Punishment and the Extraction of Labour in Colonial Botswana

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Abstract

The role of law as an instrument of colonial rule in sub-Saharan Africa seems to have received inadequate attention in the historiography while on the other hand, the extraction of African labour has received significant coverage. This has meant that the relationship between punishment and labour has rarely been thoroughly investigated. Under colonial rule transplanted law was the constitutive law of the state. But amongst the panoply of laws used to facilitate colonial control over African territories, it was criminal law that was more directly employed in the colonial enterprise for purposes of social, political and economic control. This paper discusses how criminal law was used to facilitate labour extraction in colonial Botswana, which served as a labour reserve for the South African economy for much of the twentieth century.

Introduction

With a few exceptions (Chachage 1990; Shivji 1982; 1985; 1986 and Seidman 1978) the role of law as an instrument of colonial rule in Africa does not get adequate investigation in the African historiography. This has meant that the relationship between punishment and labour has rarely been put under the spotlight (Seidman 1978). Where these two issues are discussed, they have been subsumed under the logic of modernisation theories (Ahire 1990). According to the modernisation accounts, the primary function of colonial laws was to bring order to societies which had hitherto known only anarchy. This view echoes the beliefs held by liberal proponents of European imperialism when colonial expansion began in earnest in the late nineteenth century. Missionaries, and subsequently the practitioners of imperial rule represented colonial law as a 'civilizing influence' (Lugard 1965:546-547 and Fitzpatrick 1992:107-111). Punishment inflicted on the indigenous population was seen as being in the interest of social order and progress (Fitzpatrick 1992). A general survey of literature which gives particular prominence to the use of criminal law in the colonial context conveys a classic image of 'authoritarian statism' (Poulantzas 1978 and Jessop 1980).

It has been suggested that the features of colonial laws were largely determined by the objectives of the colonising powers (Ghai and McAuslan1970; Samir Amin 1972 and Seidman 1978). Punishment by extension also mirrored these objectives. Colonial relations throw into sharp focus a seldom explored dimension of the law/society relationship – that is how law can be used to structure the social universe. Even in Western contexts, while literature abounds on the influence of the social on the legal, there is very little written on how the relationship works in reverse (Roshier and Teff 1980:201). Yet the most profound changes wrought on native institutions and social structures by the European powers resulted from the imposition of Western law (Ghai *et al* 1987 and FitzPatrick 1984). Colonial powers deliberately employed law to induce social change in those parts of Africa they controlled. Law became the instrument for establishing colonial rule, defining and mediating the power relations between the rulers and the ruled. It was directly constitutive of economic and social relations in a way that contrasted sharply with what was conceived to be its role in the contemporary West. Perhaps, more importantly received law operated as a framework under which the objectives of the colonial enterprise, which were primarily economic, could be realised.

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Criminal law was at the cutting edge of the state's drive to restructure the lives of the indigenous people to suit its policies. In British dominated Southern and Eastern Africa in particular penal sanctions were used to induce the flow of labour and to regulate contractual work (Bouman 1984 and Chachage 1988) in a way that recalls Rusche and Kirchheimer's (1968[1939] and Garland 1990) thesis in their seminal work 'Punishment and Social Structure'. To that extent the state used law (criminal law in particular) in a way that violated the fundamental principles of liberal legality.

It is not surprising, therefore, that the species of law found in the colonies differed in several important respects to English Law as it was practiced in England. Firstly, law was shorn of its guarantees against abuses especially in relation to liberty and due process. The only people protected against unfair treatment were 'Freeborn Englishmen' whom it was presumed carried with them all the rights guaranteed by English Law (Ghai and McAuslan 1970; Mukherjee 2005 and Kolsky 2005). Secondly, law and punishment were actively deployed to extract labour and regulate relations between African workers and their European employers. Employment contract, which ordinarily falls outside the ambit of criminal law, was criminalised (for example, master-servants ordinance(s)). As a result, most of the cases that came before common law courts 'in the main involved not traditional crime, but criminalized forms of administrative rules' (Seidman 1978:207).

The blurring of criminal law with administrative and political edicts was not accidental. It had as much to do with the fact that political control and extraction of labour were the overriding concerns of the colonial state, as the unity of functions amongst colonial officials. Magistrates functioned as both judicial officers and district administrators. This meant that judicial independence could not be guaranteed, hence Seidman's observation that in African colonies the judicial functions of state institutions were subordinated to administrative and political objectives (Seidman 1978:207; Malila 2012; R v the Earl of Crewe (*Ex Parte* Sekgome)). The selective application of the rule of law reflected the racial hierachisation and status differentiation that colonial officials inscribed on the law. Importing racial divisions into the realm of law served to justify roles assigned to Africans on the basis of racial myths. As Ghai and McAuslan put it:

> Africans were to be coerced into performing their required role in society, whether it was work, to pay taxes, to live in a particular place, or to move about the country, and thus the criminal law, and the courts to enforce it were in many respects key institutions in native administration for they underpinned the whole approach of the colonial administrator…. Europeans on the other hand, were invited to, perhaps a more accurate description would be were conceded as a result of their demands, a great degree of cooperation in the administration of law (Ghai and McAuslan 1970:506-507).

The result of segregationist and discriminatory legislation was the denial of formal equality of Africans in the European courts. In fact, in many instances the white community were so unwavering in their opposition to formal equality that sometimes disturbances ensued if the state deviated from the principle of white racial superiority in the interest of fairness (Seidman 1978:203). The law was therefore used as both an instrument of coercion and division. In the eyes of the state and the white settler community deviance and punishment, if invited, reinforced the 'otherness' of Africans while simultaneously confirming their 'inferiority'.

Periodic clashes in the courts and outside between the state and local populations often brought into sharp focus contradictions between the use of law for control and exploitation of Africans on one hand and for the purpose of legitimating of colonial rule on the other. Thus despite the popular ideological justification of the 'civilising mission' the colonial state was a state whose birth could only be explained in terms of its original role as conceived at the Berlin Conference (1884) –that is, to serve the economic interests of the colonising power (Chachage 1988).

The Colonial State in Botswana and the Territory as a Labour Reserve

Botswana was declared a British protectorate in 1885 by Sir Charles Warren, and whereas *dikgosi* (chiefs) were surprised at this development they accepted British colonial rule without any meaningful resistance as they knew that it could be fatally futile. It was initially the desire to protect the strategic corridor linking British possessions in the north and the south from German and Boer take-over that prompted the British to extend their protection over the territory. They called it Bechuanaland Protectorate. Initially rudimentary structures were set up to establish British authority in the Protectorate. The territory was headquartered in Mafikeng, Cape Colony. The constitution that led to the formation of the Union of South Africa in 1910 had provision for eventual transfer of colonial Botswana to South Africa. Therefore, it was assumed that the territory would ultimately become part of South Africa and some of the policies of the colonial governments were designed with this eventuality in mind. The bulk of the colonial civil service officials were recruited in South Africa and a good number returned there upon retirement (Makgala and Maundeni 2010:19-38). It appears that the British were not interested in developing strong administrative structures in the protectorate (Parsons 1979; Parsons 1984 and Picard 1987).

Colonial Botswana like other African territories under European rule was dogged by problems of racism and the territory's close proximity to South Africa only exacerbated matters. (However, it has to be admitted that compared to her neighbours Botswana suffered very mild colonial exploitation and racism). A large body of legislation was borrowed from the 'native code' of the Cape Colony (later Cape Province of South Africa). Unlike most other colonies Botswana did not have a large settler population but nevertheless criminal and tax laws were used to force young men to provide labour to mining houses in South Africa.

Since the Protectorate's initial importance was that it was merely a corridor to the north (Central Africa), the main objective of the British rule during the opening decades was simply to establish political control over the territory and its inhabitants. There was such great reluctance on the part of the rulers to bear the cost of administering the territory that there was suggestion to hand over the administration of the territory to the brutal and notorious British South African Company in the 1890s (Parsons 1998). The Protectorate's value as a labour reserve for South Africa soon dawned upon the territory's administrators. Thus labour and tax laws in the Protectorate were essentially designed to facilitate the extraction of labour (Amin 1972; Parsons and Palmer 1977; Parsons 1979; Bouman 1984 and Malila 1994). In that respect they were not dissimilar from those found in other parts of Eastern and Southern Africa described by Samir Amin (1972:504) as 'Africa of the labour reserves'.

The colonial state's policy towards the territory was clear and consistent so only 'sufficient monies were spent to ensure the simple reproduction of the minimum infrastructure necessary for the system of migrant labour to continue and other expenditure kept as low as possible to ensure that there would not be opportunities within the Protectorate which would attract labour away from migration' (Parsons 1979:62). It is clear that the objective was not simply to raise revenue for the running of the territory as some writers have argued (Picard 1987). A number of factors make it unlikely that the raising of revenue for taxation was the sole aim. Firstly, the administrators of the territory carefully co-ordinated labour recruitment with South Africa mining houses. The punishment of defaulters was stepped up whenever the demand for labour in South Africa increased as we have already demonstrated. Secondly, labour recruitment agencies in South Africa counted amongst their members officers seconded from the territory (Picard 1987:112). In the Protectorate itself district commissioners also acted as district labour officers hence:

> District Officers themselves have at times actively encouraged recruitment. This has usually taken the form of instituting a special drive against tax defaulters, the men being warned that they will be prosecuted unless they pay their arrears immediately, if necessary by taking an advance from the labour agent (Schapera 1947:151).

The imposition of the hut tax by the state in 1899 could not have come at a worse time for the majority of the population. The country was just emerging from a series of ecological disasters which had decimated its livestock. Many people had lost their cattle through drought but an estimated 90% were wiped out by the 1896-1897 Rinderpest epidemic which swept across the country and the region. Many families had little choice but to send a member of the household away to South Africa to look for employment to pay the tax. Migration to South Africa was by no means a new phenomenon to the Tswana. Some of them are known to have started working as migrant labourers from the mid-nineteenth century (Schapera 1947:25; Morton *et al* 1989 and Picard 1987:111). But these were such an insignificant minority that the impact of migration process on Tswana polities was minuscule. In contrast, the hut tax had a fundamental impact on the structure of indigenous societies and their way of life. Taxation induced migration of young males on a much larger scale than before. According to Picard (1987:111-112) 'the Bechuanaland administration encouraged labor migration and the imposition of taxes introduced an element of compulsion'.

Whilst some writers have disputed the notion that the 1899 hut tax was imposed specifically to force able-bodied young men to migrate to South Africa (Schapera 1947:158 and Massey 1978), there is no doubt that the colonial authorities were aware that it was bound to be the outcome (Massey 1978 and Mogalakwe 2006). Those who insist that taxation was not meant to induce migration claim that the overriding concern of the colonial officials was raising revenue to augment their meagre budgets rather than supplying labour to South Africa. The importance of revenue raised through taxation during the colonial era cannot be over-estimated. Some sources have estimated that more than three quarters of district administration revenue was raised through so-called native tax (Massey 1978). However, that does not necessarily validate the argument that taxation was not devised to induce migration of labour. Even though Schapera did not see taxation as the main cause of migration (at least the time he conducted his study of migration in the 1940s), he nevertheless observed that some locals had difficulty raising the money needed for tax and recommended that native tax should be revised so as to take account of capacity to pay (Schapera 1947:214).

On the other hand, there are more persuasive reasons for us to believe that one of the results of the hut tax was flushing out labour. Even though the Protectorate did not have large industries or extensive commercial farming operations, it was still subject to the same battery of labour laws that extended to other labour-supplying areas of Africa. As intimated earlier, Bechuanaland Protectorate fell within the region termed 'Africa of the labour reserves' (Amin 1972:504). Like two other High Commission Territories of Basutoland and Swaziland, the territory was treated as no more than an extension of South Africa. In fact, it was intended that it would eventually be incorporated into South Africa as stated above.

British colonial policy in the region appears to have been geared towards the provision of migrant labour. In Bechuanaland, the state's expenditure was designed 'to ensure the simple reproduction of the minimum infrastructure necessary for the system of migrant labour to continue and other expenditures were kept as low as possible to ensure that they would not be opportunities within the Protectorate which would attract labour away from the mines' (Parsons 1979:62). District officers in the territory supported labour recruitment agencies from South Africa to force young men to register for employment at the mines. Labour recruitment agencies in South Africa even boasted staff seconded from the territory to help with the administration (Picard 1987:112).

Taxation and Punishment

During the Rinderpest epidemic (before the introduction of the hut tax), the colonial government linked food relief to work for men (Wylie 1990:60). The exclusion of men from the food relief scheme was intended to 'encourage' them to seek employment in the mines and in railway construction. Similarly, but perhaps more effectively, the hut tax linked migration to punishment. Higher demand for labour in the mines meant that the sentences of male defaulters were reactivated to force them to migrate. The Protectorate government was determined to take full control of the supply side of the labour market. In 1899 it wrested the control of recruitment of labourers by labour agents from the *dikgosi* (Taylor 1978:100). Before that labour agents approached the *dikgosi* who in turn would lend their support to the recruitment drive. The Native Labour Proclamation (1907) tightened the state's control of the recruitment process by forbidding the *dikgosi* from binding themselves by contract or concession to provide labourers.

Despite having gained overall control of the recruitment process the government still needed the input of the *dikgosi*. It developed a co-operative relationship with the *dikgosi* to facilitate the collection of tax and punishment of defaulters. The *dikgosi* were allowed to keep 10% of whatever they collected which was quite a substantial amount of money (Makgala 2004:279-303). The colonial government also cultivated a relationship with the South African mining houses as has already been noted. In 1933 when the mining companies sought to increase the size of the African labour force without having to raise wage levels they looked to the Protectorate to supply some recruits. The mining companies had ceased recruiting from tropical areas in 1913 when it was prohibited because of an unusually high death rate among recruits from those areas (Massey 1978:96). However, with the ever increasing demand for cheap labour the recruitment agencies wanted to recruit in the northern parts of the Protectorate which fell within the tropics. A medical research institute belonging to the mining industry was authorised by the South African government to conduct an experiment to find out the mortality rate of the labourers after the administration of a new drug that was being developed to reduce their susceptibility to disease. The subjects on whom the new drug was being tested were not aware that they were being used as guinea pigs.

It was decided that eight hundred of the two thousand experimental recruits should come from northern Bechuanaland. The colonial state's administrative machinery (including the *dikgosi*), was mobilised to help with the recruitment drive. The force of the law was also used to good effect. The threat of punishment for those young males who could not pay their tax was renewed to ensure compliance with registration for the experiment. The resident magistrate for the Bangwato reserve reported to the headquarters that 'I have taken steps to endeavour to stimulate enlistment and I hope that the quota will be secured. I agree that any able-bodied men who owe hut tax and have not gone to work should be prosecuted and will make an endeavour to visit Bokalaka in April to revise the tax registers' (Botswana National Archives S344/3, 28 February1934). When the resident commissioner realised that the quota was not likely to be met within the agreed time frame he sent a message to the resident magistrate in Serowe:

> Shortage of numbers recruited appears to be more probably due to reluctance of natives to work. It is important that you should see the chief and obtain from him more active co-operation than has hitherto been the case. It is important that you should arrange to press for hut tax payment at Tonota and Mmadinare immediately. You should also bear in mind that we have been refraining from prosecutions for hut tax because no work was available but as that excuse no longer holds we shall not be justified in continuing this attitude (BNA, S344/3, 12 March 1934).

The Role of Prison

Dearth of information makes it extremely difficult to construct a meaningful picture of penal practices in the Protectorate for the years immediately following the introduction of the hut tax in 1899. Available evidence indicates that there were hardly enough detention facilities during that period for the state to have resorted to imprisonment of tax defaulters on a large scale as later became the practice. It is therefore difficult to discern exactly what penalties were considered appropriate for tax offenders at the time even though it is obvious that some form of pressure or threat of punishment was used. Records indicate that approval of plans to construct a lock-up facility was granted by the governor and the high commissioner in 1892. There was, however, already a place used as a holding facility for first offenders commonly referred to as 'the fort' (Ramokhua 1985). But convicts with long sentences were sent to the Cape Colony to serve their prison terms. The detention of Sekgoma (R v the Earl of Crew Ex Parte Sekgome) from 1906 to 1912 at Gaborone suggests that at least by this period the promised lock-up had been constructed. But it remains uncertain whether there were more lock-ups than the available information indicates. It is important to note that the authorities classified detention centres into three groups (Otlhogile nd). The most rudimentary of these structures were the lock-ups. These were described as places where those awaiting trial or removal to a more secure place of detention were held. A jail was in contrast, defined as any building 'used as a place for the detention of confinement of persons liable for detention for a period not exceeding 12 months' (Otlhogile nd). Jails were supposed by description to have more facilities than lock-ups. Prisons were a grade higher than jails by reason of size and range of facilities. By 1936 the Protectorate had eleven detention facilities in various centres that were classified as lock-ups and jails (Ramokhua 1985:136). But prisoners serving long sentences continued to be sent to the Cape until the early 1940's (Ramokhua 1985:135).

Even though there are hardly any statistical records showing the distribution of prisoners by type of offence for the decade and half following the introduction of hut tax, at least one writer has claimed that the majority of prisoners during that period were tax defaulters (Ramokhua 1985). There is evidence to suggest that sentences meted out to tax offenders were quite harsh even then. Life in the territories' detention centres was quite horrifying if we go by the account given by a certain Stanley Langton who was detained in one of them whilst awaiting trial (Otlhogile nd). He was so appalled by the treatment of one African prisoner who was in detention for stock theft that he wrote a letter of complaint directly to the secretary of state in London. He described how the prisoner was 'confined to a stuffy cell where no ray of sunlight penetrates. A flat corrugated roof, no ceiling, cement floor with no covering, no bed or mattresses, no ventilation and manacled in heavy chains, ill and dying of pneumonia' (Otlhogile nd).

The prisoner described did in fact die in detention. But he was not the only one to die of gross neglect and the harsh prison conditions. The treatment of African male convicts was particularly harsh. African males were considered to be the only suitable candidates for gaols which were regarded as unfit to hold European males, Coloured (people of mixed race) and native female inmates. Conditions evidently did not improve much over the years because even as late as 1964, a report on the prison department stated that standards in prison system fell foul of the United Nations' Minimum Rules for the Treatment of Offenders and the Prevention of Crime (Garratt 1964:1).

Many tax offenders who were sentenced to a spell in prison had to endure the inhuman conditions so graphically described by Langton. But for many of them it was not a simple choice between paying tax or going to prison. As one high commissioner himself even acknowledged, the fines imposed on African offenders were far beyond their capacity to pay, so many inevitably ended up in prison. The wave of demand for labour that led to the 1933 experiment discussed above saw the prison population leap to unmanageable proportions. For a Protectorate with a population of about 270 000 (in 1938) a prison population of 935 was undeniably too high (Ramokhua 1985:142). It continued to grow so fast

that the Colonial Penal Administration Committee in Britain registered its concern about the size of the prison population in the territory. A disproportionate number of those incarcerated were tax defaulters. But the resident commissioner, anxious to deflect criticism insisted that less than 1 percent of tax defaulters were actually prosecuted.

New solutions to the problem of overcrowding were considered including the sale of the property of the offenders, but it remains unclear whether any of them were ever actualised. The state appeared to have been more interested in inducing the flow of labour to the mines than anything else. For instance, colonial government officials were not at all concerned about the negative impact of large scale migration to the mines might be having on agriculture amongst African households. As families lost able-bodied males to the mines the traditional division of labour along male-female lines could not but be affected by the deficit. By 1943 one third of the adult male population was absent from the country. This figure includes 30% of men who were at that time away on account of the Second World War. Table 1 below reflects the number of individuals who were incarcerated under numerous pieces of legislation:

Table 1: Number of persons convicted and/or imprisoned under various laws (nd)

Offence	Total Offence	No. Sentenced to imprisonment without Option	No. Sentenced with option of fine or given suspended sentence	TOTAL No. Actually Imprisoned
Tax Default	572	27	565	315
Pass Laws (Aliens)	130	1	129	72
Veterinary Regulation	26	2	24	8
Master & Servant Proclamation	73	2	71	20
Other Minor Statutory Offence	198	24	174	70
Miscellaneous Minor Offence	260	109	151	130
TOTAL	1259	165	1114	615

Source: reproduced from Frimpong (1985:114).

It is interesting to note that 3.3% of the prison population were convicted under the Master and Servant Proclamation. If native taxes were devised to procure labour, the Master and Servant Proclamation was designed to give (white) employers in the Protectorate tight control over their African employees. Like Master and Servant Ordinances in East Africa, the proclamation borrowed heavily from a similar law already in force in the Cape Colony.

The ordinary contractual relationship between employer and employee was not considered sufficient to regulate the behaviour of African servants so breaches were directly linked to penal sanctions. The offences under such laws which formed part of laws borrowed from the Colony of the Cape of Good Hope, specifically the Master and Servants Acts of 1856/1889, covered a broad spectrum of behaviour including insubordination, using abusive or insulting language to employer, damage to employer's property, refusing to obey orders of a supervisor appointed by the master and absence from work without permission. All these offences were punishable by fine or imprisonment. It was often considered legitimate for employers to use violence against their servants. If the matter went to court, the magistrates most likely chose to believe the employer's version of events (Seidman 1978:208-210). The employees could not expect any form of relief from the courts because civil liability did not apply in an action by an African against a European.

The figures in Table 2 below show a consistent rise in the number of migrant workers from the Protectorate working in the South African mines. The exception to this trend occurred in the years between 1915 and 1922 when there was a fall in the number of migrant workers from the Protectorate. As we have seen elsewhere the coercive element that taxation introduced to the migration process can only have ensured an upward trend in the number of migrants to South Africa. There was probably a snowballing process so that over time, the migration began to acquire a dynamic of its own.

This would explain why even though there was a drop in the number of migrant labourers going to South Africa immediately after independence in 1966, the process did not stop completely. But during the colonial era the numbers were boosted from time to time by the increase in pressure on tax defaulters. It must be noted that there was also a sizeable migrant work force from the Protectorate in other sectors of the South African economy particularly farming and domestic service throughout the colonial period (Schapera 2004[1970]:117).

Table 2: Composition of the black mine labour force in South Africa including migrants from Bechuanaland

Year	South Africa	Basu-to-Land	Bechu-ana-land	Swazi-Land	Mozam-bique	N+S Rhodesia + Nyasa-Land	Total	Non-South Africans as a % of Total Lab-our Force
1904	18057	2240	531	492	50997	4550	77000	76.5%
1905	11842	1571	591	639	59284	7005	810000	85.4%
1908	58303	4604	1221	1509	81920	1266	149000	60.4%
1909	61135	3895	1020	1413	85282	4160	157000	61.1%
1912	64710	9970	1146	3705	91546	2941	191000	66.1%
1913	58497	8804	1800	2898	80832	2007	155000	62.3%
1915	93396	12355	2950	4910	83338	1148	198097	52.8%
1918	59534	10349	1817	4123	81306	805	158000	62.3%
1920	59269	12680	1435	2802	96188	605	173000	65.7%
1922	78983	14475	2690	5472	80959	403	183000	56.8%
1927	84495	12264	1483	3655	107672	430	215000	60.7%
1929	79950	21586	2337	3977	96657	389	205000	61.0%
1931	112548	30781	3367	5062	73924	316	226000	50.2%
1932	131692	31711	4963	5872	58483	280	233001	43.5%
1936	165933	45982	7155	7027	88499	3402	318000	47.8%
1939	155393	48385	8785	6687	81335	9141	323000	51.9%
1942	214243	-	-	-	74507	21656	310406	31.0%
1943	207379	-	-	-	84478	23213	315071	34.2%
1944	185658	-	-	-	78950	26770	291378	36.3%
1945	210485	-	-	-	78806	30856	320147	34.2%
1951	108000	35700	9100	5600	106500	41200	306100	64.7%
1956	116100	39900	10400	5400	102900	58800	334500	65.3%
1960	150900	51400	15000	5600	95500	82800	402200	62.5%
1961	150900	53900	13200	6500	100200	89100	413900	63.5%
1963	153800	56500	15300	5800	88700	74200	390430	61.0%

1064	139400	58500	16000	5500	97500	71800	388800	64.1%
1965	130500	64300	19000	4300	109000	56300	383400	66.0%

Source: Adapted from Libby (1987:38-39).

In the late 1930s the Protectorate officials complained of prisons being overcrowded with tax defaulters and blamed this on Batswana's preference to serve jail terms as opposed to selling their livestock to pay tax and avoid imprisonment (BNA, Resident Commissioner to High Commissioner, 7 July 1938, S 305/6/1). The reason advanced was that there was a view that a stint in jail did not carry a stigma among the people. It should be understood that possession of cattle has always been extremely important and prestigious to Batswana. Therefore, one preferred to serve a jail term instead of parting with his beasts. Even in the twenty first century Botswana authorities have a hard time convincing communal farmers to sell some of their cattle when drought beckons in order to avoid losing entire herds to droughts.

Generally, harassment of tax defaulters by the colonial authorities led to some eligible tax payers evading tax by settling in remote communities deep in the Kalahari Desert which were inaccessible to the under-resourced authorities (Makgala 2010:57-71). Table 3 below gives the preponderance of tax offence in relation of statistics on other crimes in 1938. Table 4 is also instructive on these issues.

Table 3: Return of Minor Statutory and Other Offences (Description of Offence), 1938

Sentence	Contra Native Tax Proc	Pass Laws (Alien Natives)	Contra Diseases of Stock Regs	Masters and Servants Act	Other Minor Statutory Offences	Miscellaneous Minor Offences
No. of sentences of imprisonment without the option of a fine	Ghanzi 2 Francistown 25	Francistown 1	Francistown 2	Francistown 2	Lobatsi 1 Maun 2 Gaberones 11 Serowe 7 Francistown 1 Ghanzi 2	Serowe 20 Maun 6 Kasane 3 Kanye 2 Francistown 77 Ghanzi 1
No. of sentences of imprisonment with the option of a fine in which fine not paid and sentence served	Mochudi 22 Kanye 39 Lobatsi 14 Francistown 45 Serowe 68 Ghanzi 1 Molepolole 30 Maun 44 Tshabong 14 Kasane 4	Mochudi 2 Kanye 1 Lobatsi 1 Francistown 8 Gaberones 3 Tshabong 1 Serowe 50 Kasane 4	Mochudi 1 Francistown 1 Lobatsi 1 Gaberones 1 Serowe 2	Lobatsi 1 Serowe 2 Kasane 11 Francistown 3	Lobatsi 2 Ghanzi 1 Serowe 6 Tshabong 8 Mochudi 21 Kanye 6 Francistown 2	Gaberones 1 Serowe 5 Maun 5 Kasane 1 Francistown 9
No. of sentences of imprisonment with the option of a fine in which fine has been paid	Mochudi 3 Kanye 3 Lobatsi 1 Francistown 9 Serowe 15 Tshabong 2 Molepolole 8 Kasane 14	Mochudi 5 Francistown 44 Kasane 1 Tshabong 4	Lobatsi 1 Serowe 1 Maun 1 Kasane 1 Francistown 11	Lobatsi 28 Serowe 2 Francistown 5 Molepolole 2 Maun 1 Kasane 1	Mochudi 2 Francistown 7 Gaberones 3 Ghanzi 2 Serowe 6 Molepolole 55 Kanye 7	Lobatsi 1 Francistown 63 Gaberones 2 Ghanzi 4 Serowe 5 Maun 4 Kasane 1

No. of sentences of imprisonment with or without the option of a fine suspended under certain conditions	Mochudi 63 Kanye 42 Lobatsi 28 Francistown 26 Serowe 31 Tshabong 2 Molepolole 13 Maun 8	Serowe 4	Francistown 3	Gaberones 2 Serowe 1 Francistown 1	Lobatsi 11 Serowe 2 Molepolole 29 Francistown 1 Tshabong 2	Francistown 25
No of persons given suspended sentences eventually committed to serve sentence	Mochudi 1 Kanye 3 Serowe 1 Molepolole 2	1	-	-	Francistown 1	
No of sentences of imprisonment with the option of fine in which fine allowed to be paid in instalments	Francistown 6	-	-	Lobatisi 1	Kanye 1 Francistown 24	

Source: Resident Commissioner to High Commissioner 7 July 1938 (BNARS, S 305/6/1)

Table 4: Return of Minor Statutory and Other Offences (Description of Offence), 1938 (Cumulative)

Sentence	Contra Native Tax Proc	Pass Laws (Alien Natives)	Contra Diseases of Stock Regs	Masters and Servants Act	Other Minor Statutory Offences	Miscellaneous Minor Offences	Total
No. of sentences of imprisonment without the option of a fine	27	1	2	2	24	109	165
No. of sentences of imprisonment with the option of a fine in which fine not paid and sentence served	281	70	6	17	46	21	441
No. of sentences of imprisonment with the option of a fine in which fine has been paid	58	54	15	49	82	80	338

No. of sentences of imprisonment with or without the option of a fine suspended under certain conditions	213	4	3	4	45	25	294
No of persons given suspended sentences eventually committed to serve sentence	7	1	-	1	-	-	9
No of sentences of imprisonment with the option of fine in which fine allowed to be paid in instalments	6	-	-	-	1	25	32
Total	592	130	26	73	198	260	1279

Source: Resident Commissioner to High Commissioner 7 July 1938 (BNARS, S 305/6/1).

Conclusion

Even though migration of labour to South Africa (albeit on a very small scale) existed prior to the introduction of the hut tax, it acquired a new momentum from it. An important element was introduced to the process by the coercion that taxation involved. Able-bodied adult males were targeted to ensure that they left for employment in South Africa. Colonial policy turned the territory into a labour reserve for South Africa. As one writer has argued, with colonial policy 'migration for employment became more systematic and pervasive, its cause now not emanating from factors internal to be social formation but from the externally imposed tax and land arrangement' (Parsons 1979:60). The threat of imprisonment was frequently used in order to meet new demands for labour, even though with time the migration gained a momentum of its own. Penal sanctions were also linked to labour contracts between masters and servants, and many servants who fell foul of the (criminalised) labour law were imprisoned.

There can be no question that colonisation was undertaken primarily to secure economic advantages and that the colonial state was set up to create and maintain conditions necessary for the realisation of the goals of the colonial enterprise. The general law imposed by the colonial state bore a heavy imprint of the policy objectives of the mother country. To facilitate the pursuit of these objectives, civil liberties were excised from the law so that the legal and political construction of justice was a matter of administrative expediency. Bechuanaland Protectorate was subjected to the same panoply of legislation that the rest of 'Africa of the labour reserves' experienced. The fact that the territory was a Protectorate rather than a colony has confused matters. But in reality the difference between the two was largely insignificant as far as administrative and legislative policies were concerned.

As evidence adduced earlier on indicates punishment was inextricably linked to the labour market conditions. When the targeted number of recruits could not be reached penalties against known defaulters were reactivated. The regressive nature of native tax ensured that every able-bodied young man eligible for recruitment was flushed out. Labour migration probably had greater impact on agricultural production in the Protectorate than the authorities were prepared to acknowledge, given the number of male migrants outside the country at any given time.

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