceeded their powers and adjudicated in criminal cases, pocketing the fines. He reported that Africans preferred to have cases tried by magistrates because of the 'doubtful security against favour or prejudice' in chiefs' courts.³⁰ John Shepstone spoke in similar vein to the 1881-2 Commission. Africans, he claimed, found that white officials inflicted lesser fines than chiefs, who were characterised by a 'grasping tendency to appropriate fines'. He said that the right to appeal against chiefs' decisions was frequently exercised.³¹ G. M. Rudolph, a magistrate, told the 1903-5 Commission that African litigants preferred to bring cases arising out of lobolo contracts before chiefs (an amendment to the Code in 1894 prohibited European courts from hearing lobolo suits); but for other cases, he said, most preferred to go to magistrates.³² In 1898 the magistrate of Napumulo reported that very few cases were taken to the chiefs in the first instance. Some magistrates, he said, insisted that cases first be heard by chiefs (a practice that had been strongly deprecated by the 1881-2 Commission).

The magistrate observed that:

'Many of the Natal chiefs of today are by no means the intelligent, self-respecting, and dignified men, that persons holding such a position generally were a few years ago. In many instances the Chief of today is an avaricious mendicant, in addition to being a tool in the hands of his Indunas'.

Bribery, nepotism and arbitrary 'justice', he asserted, were the hallmarks of contemporary chieftainship.³³ Many similar allegations were

made by magistrates. In 1894 the magistrate of Inanda damned all the chiefs in his division as 'a source of trouble and anxiety, a source of weakness rather than of strength'. They were either old and decrepit, or young and without experience or discretion. All were prone to nepotism. He recommended that they be deprived of all their judicial power.³⁴ A similar recommendation was made by the magistrate of Lower Umzimkulu in 1896 'for justice or even the semblance of it is very seldom meted out', and appeals were frequent.³⁵ Magistrates' statistics over the period 1902 to 1909 for Natal (excluding Zululand) showed that in appeals from chiefs' courts chiefs' judgments were upheld in approximately forty per cent of the cases. Hearing appeals against chiefs' decisions, however, constituted only a small part of the magistrates' court work in African civil cases. Over eighty per cent of the cases before them were heard in the first instance.³⁶

In theory the jurisdiction of chiefs extended to their subjects who lived on white-owned farms. Indeed, in 1906 there were thirty nine hereditary and thirty seven appointed chiefs living on land owned by whites.³⁷ But their authority was attenuated by the presence of the landowner, who often appointed an 'induna' for his own purposes.³⁸ Chiefs claimed that their authority was insufficiently supported on the farms.³⁹ Tulepu complained to the 1906-7 Commission that landowners placed hindrances in the way of chiefs when they required the attendance of their people on tribal matters. Ngqambuzana said that chiefs found that landlords prevented them from giving orders to their people; Hsakaza objected to the practice of landlords allowing people from another tribe to settle on land which had formerly been occupied by members of their own tribe.⁴⁰

On the whole chiefs remained opposed to education and Christianity in which they saw yet more forces eroding their authority. John Shepstone said in 1881 that, so far, no chiefs had expressed a desire to have schooling

for their children.⁴¹ Chief Teteleku, on being asked by the 1881-2

Commission about education, replied:

'I can see that it would be no help to me, because I would have no authority over them, and they would become dissolute and learn to drink beer and become vagrants. I consider myself better in darkness'.

A headman claimed that the spread of education would undermine parental authority. But other chiefs reported that they were opposed to neither education nor missionaries. Mawele, Zipuku and Homoi, chiefs in Umvoti, said that they did not like their people becoming Christians but they did not persecute them for doing so.⁴²

The missionaries continued to view chiefs as obstacles to the spread of Christianity. In discussing this in 1882 the Reverend G. A. Wilder quoted Cetshwayo's words to a missionary: 'There can be but one king in Zululand'. Wilder observed that the majority of chiefs still thought that if their people became Christians 'their authority will diminish in proportion, and their tribes will melt away'.⁴³ The Reverend Thomas A. Chalker reported a similar finding. Out of 160 chiefs in Natal, he said, only six had Christian names. He alleged that there was persecution of Christians in the reserves by chiefs but it was hard to prove because the chiefs were so skillful at employing it. He cited cases where a chief would lean to the side of pagans in small disputes.⁴⁴

In 1895 there was an interesting case revolving around a chief's relations with Christians. One Ngubane claimed £35 damages from Chief Hemuhemu for illegal and wrongful acts: he claimed that a fine had been levied upon him because he was a Christian, and that he had been held up to ridicule and hatred by the tribe. What had happened was that representations had been made to Hemuhemu by some men because their wives and daughters had been inclined to follow Christian teaching. Hemuhemu thought it necessary to fine Ngubane one beast. The real point at issue was whether or not a chief could impose restrictions on Christian worship among his people. John Shepstone, as judge of the Native High Court decided in favour of

Hemuhemu, whereupon Ngubane appealed to the Supreme Court who unanimously reversed Shepstone's decision. Part of the Supreme Court judgment read:

'It is quite clear that this man, in face of his duty as chief, objected to, and tried to prevent the teaching of Christianity amongst his tribe. He gave them some sort of permission to hold services organised in some place or other, but it was a permission mixed with a condition which was one of indignity. They were to be isolated; they were to be marked people; and he tried to show his displeasure of what they considered was trying to do what was right, by imposing certain conditions which were inconsistent with the promotion of true Christianity'. 45

Commenting on the judgment the Governor, Sir W. Hely-Hutchinson, thought that its effect would be to increase the difficulties of chiefs in administrative matters, although he felt it was as well that they understood that no impediment must be offered to the evangelisation of their people. He wished, however, that the Supreme Court had censured the plaintiff for the language he had used against the chief, which, 'if allowed to pass unreprieved and unpunished, must tend to subvert the Chief's authority'. 46

Inkanyiso stated precisely Hemuhemu's dilemma:

'There is no doubt whatever that owing to the neglect of Government to protect Native women and girls who find their way to the towns, and to see that laws and regulations which provide for this protection are carried out; and owing also to the vices of civilisation, immorality amongst Natives is increasing. The chiefs are well aware of this and are much alarmed. And if, in their inability to distinguish between the white man's civilisation and his Christianity, they discourage Christian teaching, to which they wrongly attribute the demoralisation of their people ... who can blame them?' 47

Friction between chiefs and Christian Africans occurred also over the question of the kholwa chiefs. The first instance, as far as the writer has ascertained, of a missionary devising something resembling what was later termed a kholwa chieftainship was Henry Callaway's establishment in 1864 of an African committee to enforce 'village regulations' among the people at the Spring Vale Station. The regulations comprised rules as to

'the care of the school and chapel; salutations and conduct to superiors; cleanliness; regulations for cattle, fences, etc. They have the character of police regulations rather than of anything else, but they will be extended according to circumstances. The people themselves are to be the agents in carrying them out, and also are to have a voice in framing them'.

Five 'officers' were appointed to constitute a committee which elected one of its number as chairman.⁴⁸ Later on the idea was taken up by the American Board Mission who hoped that 'a leader from among those who were progressing would help the progress better than heathen chiefs would help'.⁴⁹ At first these leaders were termed 'indunas' and were, in theory, subject to other chiefs, but under the Code of 1891 they were given the status of chiefs.⁵⁰ The kholwa chief was elected by male Christians on the mission reserves and approved by the missionary in charge of the station. The appointment was subject to ratification by the Supreme Chief, who, in some cases, refused to approve it.⁵¹

The position of the kholwa chief was complicated by the presence on all mission reserves (or 'glebes' as the smaller allotments were called) of large numbers of pagans who, in nearly all cases, substantially outnumbered the Christians. (According to the returns furnished to the Lands Commission in 1902 pagans outnumbered Christians nine to one on the reserve with the largest population).⁵² Mgoduka, kholwa chief for the Adams Mission, explained in 1902 what this led to:

'I have equal power over the kolwas and the heathen on the Reserves. Some are under their own Chiefs, though they are living on the Reserve. There are two Chiefs beside myself. One lives on the Reserve, but the other has his people living there. The heathen and the kolwa Natives do not generally live in peace. Three Chiefs on one Reserve does not answer'.⁵³

Africans coming onto a mission reserve could choose either to remain under the jurisdiction of their former chief or to come under that of the kholwa chief. 'Some do one thing, some the other'.⁵⁴ This made for constant rivalry between chiefs for the allegiance of followers; and the rivalry was exacerbated by the pagan/Christian cleavage:

'There is no [mission] Reserve ... where all the Natives belong to one Chief, and if they here, on this Reserve, wish to leave their heathen Chief and go to this Induna who is made a Chief, there is great ill-feeling, and it damages [missionary] work, as the heathen Chief is prejudiced against mission work by the Induna's prerogatives as Chief'.⁵⁵

Before 1896 there was no power to define boundaries between chiefs on

mission reserves and, although Act 40 of 1896 attempted to remedy this, apparently it was not enforced.⁵⁶ In his evidence to the Lands Commission of 1902 S. O. Samuelson, the Under-Secretary for Native Affairs, said that there was friction arising from these causes on most of the mission reserves. He did not think, however, that the fact of an African being a Christian made any difference in the relationship between him and his chief:

'It is only when the Christian native tries to assert himself as against his Chief that trouble arises. Christian natives appear to think that by becoming Christians they are thereby taken out of the authority of their Chiefs Then the endeavour of the heathen Chief to retain his control over the Christian natives belonging to his tribe is called "persecution". I should like to know of a case of actual persecution, for the sake of religion, by a Native Chief in this Colony'.

Samuelson disapproved of the institution of kholwa chiefs and he was sympathetic to pagan chiefs in the friction that inevitably arose. He disapproved also of kholwa chiefs becoming exempted from customary law.

'I consider that every Native Chief should be subject to the Native Law which he administers'.⁵⁷ Anger was aroused in missionary and kholwa circles when, in 1891, Christians on a mission station elected one of their number as chief and the Government refused to recognise him because he was exempted.⁵⁸

By the end of the century the missionaries themselves had reached the conclusion that the experiment with kholwa chiefs had not been a success.⁵⁹ In 1896 the Reverend W. C. Wilcox, of the Umvoti Mission Lands, expressed his view that 'self-government' on this reserve was impossible because of the acute cleavages between the Christian Africans resident on them:

'The people here are divided into three factions who inherit the bitter animosities of the feudal days. Let a local justice or induna be chosen from one of the factions and the other two will immediately combine against him and it is impossible to execute any laws made by the people themselves, unless there is a strong hand at his back. Just now two of the factions have combined to try to oust the present induna of the station for no cause except that he fined the leader of one of the factions for

refusing to attend his court when a charge had been brought against him. Should they succeed in ousting him it would not remedy matters as neither of the opposing factions would be satisfied unless they got the indunaship for themselves, and the party that should get it would then be as bitterly opposed by the other faction as they are both now opposed to the present induna. This state of affairs is not new. Every missionary on this station has complained of it from the beginning as the great obstacle to mission work.

Another thing which contributes to foment the disorder is the fact that polygamists have been allowed to gain a foothold in the Christian community and to take part in their affairs. They form the leading element in the third party which is ever ready to stir up quarrels between the other two and take sides with the one that seems to favour their ends'. 60

Despite the real perversion of chieftainship and the obvious decline in its legitimacy, the official policy of preserving it remained unchanged. For the Natal Government chiefs symbolised the old order which they were anxious to shore up. Like the chiefs the administration opposed the disintegration of tribal society and assumed that demoralisation, lawlessness and a questioning of the white man's rule must be a necessary and intrinsic part of social change. "Give more power to the chiefs, that they may keep their people in better order", is the common cry⁶¹ A typical manifestation of this point of view was the comment of a committee appointed to investigate the causes of the alarming incidence of drunkenness among Africans:

'We view with feelings of apprehension the weakening of the power of the Chiefs over the members of their tribes, and of the Headmen over the members of their Kraals. The authority of the Magistrate is not by any means a substitute for tribal responsibility and tribal subjection. The comparatively sudden and violent breaking away from old habits and customs, and from the somewhat severe control of the Chiefs and Headmen, naturally leads to an abuse of liberty, and to licence'. 62

But the actual utility of the chiefs to the administration was ebbing fast, as the chiefs themselves pointed out. The chiefs were relied upon for 'the keeping up of a continual communication between the Executive and the native population'⁶³ In 1878 Bulwer had deplored the lack of intimacy between magistrates and Africans which, he said, led to a lack of

information. To remedy this he mooted the idea of paid informers. Galloway, the Attorney-General, doubted the wisdom of this and argued instead that the want of information was an inherent defect in the whole system: Africans had a double allegiance to their chiefs and to the Government, and when the two clashed the allegiance due to the chief was considered more obligatory than that due to the Crown. He noted that after the Langalibalele episode chiefs no longer visited the Secretary for Native Affairs and vice versa. He believed that little could be done unless the position of the chiefs were eroded in the eyes of their people and they were replaced by magistrates.⁶⁴ The real causes of the lack of information about what Africans were thinking were more complex than Galloway had suggested, although he was correct in saying that they were inherent in the system. In 1903 James Stuart recorded the remarks of an old African, which showed exactly how demands were suppressed in the supposed communication line. The African gave a long list of popular grievances and pointed to the conclusion:

'[T]here is no channel through which we can communicate our grievances to the Government. Whenever a meeting is called by authority our Chiefs will not permit any of their followers to give vent to those feelings of which I have already given you a lengthy illustration. Our Chiefs feel bound to keep in well with the authorities on account of the stipend each draws year by year. And so by these and other means it has become habitual with us to refrain from speaking on matters which lie near the heart and which unless uttered and in some manner attended to must 'ere long tear the whole people to pieces and cause our once fair organisation to fade and decay'.⁶⁵

Stuart himself was concerned that the absence of a means to express grievances would engender 'discontent and even sedition'. He said:

'At present no Magistrate encourages discussion on political subjects, in fact it is his business to suppress it and when, by ones and twos, chiefs get as far as the Secretary for Native Affairs they express their grievances and general sentiments in camera so that such conversations become personal to the Secretary for Native Affairs instead of general to the Government'.⁶⁶

The biggest bottleneck in the lines of communication, however, was the attitude of the Government which ignored the steadily mounting fury of the

African population, and deluded itself that all was well. If there was discontent and agitation, it was assumed to be inspired from without or by 'Ethiopianism' and/or the American Board Mission. Herein lay one of the crucial differences between Theophilus Shepstone's days and those of his successors: Shepstone had kept his eyes open to African discontent and, although there were exceptions such as the £5 marriage tax of 1869, he had used his influence to balk the enactment of legislation that would irritate Africans. No such inhibitions were operative in the 1890's and after. Shepstone had also encouraged chiefs to visit him and discuss their grievances. In the 1890's, however, a department regulation was introduced which required that chiefs should obtain a permit from a magistrate before visiting the Secretary for Native Affairs. This often meant a long journey to apply for the permit, another to collect the permit, and then a wait before they could proceed to Pietermaritzburg. Sometimes permits were not granted.⁶⁷ Colonel G. Leuchars, Secretary for Native Affairs, consistently refused to allow any chiefs to visit him to pay their respects. He did this deliberately because he believed that chiefs ought to communicate with the permanent head of the Department, i.e. the Under-Secretary. But Leuchars omitted to explain why he had departed from the old practice, and chiefs were offended. On one occasion an old and infirm chief who had served the Natal Government loyally for forty years visited Leuchars who had to see him because the Under-Secretary was away. Leuchars was said to have forced the old man to kneel on the floor.⁶⁸

The cleavage between chiefs and commoners and between chiefs and the administration had widened. The opinions of the subject African population were not taken into account as one restrictive law after another mounted into a massive pile of irksome and harassing bureaucratic controls. Even the loyal Chief Sibindi (who gave assistance to the government in putting down the Bambatha rebellion and was rewarded by the addition to his tribe of other tribes and sections of tribes whose chiefs were convicted as rebels)⁶⁹ complained bitterly in 1907:

'They had grievances. The greater portion of their trouble had arisen since the death of Sir Theophilus Shepstone. Everything in connection with the Government was satisfactory in the time of Sir Theophilus Shepstone, because he followed the practice which the Commission was adopting that day, and allowed the people to express their feelings. Since then, however, they had been placed at a disadvantage through not being permitted to lay their grievances before the Government in a satisfactory manner. The newer laws were troublous in some respects, but they could not make effective representations or secure any reply from the authorities'. 70

Some officials were conscious of a need to educate chiefs. In 1901, for example, the magistrate of Ipolela said in his report that it was high time that chiefs should be superior to their tribesmen in terms of education. Proposals were made for the establishment of four schools for the sons of chiefs and headmen. Pupils were to be instructed 'in matters of Government and ordinary local laws, and how to conduct themselves towards the Government, and those over whom they may have control'. No such schools, however, were established.⁷¹ To the évolu  class the chiefs' lack of education and the entrenchment of traditionalism which they represented were sources of resentment. Inkanyiso commented critically on the finding of the Magistracies Commission in 1892 that 'the principal chiefs and many headmen' were, on the whole, satisfied with their position:

'We should be surprised if it were not so. The chiefs and headmen have, on the whole, every reason to be satisfied with their very comfortable position. They, for the most part, are men who have no desire for anything than to be left alone in their barbarism to practise and enjoy their filthy customs; and seeing that these have by law been secured to them, well may they be satisfied But how about that large and growing class of Natives who do wish for better things, and who have left that savage state in which so many of their brethren yet remain? Did the chiefs and headmen speak for them?' 72

In 1907 Ilanga lase Natal questioned the advisability of allowing uneducated people to succeed to chieftainships and asked whether the time had not come for chiefs to be appointed solely on a basis of merit:

'The idea of chieftainship not being hereditary will be new to some of our people, and doubtless will cause a good deal of resentment and discontent, but we might as well be prepared for it. In the new order of things the office will be based on utility and fitness, and not upon a predecessor's qualities'. 73

The Supreme Chief

The Governor, as Supreme Chief, remained at the apex of African administration. The Native Administration Law of 1875 empowered him to exercise the authority of 'any supreme or paramount chief', in so far as this exercise was not repugnant to other provisions of the Law. He could dismiss chiefs who had been found guilty of any political offence 'likely to endanger the peace of the Colony' with the advice and consent of the Executive Council. Doubt arose in 1879 as to the extent of the Supreme Chief's powers when the Supreme Court ruled that he had no power to frame rules or rules of procedure in any court. It was held that the 1875 legislation had vested those powers in the Board of Native Law (established by Section 10).⁷⁴

More important, from the Executive Council's point of view was the inconvenience, under the Native Administration Law, of not having judicial powers vested in the Supreme Chief. This meant, according to the Secretary for Native Affairs, Henrique Shepstone, in 1887, that

'No effective check can be applied to the disloyal or otherwise criminal conduct and acts of the Chiefs except by the cumbrous processes of Courts of Law, and they know full well how difficult it is to obtain evidence from their people, usually the only evidence, to convict them'.

He said that some chiefs, on the advice of lawyers, were defying the government. This could have grave consequences:

'The general effect has been to paralyse the action of the Government; it cannot apply any timely remedy to known growing evils and dangers which might easily and safely be nipped in the bud, it is obliged to wait until these evils have grown to dangerous proportions and have shown themselves in overt acts, before it can think of applying the only check left at its disposal, namely, a prosecution in a Court of Law; and this it dares not have recourse to because of the almost certainty of failure, and because failure would at once proclaim the impotence of the authority that should be held in the highest respect'.⁷⁵

The powers of the Supreme Chief were restored by Section 7 of Law 44 of 1887. In 1891 Harry Escombe, a leading politician and Prime Minister of Natal in 1898-9, asked the Secretary for Native Affairs what the powers of a Paramount Chief were, and received the following reply:

'The powers of a Paramount Native Chief are absolute, and are legislative, judicial, and executive or administrative. They are limited only by the extent to which, as a Ruler, the Chief may be able to enforce his powers. Such a Chief may, in his discretion, and does, act with or without the advice and concurrence of his Councillors. It is the recognised practice, however, that no portion of the Tribal Landed Property can be alienated to people outside of the Tribe by any Paramount Chief without the advice and consent of his Headmen'. 76

The answer evoked criticism from an African correspondent in Inkanyiso who pointed out the tribal principle of government was that of 'a very limited monarchy'. 77

Sections 32 to 42 of the Code of 1891 set out the powers of the Supreme Chief. He had absolute power to appoint and dismiss chiefs, to call upon Africans to furnish military service and labour on public works, and, in conjunction with the Natal Native Trust,

'when deemed expedient in the general public good, [to] remove any tribe, or tribes, or portion thereof, or any Native, from any part of the Colony or Location, to any other part of the Colony or Location'

Even more sweeping was Section 39:

'The Supreme Chief, in the exercise of the political powers which attach to his office has authority to punish by fine or imprisonment, or by both, for disobedience of his orders or for disregard of his authority'.

Complementing these formidable powers was Section 40 which provided that the Supreme Chief was not subject to any Court in Natal.

The significance of the restoration of the Supreme Chief's power by the Code was that it almost entirely undid the reform of 1875. The Colonial Office had emphasised that such proceedings as those against Langalibalele could never recur (see p. 174). With the exception that deportation was not possible as a punishment, only the prudence of the Governor stood in the way of similar action. Indeed, in 1893 two feuding chiefs and their headmen were heavily fined by the Supreme Chief after an inquiry by the Secretary for Native Affairs. No charges were preferred and neither set of parties was defended. The implication was correctly stated by Inkanyiso: '... every chance of redress is closed, however great

the grievance a Native may have suffered'.⁷⁸

Part of the Supreme Chief's powers were temporarily removed by the Supreme Court in 1894. The case arose out of a disputed succession to a chieftainship. Seziba claimed to be heir to the great house of Chief Musi, but his uncle, Mesini, was appointed chief by the Supreme Chief. The Native High Court threw out the case, saying that it had no jurisdiction over the actions of the Supreme Chief. Counsel for Mesini argued before the Supreme Court that the powers of the Supreme Chief were 'indefinite, inherent, and uncontrollable' The majority decision of the Supreme Court repudiated this view, saying:

'There should ... be no hesitation in expressing the opinion that the act of the Supreme Chief in deciding upon heirship and awarding property, in conjunction with the promotion of Mesini to the Chieftainship, was an usurpation of power of which his office had been deprived, and amounted to interference with the authority and jurisdiction of Courts expressly and adequately invested with the faculty necessary for the control of claims and rights appertaining to the property in dispute between natives'.

The Court dismissed the argument that the Supreme Chief's powers were limitless, saying that it was not the intention of the Legislature that the Supreme Chief 'was to be a wholly irresponsible personage and beyond the reach of the Courts' Such a proposition, it said, 'could not be received with any favour in the interest either of law or of policy'⁷⁹

This decision applied only to heirship and not to succession to chieftainship which was in the sole competence of the Supreme Chief to adjudicate. Several cases involving a similar principle were heard, until in 1900 legislation was prepared which would make the Supreme Chief's decision as to heirship final. The aim of the legislation, according to Sir Walter Hely-Hutchinson, was to prevent ruinous litigation and 'the influence of the Supreme Chief with the Natives from being attacked'.⁸⁰

The Secretary for Native Affairs, F. R. Moor, informed the Legislative Assembly that an average of four to five chiefs died every year, and the Government was 'paralysed' in making new appointments.⁸¹ The legislation provided that the Native Affairs Department was to appoint three men to

make inquiries as to who the heir should be. No legal assistance was allowed to the parties and the decision of the three men was final.⁸² According to R. C. Samuelson the procedure adopted often led to great injustices because the subject matter was usually complex and the three men were far from experienced.⁸³

When responsible government for Natal was in the offing the issue of the Supreme Chief and his relations with the Executive Council had to be examined. In 1882 the Colonial Secretary, Lord Kimberley, pointed out that it would be inconsistent with the principle of responsible government for the Governor as Supreme Chief to act without the advice and consent of the ministry that was responsible to the legislature. He suggested that, in the event of responsible government, the Supreme Chief should cease to have legislative power over Africans: he must act on the advice of his ministers and could no longer properly be invested with undefined powers.⁸⁴ The matter was raised again in 1890 when the Governor, Sir C. H. B. Mitchell, refused to assent to a law to legalise the Code of Native Law because it would have excluded the Supreme Chief from amending customary law and given exclusive legislative authority to do so to the Legislative Council. An amendment by the Attorney-General to the effect that the powers of the Supreme Chief were unaffected by the bill was rejected. The Colonial Secretary, Lord Knutsford, approved Mitchell's action and said that he would not recommend assent to the bill until such an amendment was inserted:

'It would not be right for Her Majesty's Government, at the very moment when the question of Responsible Government is about again to come under consideration, to abandon its responsibilities towards the natives of Natal' ⁸⁵

In April 1891, Mitchell telegraphed Knutsford and asked whether the question of the Supreme Chief could not be considered in the context of a future bill dealing with responsible government and, in the meantime, the Code receive assent. Knutsford assented to this.⁸⁶

In the following month Knutsford advised that he could not recommend assent to the clause 8 of the bill to establish responsible government

which provided that the Governor was to be subject to the decisions of his ministers in exercising the powers and functions of the Supreme Chief.

But, Knutsford qualified his refusal:

'Unless in some emergency, he would no doubt be guided by their advice, but if the necessity for his personal intervention should arise, he must, as at present be responsible to the Queen for any action he may take in his capacity of Supreme Chief the Legislature may rest assured that there is no intention of invoking the powers of the Governor as Supreme Chief unnecessarily or in opposition to those of the Colonial Government and Legislature. It is difficult to forecast any circumstances in which it would be deemed essential to call these powers into operation except upon the advice and request of the Ministers'. 87

The Legislative Council, however, refused to be reassured, and in 1892 again requested the Governor to seek the British Government's agreement that under responsible government the Supreme Chief's powers would 'continue to be exercised', only after consultation with the Executive Council. In his reply Mitchell pointed out that the words 'continue to be exercised', used in the Legislative Council's address, were not an accurate description of the existing constitutional position of the Supreme Chief. 88

The British Government refused to budge, and the Instructions to the Governor that were issued at the time of responsible government contained the following restatement of the position Knutsford had adopted in 1891:

'VI. Before exercising the powers of Supreme Chief, other than those by law vested in the Governor in Council, the Governor shall acquaint his Ministers with the action which he proposes to take, and so far as may be possible shall arrange with them as to the course of action to be taken. The ultimate decision must, however, in every case rest with the Governor'. 89

As far as the writer has been able to ascertain there was no single instance between 1893 and 1910 when the Supreme Chief acted contrary to the wishes of the Natal cabinet. On one occasion, in 1898, the Governor, Sir W. Hely-Hutchinson, complained of an element of arbitrariness in certain pass law machinery proposed by the Cabinet. He received the following reply which is instructive in revealing the state of mind of those responsible for native policy:

'[Pass Laws] involve what would in the case of Europeans ... be regarded as a serious interference with freedom of contract and locomotion, but which, in the case of Natives, merely give statutory effect to the powers possessed by the Supreme Chief under Native Law. Natives are accustomed to and in fact appreciate the arbitrary exercise of power'. 90

However entrenched the Supreme Chieftainship may have become, it was not without its critics - white and African. Notable among these was Harriette Colenso, who persistently argued that this despotic power leavened the entire administrative structure with a despotic attitude:

'It is wrong morally, and injures all concerned, affecting those who have to carry it out. The habit of acting despotically produces the confirmed despot, or tyrant: ... is it reasonable to expect that young magistrates and acting assistant magistrates can mingle and maintain successfully the "paternal" attitude recommended with the despotism?'

She quoted Harry Escombe's statement in 1889 that 'the magistrates have contracted the idea ... that the officials are ... chiefs whose will is law'.⁹¹ On many occasions she demonstrated that there was no precedent for the powers of the Supreme Chief even in the autocratic tradition of the Zulu kingdom:

'... far from being essential to native law, the special powers claimed for the Governor as Supreme Chief are actually opposed to it. They are a foreign importation invented by Europeans possessing a superficial acquaintance with the natives, combined with a false notion of expediency'. 92

As Inkanyiso said in 1893 'no such person ever existed amongst our people'.⁹³

Even the Under Secretary for Native Affairs, S. O. Samuelson, condemned the use (he was careful not to condemn their existence) of the Supreme Chief's powers before the 1906-7 Commission:

'He cited in this connection the summary punishment of certain of the tribe of the late Usibepu for resisting the orders of the Supreme Chief. These men were arrested ... lodged in gaol, and sentenced to periods of imprisonment extending from one to two years. They were not tried or given an opportunity of saying anything for themselves He thought that those men who were liable to have their liberties taken away should have some opportunity of speaking for themselves, and he would like to see legislation passed extending this privilege. The autocratic power of the Supreme Chief had been increasingly exercised since Responsible Government, especially during the last two or three years'. 94

To Africans the Supreme Chief was part of a system which they regarded as oppressive. In 1906 the Supreme Chief, Governor Sir H. E. McCallum, asked himself why, since the Zulu war, there had been a change of front on the part of chiefs in Natal towards the Zulu monarchy. He concluded that with the Secretary for Native Affairs becoming a political appointment the Supreme Chief had faded into the background. The result was that in Natal the chiefs, in the absence of a representative of the Queen's government, had looked for a leader, and found one in Dinizulu.⁹⁵ McCallum's reasoning was the sheerest sophistry, and an indication of how far the Governor was out of touch with African feeling. It was improbable, to say the least, that a more prominent Supreme Chief could have been the leader Africans were said to be looking for. In his name chiefs were dismissed and people imprisoned without trial; and this was bitterly resented.⁹⁶

It is clear from the arrangements made in 1893 that constitutionally the Supreme Chief retained the power of independent action. In practice, however, he never acted independently of the ministry's wishes. His powerlessness is indicated by R. C. Samuelson's account of an episode which occurred sometime during the responsible government era (Samuelson gave no date). Samuelson presented the Governor with a copy of a pamphlet he had written. A few days later the Governor contacted Samuelson and said to him:

'I have read your pamphlet with great interest and agree with you, but I cannot do as I would like to do, for I would soon fall counter to the Government, of which I am a figure-head, and that Government could easily have me recalled. One must always look after one's bread and butter'.⁹⁷

Despite his powerlessness to affect the political process, it is evident that some Africans looked hopefully to the Supreme Chief to protect them from the colonists. When the powers of the Supreme Chief were under discussion in 1909 Ilanga lase Natal urged that the abolition of the Supreme Chieftainship would be fatal and that, in doing so, the British Government would not be doing its duty by the African population.⁹⁸

XVI

The African Response

In the 1890's and early 1900's Natal showed every sign of being a society that was running headlong into a major racial conflagration. As previous chapters have shown, discontent was widespread among all classes of Africans: chiefs complained of loss of authority; heads of families complained of their womenfolk's insubordination and the independence of their elder children; peasants endured poverty, shortage of land, heavy rents and a myriad of irksome controls and taxes. The kholwa class resented their rejection by whites and the many aspersions and disabilities to which they were subjected. Anger was mounting: it would become a fury, and sullen resentment would be transformed into violent conflict.

Presiding over this seething cauldron had been a succession of ministries (between 1893 and 1906 there were six Prime Ministers and four Secretaries for Native Affairs) none of which had paid much attention to African discontent. In the absence of African parliamentary representation little of their discontent was voiced before the Colony's legislators. Some might claim 'to know the native', as the familiar saying has it, but few really did. Writing in 1906 Maurice S. Evans, who was then emerging as a theorist of segregation and an authority on 'the native problem', mentioned that while he was a member of the Legislative Assembly he had been surprised that those members who spoke Zulu and claimed intimacy with African feeling all differed in their opinions as to what African reactions to legislation would be. He condemned the absence of a definite policy and the apathy which had characterised the treatment of African affairs for years past. He asserted that

'the administration of the Native Affairs Department has been exceedingly lax, that those who are supposed to look after native interests have been negligent, and that there has not been that close investigation and constant

watchfulness and thought which are absolutely essential to wise and good government of natives'.

Evans criticised the regulation that required chiefs to make a deposition to a magistrate before being allowed to visit the seat of government and state their grievances. Chiefs, he said, tended, instead, to stay at home and nurse their grievances. He concluded that 'accurate knowledge is what we most lack'¹

Among the kholwa class the fundamental grievance was the refusal of the Government to admit them to anything remotely approaching equality with whites. Their leaders saw clearly the contradiction upon which justification of the unequal society rested: Africans were 'barbarous' and therefore were not entitled to civic rights; but évolué Africans were mostly rascals, prone to crime and receptive to seditious doctrines that questioned the white man's right to supremacy. Ilanga lase Natal summed up the contradiction neatly:

'Certainly ours is a hard lot, for when we remain in our heathen state, we are blamed and when we follow the white people's customs we are found fault with. What shall we do?'²

Africans, according to Inkanyiso,

'expect to be led to a better way by the white man - they expect him to set his face against anything which is opposed to Christianity, and if he does not - if he confirms and establishes their degenerating customs, he must not be surprised if, instead of gaining the Natives' respect, he is despised by them'.³

A frequent complaint in African newspapers was that legislation, because it emanated from an all-white parliament, considered only white interests:

'We Natives are not admitted to the franchise, consequently, we are unrepresented in any political matters, thus we are forced into the state of dumb beasts, which can never express the pains of their bodies, nor advise us to the best way of managing them in order to get good service from them I am afraid the Government's knowledge of us is entirely derived from Magistrates, Administrators of Native Law, the Secretary for Native Affairs, and farmers'.⁴

Africans understood well from their own experience that oligarchies whose power rested on a restricted franchise governed in their own interest

and tended to ignore or discriminate against unenfranchised groups.

Denying that Africans did not understand the franchise, Inkanyiso pointed to the heart of the matter regarding the distribution of political power in Natal:

'The white man refuses to bestow the franchise on us, even upon a few, not because he thinks we will make a bad use of our vote, but because he feels that we might make too good a use of it. Through our representatives we should secure for our people what in so many instances, they have not now, viz. Justice; not only by seeing that laws are fairly and impartially made, not only by insisting that proper steps be taken to acquaint them of those laws, but also by insisting that native monies be well and fairly spent.

All this the white man knows full well. He is not afraid that we should get too much, but he is afraid that we should insist on having our due, and that, to him, is too much'. 5

The évolué class dearly wanted education for their children, and resented the limited facilities available to Africans. In 1903 it was reported that there were over forty African boys and girls from Natal who had left the Colony to obtain an education which was unobtainable in Natal.⁶ Even more galling from their point of view was the difficulty educated Africans experienced in finding jobs commensurate with their training:

'It is cruel to educate and fit us for positions which after all we are not permitted to fill. Removed from barbarism, and hindered from making use of the education which the Government bestows on him, the young Native finds himself very awkwardly placed. Already too many of his fellows are offering themselves as teachers; very few, though capable, are employed as clerks, and none are at work in the Railway department'. 7

People who found themselves excluded in this way, it was said, had to 'engage in some inferior work wherein their knowledge ... will be of no use whatever'.⁸ Even in the Native Affairs Department educated Africans were deliberately denied employment opportunities:

'It will be noticed that this Department delights in choosing heathen and illiterate natives as its subordinate officers. The Indunas of all Courts throughout the Colony are heathen men, the native police and messengers in the administration are the same; - and this is done by a Department that boasts of being part and parcel of a civilised and christian Government'. 9

The Natal Government's policy of showing up traditionalism wherever possible exacerbated relations between pagan and kholwa Africans. The latter complained frequently that they were especially singled out for rough or discourteous treatment at the hands of pagan policemen or other minor functionaries of the bureaucracy.¹⁰ In 1891 Inkanyiso alleged that

'Attempts are made to convince the Native that, at [mission stations], very little that is good and much that is bad is contracted. The raw Native is now held in preference to the Christian one. In civil courts they are first attended to and the "Kolwa" ... is jeered at, spurned, and put to all sorts of inconvenience. He is often told that he equals himself to a white man, but that his skin shall never turn white The result is that civilisation is retarded because there is no difference made in the treatment of "Kolwas" and that of Kraal Kaffirs'.¹¹

An African informant of James Stuart made similar complaints. On one occasion he had gone direct to the clerk of the court rather than approach him through an induna; for this he received a sharp reprimand and punishment. He said that

'Christian natives are always obliged to go through the Induna, even though exempted from the operation of native law and this native Induna, knowing the hold he has on Christian natives, will jeer at them, keep them waiting for a long time In short, the court Induna vents his spleen on Christian natives in every manner and treats them as ordinary natives, which they are not, and despises them as well seeing they belong to another class having become turn-coats'.¹²

In 1894 a leading kholwa, John L. Dube, alleged that certain magistrates were forcing Africans who came before them to go down on their hands and knees. 'The Native Christians ... are not excluded in this practice, and should they attempt to walk on their feet like men, policemen are ordered to force them to kneel down'.¹³ A related grievance was the insistence by some magistrates that Africans hail them with a royal salute, 'Bayete'. When a magistrate claimed that the requirement was 'the fulfilment of their own law' he was promptly cut down to size by Ipepa lo Hlanga: 'No petty chief or "induna" was ever greeted by the royal salute It was criminal to attempt it'.¹⁴ In 1905 Robert Plant claimed that a country magistrate had scolded some kholwa taxpayers for not being

polygynists in the following terms: 'Oh, bother you Amakolwa people coming with the tax for one house only! Why don't you do like the heathen and marry several wives? Then you would have to bring me more money at tax time'.¹⁵ Given the administration's clear preference for pagans, and their view of Africans as a source of revenue, Plant's story is by no means improbable.

Judging by editorial comment and other evidence the attitude of kholwa Africans to traditionalism was one of hostility, tempered occasionally by an acknowledgment that the tribal system had been well adapted to a particular environment - which had now passed. The shrill note in Inkanyiso's declamations against traditionalism reflected its leader writers' mission training. Customary law was 'our miserable Native Law'; polygyny and lobolo 'and their many debasing attendants' were 'corrupt customs'. Yet it was acknowledged that Africans had been deprived of much traditionalism 'which had an ennobling tendency'.¹⁶ It pleaded for Government encouragement to assist Africans 'to rise from their old barbarous and degrading customs, by changing the laws which at present make it so difficult for them to escape from these baneful influences'.¹⁷ The African newspapers frequently took issue with whites who made incorrect or unjust statements about traditionalism. In 1903 Ipepa lo Hlanga disputed the assertion that polygyny was responsible for African men's alleged disinclination to work: 'It is not a system to be encouraged, but we fail to see that it encourages laziness'.¹⁸ In 1909 Ilanga lase Natal rebuked a missionary for complaining that pagan fathers were reluctant to allow their daughters to become Christians. The editor pointed out that daughters had certain obligations to their fathers. 'We often call these people "heathen" and scarcely give them credit for having thoughts and feelings worthy of decent people'¹⁹ In a thoughtful editorial in 1908 on 'The tribal question' Ilanga lase Natal said that there were two opposing views on the desirability of traditionalism: one view was that it was an obstacle to progress, but the other held that it prevented 'general

vagabondage'. The editor commented:

'Here we have a predicament of two portions of a people, one which is moving faster than the other, and it follows that whichever of the two acquires the greater force, by virtue of numbers and by means of inherent ability to keep pace with the constantly occurring demands of the general social life of the Colony, has, or will have, the right to determine whether the old system must give way or not'.

He concluded that in time departure from the old system would become imperative but, for the present, neither view should be followed: there should be a via media whereby those who wished to emerge from traditionalism should be permitted to do so. In another editorial on lobolo Ilanga lase Natal advised that the

'best course to pursue is not to foster it, and to let it die out of itself. The Church and the government not supporting a custom ... we shall soon find the Native people giving it up; provided the Church and State continue to win the confidence of the Native people' 20

Most of the kholwa Africans who gave evidence before the 1903-5 and 1906-7 commissions opposed traditionalism although with variations in emphasis. P. M. Maling (a farmer), for instance, asserted that 'we should be all brought under one law. We only have one Chief and that is the King across the seas'. When asked if he was prepared to advocate 'the dropping of all Native customs, laws, and everything else' he replied 'yes'. Martin Lutuli, a kholwa chief from Grootville and chairman of the Natal Native Congress, was slightly more conciliatory although he assented to the proposition that the Government 'ought to make strong changes in their old habits and customs'. He described polygyny and lobolo as 'bad habits', saying that the latter had become 'just like a sale'. He did not agree that chieftainship should be abolished: 'These Chiefs assist the Government in many way'. Lutuli's evidence on the composition of the Congress affords a shred of evidence of the evolved political class's attitude to chiefs; Lutuli admitted that Congress represented 'only the Christian and civilised Natives' and that chiefs and headmen had not previously participated in it. But, he said, they had extended invitations to them to do so.²¹ Writing in

the Natal Mercury in December 1909, C. Kunene, a kholwa, criticised the Government for its failure to promote the development of Africans. He argued that the disintegration of traditionalism was irrevocable:

'So far as the natives are concerned, the old order of things has changed, and the new one has been substituted. They can look in vain for the resuscitation of what they enjoyed under their own forms of government, and they must submit to the inevitable. They may not wish for a recrudescence of the arbitrary rule of their own chiefs and the autocracy of their own kings, yet they do not feel "at home" with their new masters, because their inclusion in the body politic has been insincere, being only effected for purposes of self-aggrandisement or gain'.

Kunene advocated that Africans be granted parliamentary representation. He quoted Macauley's dictum: 'If men are to wait for liberty till they become wise and good in slavery, they may, indeed, wait for ever'.²²

There were, of course, many gradations between the views of the kholwa class, as quoted above, and those of traditionalists. Many kholwa people could not share the missionaries' intolerance of traditionalism, as the American Board Mission's difficulty in enforcing the 'Umsunduzi Rules' showed (see p. 287); and many members of independent African churches, too, saw no reason why Christianity and traditionalism should be regarded as mutually exclusive. But in general the kholwa people saw themselves as a special class, set apart from traditionalists and entitled to a measure of equality with the whites.

'In matters social we are quite content to keep separate [from whites] and it is to our welfare to do so. But to be denied participation in public affairs when we, as a people, form an integral portion of the British Empire is a gross injustice of medieval order'.²³

It was bewildering to the kholwa to have spurned traditionalism and then, in turn, to be spurned by the colonists for having done so. Although they frequently protested their loyalty to the government they were rebuffed and hurt by the prevailing colonist prejudice when, for example, a correspondent said in the Natal Mercury that educated Africans were

'the most lazy, arrogant, insolent human beings the white person has to contend with. You may teach the Native

religion from his birth to the day of his death, but you will never "refine" his principles, his character, or any part of his disposition'. 24

Equally offensive to some of the kholwa people was the paternalistic benevolence found among some whites, notably missionaries:

'It is lamentable that those who have a benevolent interest in our race too often express it with a kind of contemptuous pity, and regard our efforts at advancement much as they would a trick learned by a favourite animal, instead of the natural impulse of human beings like themselves'. 25

Whatever their colonist detractors said the kholwa people had drunk deeply of the well of western culture. There was an unmistakable suggestion of 'bourgeois' respectability in the following social notice that appeared in Ipepa lo Hlanga in 1903:

'The wedding was up-to-date in its general conduct; and unlike most native weddings, the invited guests were few and tasty, and the proceedings inside the chapel quiet and solemn'. 26

Another indication of cultural assimilation was found in recreational pursuits. In 1894 Inkanyiso said that

'the Natives are fast copying games from their masters, more especially in the city, where football seems to be the favourite game ... this will be shown by the number of Native clubs in Maritzburg'. 27

The grievances and frustrations of traditionalists were of a different order although they shared many in common with kholwa people. Shortage of land and resulting poverty was eroding the vitality of their social system: their whole world seemed to be disintegrating and they were powerless to stop it. Many of the strains which the old order was undergoing were reflected in the statement of the aged Chief Mafingo in 1905:

'We have to pay, pay, pay. That is all the interest the Authorities show in us. They do not help us in kraal matters and the management of our wives and families. Our sons elbow us away from the boiled mealies in the pot when we reach for a handful to eat, saying, "We bought these father", and when remonstrated with, our wives dare to raise their eyes and glare at us. It

used not to be thus. If we chide or beat our wives and children for misconduct, they run off to the Police and the Magistrate fines us; with the result that our families defy us and kraalhead control is ceasing to exist'. 28

The traditional family was ceasing to be a self-sufficient economic unit. Poverty forced men and, to a much lesser extent, women to take employment. The mobility and the growing sense of financial independence of the younger men struck severe blows at family solidarity and created a serious generational cleavage. The young man

'can earn everything himself and has his father completely at his mercy for if disinclined he will not help his father to carry out a contract and he can insist on his claim for a wife, through having while still in his boyhood contributed towards paying the annual hut tax and otherwise to both parents' wants' 29

In one of James Stuart's notebooks reference is made to a court case in 1900 in which a son, a minor, sued his father claiming certain meales and other crops. The father refused the claim on the ground that the son had no right to this produce as he was a minor and an inmate of the homestead. The magistrate found in favour of the son in a judgment which was said to have scandalised the whole community in which the parties lived. The magistrate's decision was reversed on appeal, the judge advising the son to make it up with his father: 'He could apply to the magistrate to take him out of the father's kraal and emancipate him from parental control'. To Stuart's note of the case is appended a statement by an African that 'when his son is of age he dare not appropriate his earnings without his permission'. 30

The departure of so many men for work as migrant labourers had various disruptive effects apart from the indirect ones described above. Several magistrates reported an increase in adultery resulting from the absence of husbands. In 1894 the magistrate of Lower Tugela claimed that

'Another reason for the increase of immorality amongst married women, is the fact that many men desert their wives and go off to the Goldfields or other labour centres, for years at a time, at the same time neglecting to send any money to their wives for either food, payment of Hut Tax, or rent' 31

In 1882 the magistrate of Upper Tugela described the adverse effects which a period of six to twelve months at the Diamond Fields had upon young men:

'they board in canteens, learn drinking alcoholic liquors and other licentiousness They come home changed men. The old men shake their heads and say that the Magistrate gives too much liberty to the young men'. 32

Poverty meant greater difficulty in raising lobolo and, because marriages were being delayed, seduction of girls was increasing.³³ In 1901 the magistrate of Upper Umkomanzi reported that fathers often permitted their daughters to live with their intending fiances who were unable to transfer lobolo because of the scarcity of cattle.³⁴

Complaints by men about the insubordination of women had been endemic ever since the legislation of 1869 and subsequent innovations had given them some protection against male powers (see pp. 105-6). Parental influence had declined: 'Girls, in spite of the wishes of their parents that they should marry men of property, married men who had nothing'.³⁵

Chief Mahlube complained to the 1906-7 Commission:

'If a man should reprove his wife, she would think nothing of striking him, and, when a case came before the Magistrate, the latter accepted the word of the woman, and called the man a rascal, despite the fact that women were notorious for having a sharp tongue Their women returned home at all times of the day. Sometimes they remained away all night. They were in great difficulties about these women. Some ran away from them, others they succeeded in restraining; it was all a matter of chance whether they stayed at home or not'.

Sikiti complained that

'there was something wrong in their laws, which rendered it possible for their girls to run off to towns, and, under the pretext of working lead a loose life, and bear children by all sorts of people'.

To Damana it was a matter of clothes:

'they become pregnant owing to having taken to wearing European clothing. Originally, when girls had not so much clothing about them, they did not become pregnant, but, when the missionaries came, they caused them to put on clothes, and they went wrong'. 36

Further evidence of conflict was the report by one of James Stuart's informants in 1898 that women were 'bewitching' their husbands to a greater

extent than formerly.³⁷ Another informant, Nombango, told him:

'The people are by degrees falling to pieces in every direction as a result of European government, but this is not all. There is another side almost as bad and that is the indiscriminate and fearless way in which people go about takata-ing [bewitching] one another. They hack at one another; whilst, on the one hand, the European government is loosening the various ties of life and thereby killing the people, they are themselves busy doing their best taking one another's lives'.³⁸

There is unfortunately little evidence on the incidence of accusations of witchcraft.³⁹ The statements by Stuart's informants undoubtedly reflect the tensions of a changing society; patterns of human relationships were changing and an element of fluidity was present, as new status and rôle alignments were formed; social norms were being questioned and social changes whose direction and destination could not be foretold, contributed to a state of insecurity and anxiety. In a social turmoil like this witchcraft accusations were almost certainly frequent.⁴⁰

It is very probable that many attributed the spread of diseases to the activities of witches. The annual reports of the Native Affairs Department bore evidence of the increasing ravages of measles, leprosy, small-pox, enteritis, dysentery, pneumonia, enteric fever, malarial fever, venereal disease and tuberculosis.⁴¹ There was evidence, too, that standards of domestic hygiene were deteriorating. In 1894 it was reported from Lower Umzimkulu that

'It is noticeable that as time goes on the average Native kraal does not improve in construction and upkeep. They are becoming more dirty every year, instead of improving'.⁴²

Drunkenness was widely reported to be on the increase.⁴³ Women and younger men (who formerly were not allowed to partake at all of traditional beer or only in moderate quantities and under supervision) were now participating in beer-drinking gatherings almost as freely as the older men themselves.⁴⁴ In 1898 regulations were promulgated in an attempt to curb this. The regulations provided that beer-drinking gatherings were not to be occasions for inviting large numbers of people from different tribes, or

different sections of the same tribes between whom animosities could be stirred. The attendance of women, girls and other minor inmates was to be discouraged.⁴⁵ That the need to apply this palliative was felt of course, was yet another indication of changing mores. The measure was resented by Africans as yet another bureaucratic interference with their social life. The 1906-7 Commission reported that

'it has become the practice to send Native Constables to these gatherings, a doubtful expediency at the best, for, while intended to check fighting, it does not check licentiousness, and it has the effect of making the responsibility of the kraal-head sit lightly upon him, in the presence of the representative of law and order'.⁴⁶

The Government claimed to be solicitous of traditionalists but its policies, or lack of them, negated any solicitude and rendered this claim, in the eyes of traditionalists, transparently insincere. Landlessness, poverty and the multitude of regulations that were deemed necessary to keep the lower caste firmly in its place, did not create conditions in which traditionalism could thrive. The enforcement of these regulations was at least as important as any other factor in causing the revolt of 1906. Apart from the beer-drinking restrictions, there was a multiplicity of passes ('and difficulty in procuring same'⁴⁷), regulations making it punishable for Africans to have burweed on their land, forest regulations, tick fever regulations, scab-sickness regulations, cattle-driving regulations, game regulations, and yet others.⁴⁸

Despite this multiplicity of regulations and laws none of them, including the Code of Native Law, was published in Zulu. In 1892 a group of Africans unsuccessfully petitioned the Legislative Council to have all government notices and laws published in Zulu as well. The Secretary for Native Affairs gave three reasons for refusing to grant the request: (1) it would incur great expense; (2) most of the petitioners were exempted Africans; and (3) not more than 1,000 heads of families could read Zulu. To the latter point Inkanyiso replied: '[W]e can only express a wish that he may soon find more time to acquaint himself with progress which has taken

place amongst our people within the past few years':⁴⁹ In 1893 Inkanyiso reported a rumour was circulating among Africans that capital was being made out of them: 'They imagine that they are purposely kept in ignorance of all laws affecting them in order that the fines, being numerous in consequence, may augment the public funds'⁵⁰ After the rebellion a correspondent writing in the Natal Mercury said:

'the unfortunate Zulu should be freed from the incubus of the patchwork legislation of past years. No mere man can tell exactly what the law is. There are so many laws that the Zulu does not know whether he is standing on his head or his feet. He has so many papers that the poor wretch would really need a private secretary to tell what they all are. He would need a pocket lawyer to keep him "au fait" with the laws'. 51

Joseph Baynes, a leading colonist and a member of the Legislative Council, wrote in 1906 of the other side of the legislative coin:

'Before the rebellion the return of the arrests made by the police, chiefly of coloured people [he was referring to African], published in the Government Gazette, gave a monthly average of over 4,000, or about one twentieth of our total population every year. Many of these arrests, resulting in fines, imprisonment and flogging, are for breaches of Laws, Regulations and Municipal Bye-Laws that would never have been promulgated had the coloured people been in any way sufficiently represented in Parliament, and in our Municipal Councils. And there is no doubt that the punishments inflicted in many cases constitute a greater crime than is the offence for which the punishment is inflicted'. 52

The restrictive web affected both traditionalist and kholwa alike.

To the traditionalist, already in economic straits, many of the restrictions, such as those regulating social gatherings interfered with traditional activities; to the kholwa they were part of a system aimed at preventing him from obtaining equal rights with whites. White political leaders, claimed Ilanga lase Natal,

'openly maintain that the black man is destined to be led, but not to lead; to be thought for by others, but not to think for himself. This applies with very marked emphasis upon the natives of Natal and Zululand, who are saddled at every turn with restrictions that stifle all the aspirations which lurk within their breasts - restrictions in education - restrictions in religion - restrictions in bettering their condition in the matter of migrating from colony to colony in order to offer their services to the highest markets -

restrictions in obtaining the franchise - restrictions even in the insignificant matter of walking upon the foot-paths - restrictions in fact whenever and wherever there is a possibility of enforcing them'. 53

In their anger the traditionalists looked back nostalgically to a golden age when their social order was relatively intact and when the government was more sensitive to their needs: 'In the days of Sir Theophilus Shepstone, he said, they were governed satisfactorily; he thought the Government should stand up more in their interest, in the same way that Sir Theophilus Shepstone used to do'.⁵⁴ The kholwa, in contrast, looked to the day when their cultural and political assimilation would be advanced.

Discontent with existing circumstances was heightened by fear of the future. Rumours of future drastic measures were frequent. Stuart was told in 1898:

'We say the white people be zile = have come to stay. That they will turn us into coolies, make us build houses like those of coolies. Our reason for such conclusion is because hut tax was fixed first at seven shillings, then at fourteen shillings per hut, then ... a definite number of cattle were said to be for lobola viz. ten; then to pay dog tax. Why should dogs be paid for, seeing they cannot speak? There was at one time a rumour to the effect that children, cattle and goats would be paid for [i.e. taxed]. What will eventually happen when everything that can be got has been obtained from us is that natives will be sold to other people, so that some kind of further profit may be made out of them. Each year a new law is proclaimed, and each has to be learned and grasped. I cannot think what the end of all this will be'.

Another informant said:

'There was a rumour sometime ago in Natal that izitembu [polygyny] were going to be put a stop to and men allowed to marry only one woman each. Natives discussed the matter amongst themselves a good deal and were determined that their custom would not be put a stop to; a sife kanye = we may as well be killed, meaning that they would defend it with their lives. It seems white people force their own custom on the natives by might not by reason'. 55

The spark that set alight the tinder-dry brush was the imposition of a poll tax in 1905. Natal was in the grip of a financial depression following the South African war and faced a deficit. In introducing the poll tax legislation the Colonial Treasurer, T. Nyslop, asserted that Africans did

not contribute enough to the revenue and, moreover, the 1903-5 Commission had recommended increased taxation of Africans. The new tax, which was to replace the hut tax, would be personal and, therefore, it would cast the fiscal net around young men many of whom did not assist their fathers in paying the hut tax. In addition African men having more than one wife were to pay an annual tax of one pound for each additional wife. Hyslop estimated that the new tax would bring in £100,000 more than the hut tax. The Minister of Native Affairs, H. D. Winter, stressed the beneficial effects the new tax would have upon the labour supply. Pointing to the existing wage structure, he claimed: 'Is not the reason for wages being so high due to the fact the Natives are so independent that they can work for six months and then live idle life for the other six'. The Prime Minister, C. J. Smythe, estimated that every African paid an annual average of 9/5¹d. to the revenue compared with the amounts of £30.11.4. and £1.6.4. paid by whites and Indians respectively.

Much of the debate turned on how the proposed tax would affect the African family structure, whose joints were already creaking. Several members warned that the tax would strike a further blow at the solidarity of the family. E. A. Brunner (the member for Eshowe) said that while the hut tax had been a joint family liability, the poll tax was personal, and in imposing it

'we do away with the personal interest of each inmate of a hut in his home; we destroy the community of interest ... felt by the Native population in the contribution of this tax, and we substitute a personal tax which, if it is once discharged, absolves each individual from any further liability towards his parents, his kraal head, or his chief, and so strikes at the root of the tribal system which it has been throughout our administration our aim to encourage'

Several other members spoke in similar vein, and warnings were sounded against the attempt to tamper with polygyny. Smythe reassured the House that the new tax could do no more to break down the traditional family system than the hut tax had done. The hut tax, he said, had led to

over-crowding and immorality. The magistrate of Inanda was quoted as expressing astonishment at the numbers of occupants who were crowded into each hut: 'Formerly it was the custom to have what are known as amalau, as separate sleeping huts for young and unmarried men and girls, and amadokodo for the children. This has practically disappeared'. According to Smythe the poll tax would remove the causes of this over-crowding. He concluded his speech by saying that he had, 'too great a faith in the loyalty of the Natives of this Colony' to anticipate any unrest among Africans when the poll tax was enforced.⁵⁶

There were many misgivings about the new tax, although the bill passed the second reading in the Legislative Assembly by twenty six votes to nine.

Harriette and Agnes Colense petitioned members, asserting

'That as regards the proposed wife tax:
(a) A tax on lawful marriage is immoral, and promotes illicit connexions, prostitution, and the moral and physical degeneration of the race; hitherto attempts to alter the marriage customs (including lobola) of the Natal native have been failures, more or less injurious to the morals of the said native' 57

The bill was rejected by the Legislative Council, which refused to assent to the punitive tax on polygyny. A new bill, however, was then introduced into the Legislative Assembly. The tax on polygyny was dropped but a poll tax of £1 per annum was to be paid by every male, regardless of race, over the age of eighteen years. Any African liable for the hut tax was to be exempt from poll tax.⁵⁸

The parliamentary debate had largely ignored the ability of Africans to pay the new tax. As the remarks quoted above showed, the proceedings had been largely concerned with a hypothetical discussion of the effects of the tax on the traditional family. The real difficulty which Africans would encounter was stressed by Ilanga lase Natal shortly before the outbreak of disturbances early in 1906:

'It is the young man who must provide money for all expenses in the home, besides paying large rents to farmers, dog tax, hut tax and earn his ten head of cattle for lobola. In view of the fact that the wages have greatly fallen down since this financial depression ... we fail to see

how the natives are to raise the Poll Tax. The burden is too great for the poor natives to carry. The most unjust view of the Tax from the native point is that while he is being taxed, he is refused representation in the House to watch his interests He is entirely at the mercy of legislators, who secured their seats in Parliament by declaring that "let us sit on them (natives)". 59

The events of 1906 and the trial of Dinizulu, former King of the Zulu, for alleged complicity in the rebellion are not included in this account, as they have been fully described in several other works.⁶⁰ Thirty whites and 3,000 Africans lost their lives in the fighting. The number of African killed was remarkably high considering that, according to Stuart, only 12,000 participated in the rebellion.⁶¹

The immediate reaction of the Natal authorities was to blame 'Ethiopianism' for the rebellion. In a statement given to the 1906-7 Commission Assistant-Commissioner Mardall of the Natal Police attributed the discontent and rebellion to education and missionary influence which he claimed, 'tends to inculcate an equality between black and white, which is a dangerous doctrine in Natal, and must result in discontent in the subject race'. He asserted that a large proportion of the rebel prisoners were kholwa, although he admitted that it was difficult to distinguish between kholwa and Ethiopians. As a corollary to this account of the causes of the rebellion Mardall launched a xenophobic attack on the American Board Mission without mentioning them by name:

'Mission Stations, controlled by foreigners, have lately proved hot beds of rebellion. At these places everything is taught except loyalty to the Government and the Crown If mission stations must exist in Natal, they should be British, and loyalty to the Government should be made one of the main features of the educational system'. 62

The Governor, Sir Henry McCallum, took a similar view:

'It seems certain that many of the semi-civilised natives who are the outcome of missionary effort ... have been, unfortunately, agents for spreading ideas of resistance against constitutional authority, or in other words, in

showing in an active form the aspirations of the Ethiopian movement'. 63

These accusations, and many in similar vein, led to protracted and acrimonious discussion between the American Board and the government. The American Board, naturally, wished to clear its name of the slur that had been cast upon it and pressed the authorities for proof of their allegations. In February 1907 the semi-annual meeting of the Board resolved

'That we protest against the persistent effort that has been made by Government to discredit native christians, and especially those of the American Zulu Mission by exaggerating the part that has been taken by christian natives in the rebellion, which in the case of the American Zulu Mission, as in the case of other societies near the rebellion centres has been insignificant, being only the falling away of comparatively few individual members, while the great body of communicants remained loyal'. 64

An indication of the state of relations between the Mission and the Government is given by James Dexter Taylor's comment in June 1907:

'For four years the mission has endured from the Natal Government suspicion, injustice and slander which has culminated during the current year in the publication throughout the world of an official statement from the Governor of the Colony himself to the effect that the churches of this mission are beyond the Mission's control and are a danger to the Government'.

He asserted that probably not more than a half a dozen members of the legislature regarded Christian missions as beneficial to the country. 65

It was, of course, difficult to ascertain precisely what role the kholwa had played in the uprising. Stuart, the semi-official historian of the revolt, estimated that only five per cent of the rebel prisoners held in July 1907 were Christians. Dube, the most prominent kholwa in Natal and the editor of Ilanga lase Natal, consistently urged the kholwa to refrain from participating in the revolt and to stay loyal. 66 In February 1906, after disturbances had occurred at Richmond, Ilanga lase Natal appealed to kholwa: 'Here is a splendid opportunity for you despised "Mission Kaffirs" to prove that your education is a blessing in the Country Pay up your poll tax first, and explain to the people why the Government found it necessary to impose this tax'. In June the editor pointed to the

'terrible ill-usage' of Kholwa by the rebels in Zululand as 'sufficient proof that the Christian natives are viewed by the rebels as being enemies'. He urged the Government to bear this in mind in any future re-adjustment of native policy.⁶⁷ In April 1907 Ilanga lase Natal quoted with satisfaction a letter from Sir Charles Saunders, Commissioner for Natives in Zululand, in which he said without hesitation that 'the behaviour of the Amakolwa generally throughout Zululand was all that could be desired during the recent rebellion'.⁶⁸

Despite these views Dube's newspaper remained highly critical of the Natal Government. In January 1906, for example, Ilanga lase Natal pointed out that 'White men can have big meetings to protest against the poll tax, but if native people and their chiefs say a word against that measure they are suspected of disloyalty'.⁶⁹ In May it was pointed out that the rebellion would not have occurred unless 'there had not been plenty of combustible material, the result of loss of respect'⁷⁰ When a group of white farmers petitioned the government, during the rebellion, to raise the poll tax to £2 and to impose a tax on wives Ilanga lase Natal exclaimed that 'The time has come for us natives to feel like leaving Natal and seek homes in countries where we wouldn't be treated as we are here'.⁷¹

To the Natal authorities Dube's undeniable sympathy with the mass of Africans in their grievances was dangerously close to sedition. In May 1906 he was hauled before Governor McCallum to be administered a rebuke for allegedly seditious articles that had appeared in his newspaper. The Governor claimed that as a result of what he had learned in the United States of America he taught doctrines 'which were not in harmony with the relations which should exist between the blacks and the whites in this Colony'. Educated Africans, he said, should support the Government. Dube denied that he intended to write seditious articles but he wished 'to express the native mind so that the authorities might right the wrongs which I regard as being carried on by the authorities'. On being asked what injustices he saw Dube complained of the indiscriminate seizure of cattle

belonging to people who had not been responsible for the disturbance. The Governor then reminded Dube that he was a 'Bantu' and that he knew very well that 'according to Bantu custom it is tribal and not individual responsibility that is attached to any disturbance of this nature'. Where, he asked, did the injustice arise? To this Dube replied: 'I expected the English Government to deal more justly, with the natives than the Bantu custom would have done'. In conclusion the Governor observed to Dube: 'I presume you acknowledge that we are the ruling race'.⁷²

In a careful review of the evidence a recent investigator, Shula Marks, has attempted to delineate the extent of kholwa of participation in the rebellion. It seems that of those Christians who participated the large majority were members of independent African churches. Marks concludes:

'the Amakolwa of Natal took up no single stand on the 1906 disturbances: they were as divided as their fellow tribesmen. While about three hundred Christians levies fought on the government side, an equivalent number joined the rebels, while the majority, even in the areas of military operations, tried to retain a precarious neutrality. It is of course difficult to estimate the influence of those who joined the rebels, but it would not appear to have been profound. There is substantial evidence that a number of these Christian participants were forced to join the rebels against their will through fear of reprisals'.⁷³

It should be pointed out, too, that at no stage was the Natal Native Congress even remotely implicated in the rebellion. The poll tax rebellion was a peasant or traditionalist uprising in which the peasants themselves viewed the kholwa as traitors (amambuka).⁷⁴ As Stuart himself said, the rebellion manifested dissatisfaction with European rule and a desire to control their own affairs on lines other than European ones.⁷⁵ The 1906-7 Commission found that

'It was primarily a revolt against restrictive conditions, assisted by a natural desire, common enough, as history shows, amongst subject races, to return to their own mode of tribal and family life They wonder why their family system is permitted to crumble to pieces, and their daughters go astray; why they are compelled, through the Courts, to pay heavy rents and usurious interest; to submit to the overbearing conduct of the Police, and to laws they were ignorant of, and in the making of which they had no voice'.

In another paragraph the Commission said that

'A few Natives went the length of saying that the days of Tshaka were to be preferred to the present; others regretted not knowing of a place where they could escape the white man's rule, and live as they liked. These exceptional utterances should not be passed over in silence because spoken by a few, as there is reason to believe they represent the thoughts of many'. 76

The evidence from Africans heard by the Commission must have been a revelation to many colonists. Traditionalist and kholwa alike poured out a torrent of grievances whose depth and bitterness impressed the Commission. One witness, Mvuyana, remarked that his grievances 'were so great that he preferred to die, be shut down in a coffin and buried, rather than continue to endure the trouble he was at present suffering from'.⁷⁷ Dholozi, a chief from Ixopo division, told the Commission that '[i]f any other nation as strong as the British should appear, the Natives would fly to and attach themselves to it, owing to the heavy troubles that at present afflict them'. He attributed the rebellion to

'the heavy burdens which ... had been pressing on the people for many years past; for, he added, the master may continue to hit and strike his dog until the time comes when the dog seizes hold of the hand of his master. This was what had occurred'. 78

What was remarkable about the evidence taken from Africans was its consistency; in all parts of the Colony Africans expressed similar views. A recurrent theme was the poll tax; not only did it press heavily upon them financially but it exacerbated the strains to which the traditional family was subjected. Socwataha informed the Commission that

'the one main cause of the Rebellion was the imposition of the Poll Tax, which had not only been keenly felt monetarily, but it had the effect of separating the children from parents. The young men were very angry at having to pay this tax, and, had the matter been carefully looked into, it would have been found that these young men were disloyal, and had in their possession new assegais. These young men who were now being arrested were in the habit of exclaiming, "Happy are those who have already fought and are now dead". The kraal-heads ... were the persons who should be taxed. They were the property owners, and the result of placing this tax on the boys was to give them a position of independence which they had no right to claim'. 79

The evidence of H. D. Winter, Minister for Native Affairs in the ministry that had enacted the poll tax legislation, is worth mentioning to illustrate the width of the cleavage between white and African opinion. It had been frequently asserted that legislation, including the ill-fated poll tax law, was not adequately explained to Africans. A member of the Commission asked Winter whether, in his opinion, this was so, to which he replied:

'You know what natives are. They will make a mountain out of a mole hill. You hear an ill-advised native who wants to do mischief say, "I never heard the Magistrate". Then you get the individual white man who backs the natives up. Those are the people we have to guard against. If these people were not in existence you would not have any trouble with the natives, and you would not get the complaints from them'.

Winter did not believe that Africans had 'any reasonable ground to feel dissatisfied'⁶⁰

The Report of the Commission, although confused and muddled in many instances, was a serious indictment of past policies. 'Weighed and wanting must be the reluctant verdict upon past efforts to reconcile them [Africans] to changed conditions of rule and policy, and to convert them into an element of stability and strength'. The policy of shoring up traditionalism and neglecting African advancement in education, agriculture and other matters was condemned. The Commission noted, too, that the traditional reliance on tribal rivalries was worthless as a safeguard:

'Recent events have... shown that these once acute animosities can no longer be relied on to maintain order, and that community of blood and speech are sufficient upon common cause to set them at rest, and to unite once disunited tribes'.

Moreover, said the Commission, common grievances had reduced the cleavage between the kholwa and pagan classes of Africans.

On the topic of traditionalism the Commission was ambivalent, reflecting perhaps the divergent views of its members. On the one hand it said:

'It is admitted by most competent judges that tribalism must for the present, and, indeed, for a long and uncertain period, remain as a necessary institution, and an indispensable component part of the government of the

Natives. With a full confession of all of its defects, political, moral, and social, and as a bar to individual progress, to attempt to sweep it away would be suicidal, and lead to worse evils than now surround it. Paradoxical as it may seem, it is proposed, concurrently with its maintenance, closer regulation and supervision, that means should be adopted for its silent and unobserved disintegration. It should be remembered that the growth of the system has been a natural process, and that organic development is equally necessary to its supersession and extinction. Tribes or portions of tribes are of all dimensions - some are too large and others are too small, and their areas are scattered and ill-defined. Concentration is recommended, with some manageable standard of size'.

But on the other hand the Commission recommended that the powers of chief and family heads be strengthened:

'To control the growing lawlessness of young men and women, Chiefs and kraal heads should be entrusted with more authority in the direction of securing social order and the maintenance of discipline amongst their people. The loosening of the family tie fills husbands and fathers with alarm, and the fabric of their social system is disappearing before the inroads of misapplied and abused personal liberty. Social evolution in relation to these people is a question that demands much more encouragement by Government than it has received in the past, because, apart from its manifest advantage to the individual, it is a political engine of the highest importance in reducing the power of the Chief, and consequently achieving the disintegration of the tribal system. As they become fitted by character, education, and intelligence, they should be encouraged to dissociate themselves from tribalism by every agency and means that can be devised for their welfare, so that the system will gradually disappear, more by internal force than by external law'. 81

These two paragraphs were obviously intended as an all-embracing compromise: colonists would be satisfied at the insistence on maintaining traditional controls; chiefs would be satisfied at the restoration of some of their powers; and the kholwa and missionaries would be encouraged by the Commission's emphasis on the desirability of 'social evolution' and its advocacy of more educational facilities and a less restrictive attitude towards exemption in which it saw, potentially, 'one of the most powerful political devices for the disintegration of tribalism'. 82

A strong attack on the Commission's recommendation was made by S. O. Samuelson, the Under-Secretary for Native Affairs who described them as

'lamentably inadequate and disappointing'. He argued that reforms could not be carried out in a climate of racial antipathy, exclusiveness and selfishness. 'So long as the European population of the Colony regards the Natives as the Nobility of France regarded the proletariat before the Revolution, little progress can be made towards a permanent settlement'.⁸³ The Governor, Sir M. Nathan, warned against any rapid stripping away of power from chiefs, citing the Sierra Leone rebellion of 1898 one of whose causes was the dissatisfaction of chiefs with their loss of power. To avert any such danger Nathan recommended that the chief be given power 'as a Government officer as he loses it as a tribal head. The more native law can be administered by native chiefs the better'.⁸⁴

Viewed against the background of African discontent neither the recommendations of the Commission nor the reforms passed by the Natal parliament were anything more than minor palliatives which could not cure what Africans saw as the main afflictions of the body politic: landlessness, poverty, and the denial of civic and political rights. A bill was introduced in 1908 which provided for the appointment by the Governor-in-Council of four members to represent African interests in the Legislative Council. African opinion, in general, rejected the measure. A large deputation of Africans, comprising chiefs, ministers and headmen, waited on F. R. Moor, the Prime Minister and Secretary for Native Affairs, and informed him that the four members could not be considered as their representatives, but nominees of the Governor-in-Council. They requested, instead, 'the extension of the franchise to the native races of this Colony'.⁸⁵ The bill was never enacted largely because a majority of Natal's legislators would not tolerate the idea of African representation in any form. A further measure was a bill 'To provide for the better administration of Native Affairs'. The bill's provisions dismayed Africans. Over two hundred chiefs and headmen called on Moor in April to protest. Others petitioned the legislative Assembly in July saying that the bill would 'confer the

authority and powers, now held by His Excellency the Supreme Chief alone, on an indefinite number of officials' while these powers were 'opposite to the spirit and letter of the law of the British Empire, repugnant to the spirit and principles of civilised and just government, and not in accordance with our Native Law'.⁸⁶

The Law 'To provide for the better administration of Native Affairs' (Act 1 of 1909) was hardly a radical innovation. It merely tinkered with the existing system. For purposes of African administration the Colony was divided into four districts each under the control of a District Commissioner; the Secretary for Native Affairs was to be an office held by a permanent official (a change reflected the frequently made claim that Africans could not understand the frequent changes in the head of a department occasioned by changes of ministry). The Minister for Native Affairs, officers of the department of Native Affairs and other officers exercising administrative functions under Native law were, in terms of the legislation, to be regarded as representing the authority of the Supreme Chief and were answerable to the Supreme Chief only. The power possessed by chiefs to punish their subjects by fine was raised from £2 to £5. Another provision was the creation of a Council for Native Affairs consisting of nine persons. The nine members would consist in the Secretary for Native Affairs, the four District Native Commissioners and four non-official members, chosen by the Governor-in-Council, one coming from each of the four districts created by the law. They were chosen on the basis of their knowledge of African affairs. The object of the Council, according to Moor, was 'to try and take the native question out of party politics'.⁸⁷ This proved to be a chimera that haunted many later white politicians. The Council was purely a 'deliberative, consultative and advisory' body, i.e. it possessed no legislative teeth. Its functions were to revise all existing legislation and regulations affecting Africans, to consider the existing system of taxation, to advise the government on all matters calculated to lead to the betterment of Africans and to consider and report upon all proposed

legislation of Africans, and to consider and report upon all proposed legislation affecting African interests.

The rebellion of 1906 had tarnished Natal's reputation in the eyes of other South African colonies and embarrassed her in the deliberations about Union. Cape and Transvaal politicians said hard things about the native policy of which so many white Natalians were proud.⁸⁸ But the remarkable feature of native policy in the years after 1910 would be the extent to which institutions, administrative devices, and theories of native policy that had developed in Natal would be incorporated in the policies of Union governments.

University of Cape Town

XVII

Conclusion

The joint efforts of Africans, Asians, and whites had created in Natal an economically interdependent society, but strife between the races tended to obscure the realities of this co-operative interaction. In essence it was a racial oligarchy dominated in all respects by the colonists, and maintained, in the final analysis, by force. The separate administrative and legal provisions made for Africans by Theophilus Shepstone were pragmatic responses to pressing governmental problems. But they were buttressed by Shepstone's conviction that the cleavage between white and black was too great to be contained within the framework of an integrated administration.

It has been shown that colonist views on traditionalism differed over time but depended always on their conception of their own interests. The tribal system had initially seemed to them a military danger and an economic obstacle that outweighed any administrative benefits that its retention might have afforded. The change in colonist opinion was a gradual one, and by no means all colonists came to share the view that traditional law and custom should be retained. A study of the evidence given by white Natalians to the two commissions in 1903-5 and 1906-7 shows that many still expressed opinions hostile to traditional institutions.¹

The views of white politicians and administrators had little relation to the realities of life among Africans. When the mainstream of colonist thought came around to supporting Shepstonian traditional African society was disintegrating under the impact of land scarcity, missionary endeavour, poverty, and the increasing enmeshment of Africans in a wider-scale multi-racial society. However loudly politicians might proclaim the usefulness and the virtues of the old order they did nothing to arrest this erosion. An ostensible concern for traditional institutions did not go so far as to

recreate the living space and isolation in which they could flourish. Land and labour were the vital issues: tribal society postulated a plentiful availability of land and economic self-sufficiency, but in Natal this had ceased to exist. Fewer than half of the African population lived in the reserves and even then the reserves were overcrowded. Despite colonist complaints about the quantity and reliability of African labour the evidence has shown that spells of work as migrant labourers became increasingly necessary to growing numbers of Africans. Enlarging the reserves or undertaking vigorous measures to raise their productivity were unthinkable, given the status of Africans as a subordinate caste whose role was to provide whites with labour and revenue (from taxes and import duties). The maintenance of the tribal system seemed compatible with this role. Moreover, it avoided the expense of a direct system of administration, and kept Africans politically docile and more amenable to white rule. Even the revolt of 1906 did not destroy this illusion. It is something of a paradox that the more traditionalism disintegrated and the more Africans accepted the inevitability of change the greater was the praise of Shepstonism. The colonists never acknowledged the contradiction in their views and, in general, they never understood traditionalism or the manifold forces that changed it. They equated traditionalism with stability, and change (as represented by the kholwa class) with the unknown currents and hazards of an open society in which they were numerically far outnumbered.

By the turn of the century the spectre of tribal rebellion had seemingly receded. The Zulu had been crushed in 1879 and much of the best Zulu land was being opened up for white settlement. In Southern Rhodesia the Ndebele and Shona revolts had been suppressed in 1894. Shorn of its dangerous potentialities, the tribal system could be used as a bulwark of white rule. Views similar to those held in Natal were evident on the wider South African scene. Much of the force of earlier arguments against traditionalism had gone. In 1903 the Transvaal Labour Commission weighed up the arguments for and against maintaining the tribal system and concluded

with a warning that attempts to abolish it would be unwise:

'Considerable difference of opinion was expressed as to the effect of the natives' present tribal system upon the labour supply, some witnesses supporting its abrogation, while others held that it should be maintained on the ground that the maintenance of communal responsibility was an advantage which should be strengthened rather than weakened The more weighty proposals put forward to improve the supply recommended that the existing native social system should be attacked with the object of modifying or destroying it. Marriage and family ties, native laws of succession, inheritance and ownership are bound up indissolubly with the existing tenure of land and native tribal system and to weaken or destroy the existing bases of native society clearly involves social consequences of the gravest and most far-reaching character. It may be said generally that in our opinion such changes should not be considered from the standpoint of their effect on the labour supply. The existing relationships between the white and black races are more important than a full supply of African labour for local industries, and modifications of these relations the effect of which will probably be felt for generations, should be fully considered from these wider points of view before adoption'. 2

The Commission dismissed the old objection to polygyny that it impeded the flow of African men into the labour market by enabling them to live in idleness on the labour of their wives. Polygyny, the Commission said, had only a 'small influence' on the labour supply, and in any event it was decreasing from natural causes. Moreover, the Commission found that lobolo was in fact a 'considerable incentive' for Africans to enter the labour market.³

Even more important were the conclusions of the South African Native Affairs Commission of 1903-5, whose recommendations carried much weight with policy makers after Union. The Commission found that 'the abolition of the tribal system and chieftainship is being left to time and evolution towards civilisation, assisted by legislation where necessary and administrative methods'. It advised against prohibitory legislation on polygyny and lobolo, saying that they would disappear in the course of time. Furthermore, the Commission accepted the general view presented to it that it was not desirable to dispense with the administrative use of chiefs. According to statistics collected by the Commission the following percentages

of married African men were polygynists:

Cape Colony:	25%	
Transkeian Territories:	22%	
British Bechuanaland:	9%	
Natal (excluding Zululand):	20%	
Transvaal:	11.65%	
Orange River Colony:	5%	4

The earlier optimism that Western culture could be impressed upon Africans had evaporated. A study of the British Colonial Office between 1905 and 1908 has shown that by this time

'The mid-Victorian objective of turning Africans into black Europeans had long been given up, and the question of educating them towards self-government of the European type relegated to the distant future The tendency was ... towards segregation rather than assimilation, though elements in the Liberal tradition had always believed in separate development. Probably the main reason for this was the collapse of the old confidence that Europeanisation was inevitably beneficial'. 5

In Natal the colonists feared the social and political consequences of the breakdown of the restraints of traditionalism. When the dangers of traditional institutions had apparently abated, and when the colonists perceived that the khulwa class were their main competitors, traditionalism took on new virtues; it afforded a convenient peg upon which to hang discriminatory legislation. Cultural assimilation involved a blurring of the line between race and culture which had formerly been so clear. The colonists no longer held a monopoly of cultural 'superiority' and it became correspondingly more difficult to justify their exclusive racial privileges. To justify maintaining these privileges the line had to be redrawn. It is clear that the colonists favoured segregationist ideas not because Africans were 'barbarous', 'primitive', or 'savage' but because a significant group of Africans no longer conformed to these stereotypes and claimed admission into the upper caste. Africans were acceptable provided that their subordination was undisputed; and westernisation, to colonists, was unmistakable evidence of a claim to equality. Intercaste etiquette emphasised 'differences'. Thus

'Many English-speaking colonists seem to have a repugnance to hearing natives using the English language,

and go so far as to decline to carry on a conversation in it, and so Kitchen-Kaffir is invariably the medium used in the towns and is the rule even in the country districts'. 6

Many colonists in Natal professed to like Africans who were traditionalists and who had no pretensions to 'aping the white man'. Writing in 1900 Sir John Robinson claimed that Natal's policy had produced a 'contented, loyal, and light-hearted population ... with a merry abandonment and an apparent zest in labour that bespeak perfect contentment with life and its burdens'.

In the reserves, he said, one finds

'a race leading a life of almost idyllic freedom and repose, with as much absence of real cause for care, as much enjoyment of the primal elements of existence, as any people unencumbered by the obligations of civilisation could desire'. 7

Another prominent Natalian, H. D. Winter, told the 1903-5 Commission that the African

'has no wants As long as a Native can amuse himself by going to dances, courting girls, and generally drinking beer; as long as he can have his little amusements, he is not going out to work. That is, really, the life of the Natal Kafir'. 8

In common parlance Africans were feckless, child-like, pleasure-seeking, lazy, but also cunning and sensual. These stereotypes, in the colonist view, justified white domination. But westernised Africans who no longer possessed these alleged attributes found even less favour. Contradictory attitudes within individuals and groups are a well-known phenomenon to sociologists. Merton has observed that

'there is no paradox at all in damning out-groupers when they do and when they do not exhibit in-group virtues. Condemnation on these two scores performs one and the same social function. Seeming opposites coalesce. When Negroes are tagged as incorrigibly inferior because they (apparently) don't manifest these virtues, this confirms the natural rightness of their being assigned an inferior status in society. And when Jews and Japanese are tagged as having too many of the in-group values, it becomes plain that they must be securely controlled by the high walls of discrimination'. 9

In the Natal system the Africans could not win: the traditionalist because of his 'barbarism', and the khulwa because of his acceptance of western

values and the resulting claim to equal status with whites.

Developments after Union in 1910 form no part of this thesis. But it should be noted that policies and institutions originating in Natal found favour with later policy-makers. The Supreme Chieftainship, demarcation of reserves, the use of chiefs and the recognition of customary law all became embedded in 'native' policy. It is a myth that apartheid is the exclusive product of Afrikaner nationalism. Its antecedents are to be found in Natal rather than in any of the other provinces. A long line of segregationist writers and politicians from Natal did much to create the climate of opinion in which segregation became acceptable to white electorates. Perhaps the most prominent of these was G. Heaton Nicholls, who emerged as one of the leading theorists of segregation in the 1920's and 1930's. In his autobiography he discussed the stand taken by Natal parliamentarians over General J. B. M. Hertzog's proposals:

'The Natal members, from the beginning, followed the traditional Shepstone line. They wanted to see Parliamentary representation extended to the Zulus as a whole, on a communal basis. They wanted to retain and develop the native reserves which Shepstone ... had, alone in South Africa, secured for them. They wanted the maintenance of native law which Shepstone had ascertained from the chiefs and which the Transvaal Republic had adopted. And they wanted to maintain and strengthen the civilising policy which lay at the root of all Shepstone's administration, and which aimed at the civilised advance of the Zulu nation en masse, as a separate identity'. 10

Nicholls's view of Shepstone's policy may have been a rose-coloured one, but its significance lies in the revelation of the pride which white Natalians took in their traditional policy. In South Africa as a whole, as in colonial Natal, white and black people continued to draw closer together in culture. The Natal tradition provided a ready-made rationalisation for attempts to keep them apart.

Footnotes

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9. Ibid., pp. 644-5.
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11. Stanley to Napier, 10 April 1842, ibid., pp. 700-4.
12. Napier to Stanley, 25 July 1842, Bird, ii. 46-55.
13. Stanley to Napier, 25 Aug. 1842 and 12 Oct. 1842, ibid., pp. 87-8, 103-4.
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39. NW, 28 July 1865.
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14. i.e. the institution of the levirate.
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17. NW, 2 Oct. 1853.
18. Ibid.
19. NW, 15 March 1861.
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21. 1883 Commission, ii. 38.
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31. Rev. Dr. Woolsey, 'Bishop Colenso and the Reverend Lewis Grout on Polygamy', New Englander, May 1858. Quoted in A Brief Outline of the Reverend Lewis Grout's Eighty Years' Life and Labour in Africa and America - Sketched by Himself (Brattleboro, 1895), p. 32.
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48. NGG, 16 Feb. 1869.
49. GH 51, Granville to Keate, 15 March 1870.
50. GH 1540, Memorandum, 22 March 1869.
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53. Secretary for Native Affairs, Circular to resident magistrates, 15 Oct. 1870.
54. SNA, 1/8/9, Circular, 5 Oct. 1869.
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56. NW, 4 June 1869.
57. GH 1216, Keate to Granville, 24 June 1869.
58. NW, 4 June 1869.
59. NW, 11 June 1869, NGG, 8 June 1869.
60. GH 1216, Keate to Granville, 24 June 1869.
61. NW, 18 June 1869.
62. NM, 1 Sept. 1863.
63. SNA, 1/8/9, Shepstone to Keate, 12 July 1870.
64. NGG, 28 June 1870, NW, 1 July 1870.
65. GH 51, Granville to Keate, 15 March 1870.
66. SNA, 1/8/9, Shepstone to Keate, 12 July 1870.
67. NW, 30 July 1869.
68. NW, 11 June 1869.
69. NW, 7 Sept. 1869.
70. NW, 30 July 1869.
71. NW, 30 April 1869, letter from 'Ploughboy'.
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80. NW, 25 Oct. 1872.
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5. 1852-3 Commission, ii. 25.
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3. 1883 Report, ii. 423.
4. Stuart, Notes on Theophilus Shepstone (based on questions put to John W. Shepstone), 1912 (JSC), p. 26.
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8. GH 1540, MacFarlane to Pine, 29 Jan. 1874.
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15. Colenso and Durnford, pp. 24-34. Major Durnford played a prominent part in the operation.
16. Brookes and Webb, p. 115.
17. Smith, pp. 416-7.
18. Colenso and Durnford, p. 24.
19. Lucas, pp. 164, 175. Lucas cites the opinion of the Cape Colony's Attorney-General that the Voortrekkers were guilty of no offence when they seceded in 1836.
20. Bryant, Olden Times, p. 181. Putile (or Putini) was chief of the Ngwe tribe.
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22. Molapo was said to have behaved treacherously. See Wyn Rees (ed.), Colenso Letters from Natal (Pmb., 1958), p. 277.
23. C.-1121, Pine to Carnarvon, 16 Aug. 1874, pp. 5-7.
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25. Rees, p. 283.
26. C.-1145, pp. 77-82.
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30. C.-1025, Minutes of Proceedings of the Court of Inquiry into certain charges preferred against Langalibalele, pp. 48-9.
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33. Ibid., Minute By T. Shepstone, 12 June 1874, p. 11.
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4. Minutes of Proceedings at a meeting of Magistrates held at Pietermaritzburg on 8, 9, 10 and 12 Dec. 1859, p. 7.
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43. 1906-7 Commission, Ev. p. 984.
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52. Ilanga lase Natal, 7 Aug. 1908.
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56. Ibid., i. 44.
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59. Evidence given before the Lands Commission, Ev. of Kilbon, p. 61: 'They are a cause of discord since the Government gave them the status of Chiefs. At first we favoured them'.
60. Wilcox to C. Bird, 2 May 1896, quoted in Report of Lands Commission, pp. 67-8.
61. F. Mason, p. 8.
62. Report of the Committee on the Supply of Intoxicating Liquors to Natives (Pmb., 1902), p. 37.
63. NW, 29 June 1878.
64. GH 1552, Memorandum, 18 May 1878; cf. SNA, 1/7/11, report of acting Secretary for Native Affairs, 19 June 1878.
65. Stuart, 'The Coming into contact of European civilisation with the Zulu people', 28 March 1903 (JSC).
66. Stuart, Memorandum on 'Creation of a Department for studying the Natives, for listening to their grievances and suggestions as to their own government as well as guiding and advising them on the one hand and the Natal Government on the other', 29 Jan. 1904 (JSC).
67. R. C. Samuelson, Long, Long Ago, p. 183.
68. R. A. Marwick, 'Why the Natives Rebelled', Ilanga lase Natal, 5 Oct. 1906.
69. GH 1548, McCallum to Earl of Elgin, 7 Feb. 1907.
70. 1906-7 Commission, Ev. pp. 643-4.
71. BNNA 1901, Ipolola Division; GH 1550, Notes by S. O. Samuelson on Native Education (n.d.)
72. Ink., 28 July 1892.
73. Ilanga lase Natal, 22 Nov. 1907.
74. GH 130, Judgment in Kumalo v. Moodie, 8 Dec. 1879.
75. GH 1545, H. Shepstone, Memorandum on Section 7 of Law 44 of 1887, 3 Oct. 1887.
76. SP 1891, L.C. No. 17.
77. Ink., 9 July 1891, letter from Lanyasima.
78. Ibid., 27 Jan. 1893.
79. Sisiba v. Meseni, Natal Law Reports (Supreme Court)(New Series) 15 (1894), 237-49.

80. GH 1230, Hely-Hutchinson to Chamberlain, 22 June 1900.
81. LAD, Vol. 29, p. 189.
82. A protest was made against the encroachment upon the judiciary's powers by the Natal Missionary Conference. See SP 1900, L.A.11.
83. R. C. Samuelson, Long, Long Ago, p. 191.
84. C.-3174, Kimberley to Bulwer, 2 Feb. 1882.
85. GH 161, Knutsford to Mitchell, 13 Dec. 1890.
86. GH 161, Mitchell to Knutsford, 18 April 1891.
87. GH 164, Knutsford to Mitchell, 28 May 1891.
88. NGG, 23 Feb. 1892.
89. Eybers, pp. 212-5.
90. GH 1034, Prime Minister's minute 23 of 1898, 2 Aug. 1898.
91. Notes of a speech on 'Native Government' in Natal, 1907 (Harriette Colenso papers).
92. GH 166, H. E. Colenso to Knutsford, 29 Oct. 1891.
93. Ink., 22 Sept. 1893; for an illustration of the fact that African chiefs were not above the law see Hilda Kuper, An African Aristocracy (London, 1947), p. 67. She cites two cases where chiefs were fined by their councils.
94. 1906-7 Commission, Ev. p. 11.
95. GH 1303, McCallum to Colonial Secretary, 19 Aug. 1906.
96. For example of the extent to which chiefs were humiliated see R. A. Marwick, 'Why the Natives Rebelled', Ilanga lase Natal, 5 Oct. 1906.
97. R. C. Samuelson, Long, Long Ago, p. 201.
98. Ilanga lase Natal, 3 May 1909.

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1. Evans, The Native Problem in Natal (Durban, 1906), pp. 7, 15, 18.
2. Ilanga lase Natal, 19 Feb. 1908.
3. Ink., 9 July 1891.
4. Ink., 5 May 1892; letter from 'Philanthropist'.
5. Ink., 26 May 1892.
6. Ipepa lo Hlanga, 3 July 1903.
7. Ink., 30 July 1891.
8. Ink., 9 July 1891.
9. Ipepa lo Hlanga, 4 Sept. 1903.
10. Ink., 26 March 1891, 2 July 1891 and 8 Sept. 1893.
11. Ink., 20 Aug. 1891.
12. Stuart, 'Conversations', Mabase (n.d.) (JSC).
13. Ink., 11 May 1894; letter from John L. Dube; see Ink., 22 June 1894; Dube's allegations were confirmed by a correspondent 'BL'.
14. Ipepa lo Hlanga, 11 Sept. 1903.
15. Plant, p. 79.
16. Ink., 16 April 1891.
17. Ink., 25 June 1891.
18. Ipepa lo Hlanga, 26 June 1903.
19. Ilanga lase Natal, 19 Nov. 1909.
20. Ilanga lase Natal, 6 March 1908 and 19 Nov. 1909.
21. 1903-5 Commission, iii. 499, 863-70.
22. C. Kunene, 'Black and White with special reference to Natal', NI, 22 Dec. 1909.
23. Ipepa lo Hlanga, 22 Jan. 1904.
24. NI, 28 Dec. 1904; see Ilanga lase Natal's comment, 20 Jan. 1905.
25. Ink., 16 Aug. 1895.
26. Ipepa lo Hlanga, 23 Oct. 1903.
27. Ink., 4 May 1894.
28. Dept. of Native Affairs, Annual Reports, 1905, Umlazi Division.
29. John W. Shepstone, 'Reminiscences', p. 27 (John Shepstone papers).

30. Stuart, 'Conversations'. The reference is to the case of Ngazana v. Nospai, reported in NM, 15 Dec. 1900 (JSC).
31. BBNA 1894, Lower Tugela Division.
32. BBNA 1882, Upper Tugela Division.
33. BBNA 1894, Lower Tugela Division.
34. BBNA 1901, Upper Umkomanzi Division.
35. 1906-7 Commission, Ev. p. 842.
36. Ibid., pp. 848, 723, 754.
37. Stuart, 'Large Notebook of Articles', note dated 26 Nov. 1898.
38. Stuart, 'Conversations', Nombango.
39. For a fragment of evidence see 1906-7 Commission, Ev. p. 725.
40. Max Marwick, 'The Continuance of Witchcraft Beliefs', Prudence Smith (ed.), Africa in Transition (London, 1958), pp. 111-4.
41. The development of the migrant labour system facilitated the spread of disease.
42. BBNA 1894, Lower Umzimkulu.
43. Report of the Committee on the Supply of Intoxicating Liquors to Natives, passim.
44. Ibid., pp. 36-7.
45. Government Notice 620 of 1898.
46. 1906-7 Commission, Report, p. 45.
47. Ibid., p. 48.
48. 1906-7 Commission, Ev. passim.
49. Ink., 7 July 1892.
50. Ink., 3 Feb. 1893.
51. NM, 17 June 1908, letter from 'Ajax'.
52. Joseph Baynes M.L.C., Letters Addressed to His Excellency The Governor of Natal (Pab., 1906).
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57. Ilanga lase Natal, 11 Aug. 1905.

58. Act 38 of 1905.
59. Ilanga lase Natal, 1 Dec. 1905.
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61. Stuart, History, p. 406.
62. 1906-7 Commission, Ev. p. 1023.
63. Cd. 3247, McCallum to Earl of Elgin, 29 June 1906.
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65. AKIC V/1/4, Report of Negotiations with Government during the Year 1906-7 on matters relating to Mission work, 26 June 1907.
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67. Ilanga lase Natal, 16 Feb. 1906 and 29 June 1906.
68. Ilanga lase Natal, 12 April 1907.
69. Ilanga lase Natal, 19 Jan. 1906.
70. Ilanga lase Natal, 4 May 1906.
71. Ilanga lase Natal, 13 April 1906.
72. GH 1269, Notes on interview between the Governor and John L. Dube on certain articles in Ilanga lase Natal, enclosure 1 in McCallum to Earl of Elgin, 30 May 1906.
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77. 1906-7 Commission, Ev. p. 772.
78. Ibid., p. 709.
79. Ibid.
80. Ibid., pp. 215, 221.
81. 1906-7 Commission, Report, pp. 5, 16, 17.
82. Ibid., p. 23.
83. NCC 1908, pp. 59-67.
84. GH 1274, Minute, 7 Oct. 1907.
85. NW, 15 June 1908.

86. Francis E. Colenso, The Reign of Unlaw in Natal (Pmb., 1908), p. 7.
87. LAD, Vol. XLIV (1908), p. 146.
88. L. M. Thompson, The Unification of South Africa: 1902-1910 (Oxford, 1960), pp. 47-8.

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1. See, e.g., 1903-5 Commission, iii. pp. 311 (G. H. Rudolph), 366 (E. A. Brunner), 484 (L. Viljoen), 546 (J. W. Mackenzie), 575 (J. C. Emmett); 1906-7 Commission, Ev. p. 74 (W. Pearce), 108 (R. A. Marwick), 138 (Dr. Evans), 143 (H. Stidston-Broadbent), 155 (T. J. Allison), 208 (W. Wilson).
2. Cd. 1896, Reports of the Transvaal Labour Commission (London, 1904), p. 39.
3. Ibid., p. 34.
4. 1903-5 Commission, i. 42, 57-60; Annexures, p. 28.
5. Ronald Hyam, Elgin and Churchill at the Colonial Office: 1905-1908 (London, 1968), p. 539.
6. Evans, Black and White, p. 51.
7. Robinson, Life Time, pp. 316-7.
8. 1903-5 Commission, iii. 477.
9. Robert K. Merton, Social Theory and Social Structure (Second ed.; New York, 1957), p. 430.
10. Nicholls, p. 282.

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