

## NGWAKETSE INHERITANCE: THE DEVOLUTION OF CATTLE ON WOMEN IN A TSWANA CHIEFDOM

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Goody has observed (1969: *passim*; 1970:632-4; 1976:10) that a significant feature of the inheritance regimes in most African societies at the time of colonial penetration was that property devolved "homogeneously": from males to males, or females to females. He contrasts this with "diverging" inheritance, predominant in Europe and Asia, under which property in an estate is capable of devolving on recipients of both sexes. Goody goes on to argue that this distribution was linked to "the higher productivity of the major societies of the Eurasian continent," which, "dependent primarily upon the existence of the traction plough and irrigated farms, encouraged the retention of property within the elementary family or sometimes the smallest segment of a lineage" (1970:637). He also finds an association between diverging devolution and such variables as the practice of dowry, the presence of state organisation and complex systems of stratification. These arguments make it worth looking with care at those exceptional cases in Africa where diverging devolution is found. Goody's argument would appear greatly strengthened if such cases reveal that cluster of variables which he has linked to diverging inheritance in Eurasia.

One African example in which diverging strains seem to have been present as far back as can be traced is presented by the Ngwaketse, a major Tswana group of Botswana.<sup>1</sup> In their case, as with other Tswana chiefdoms, cattle held by males have long been capable of devolving upon females and through them out of the agnatic segment, the principal residential and support group in that society. Furthermore, the opportunities for this to happen appear to have increased during this century, partly as a result of innovative action by the traditional authorities. Here we examine these features, looking first at the ideal rules governing devolution of cattle; then at the pattern which appears in everyday life; and, lastly, at the picture of devolution which emerges in the context of disputes.

### I. IDEAL NORMS GOVERNING THE DEVOLUTION OF CATTLE

The Ngwaketse arrangements under which cattle devolve across the generations are seen by them (and are best seen by the observer) as a process taking place slowly over time, in association with a range of different incidents in the developmental cycle of a group.

Devolution is certainly not an event linked exclusively, or even primarily, to death. We trace this process first as it would have taken place in the latter part of the 19th century, before the establishment of the Bechuanaland Protectorate, then as it should take place today, noting the various changes that have occurred.<sup>2</sup>

In order to follow the ideal process of devolution through, it is necessary to break into the developmental cycle at some point. The stage at which a man has married and established a homestead separate from (but ideally adjacent to) that of his father is a convenient moment. At this point the newly established household would be a nuclear unit made up of the man himself, the wife he had lately married, and perhaps some children born to them whilst the couple were living at the homestead of the woman's father or that of the man's father prior to the completion of their own.<sup>3</sup> At this stage, the man should hold a small but identifiable herd of cattle and other stock. There is no need at the moment to examine the way in which this herd had been built up, as this will be implicit in the way in which the herd itself should devolve. The initial stage of devolution was associated with a man's first marriage. Following this marriage, a portion of the herd should be identified and set aside for the benefit of the woman's "house" - the woman herself and the children born to her. These cattle were used to provide milk for the children and draft oxen to plough the field, and to contribute towards bogadi (bridewealth) for the sons of the house when they married. Whatever the subsequent history of this and later marriages, these cattle continued to be identified with this house and the children born to it. If subsequent wives were taken, the cattle could not be reallocated to their houses. Separate allotments of land and cattle had to be made to each new house as it was formed, and the direction of devolution of further portions of the man's estate would thus be determined.

The next step was associated with the birth of children. Among the Ngwaketse it was (and still is) proper for a man to earmark a cow under a custom known as tshwaiso for a son at the time of birth. The cow so earmarked, together with its issue, was then regarded as permanently allocated to that son, even though it remained physically a part of the father's herd. Even a man with few cattle should seek to tshwaela a cow for each of his sons.<sup>4</sup> The idea was that the cow then multiplied and formed the nucleus of a herd for the son concerned. Where a tshwaiso beast died without issue, it should be replaced. The ideal that a man should likewise tshwaela beasts for wives and daughters seems also to have been accepted at least as early as the chieftaincy of Seepapitso I (1910-16). By the time a man's children were approaching maturity, the devolution of a considerable portion of the estate should thus already be ordained.

The process of devolution continued when children began to marry. When a daughter married it was customary for her father, if wealthy enough, to provide some beasts for her known as dikgomo tsa

letsele ("cattle of the [female] breast"). These cattle went with her on marriage and were seen as forming a contribution to the maintenance of the household which she and her husband established. Some informants say that dikgomo tsa letsele were not at first irrevocably alienated by the woman's father, but that he could claim them back if he did not like the way they were managed, or for some other reason. Only at a later stage, when children had been born and the marriage was seen to be going well, would he transfer them outright to his daughter. Others suggest that the transfer was complete from the outset and that these beasts were no longer seen as part of the father's estate. However that may have been, this transaction looks very like a form of dowry.<sup>5</sup> Where a son married, bogadi (bridewealth) cattle had to be presented to the wife's father. These were required to consist of an even quantity of beasts, the number depending on the wealth of the man's family. They were transferred when the woman was taken to live among the man's agnates or on some occasion after this. These cattle, too, were lost to the man's descent group.

As the sons matured, it was recognised that responsibility for managing cattle in the father's herd should progressively fall upon them. Where they had their own posts, the father might give some beasts to each of them to look after on his behalf. Such beasts were known as dikgomo tsa kgamelo (literally, "cattle of the milk pail"). If his herd was large, each son might be given a cattle-post to manage for the father. Where care and skill were shown in the management, the father would in time tell the son that the beasts he had been managing were his own.

(Later, before the father died, he should inform his sons and some senior kinsmen of what he wanted done with what remained of his estate. Ideally he would direct that this be divided among immature children, or children whose tshwaiso beasts had not prospered. In this context there is a Tswana maxim - Lentswe la moswi ga le tlole - "the voice of a dead man is not transgressed."

Thus when the married male head of a household came to die, most if not all of his estate had ideally devolved upon the next generation, and its subsequent devolution beyond would already be in progress. It was only in respect of cattle forming an unallocated balance that the direction of devolution had still to be determined on the man's death. Where such a balance remained, reasonably clear-cut rules governed devolution. The eldest son took the largest share, while younger sons took progressively smaller shares in declining order of seniority. Apart from the odd beast given to senior kinsmen by way of tatolo (literally, "condolence gift"), no cattle would devolve at this point outside the group formed by the man's sons. Daughters received no cattle at all; and if a man died without male issue, his cattle devolved upon his nearest surviving agnates.

It can be seen from this account of the ideal rules governing devolution that the greater part of an estate was expected to devolve upon the male members of the agnatic segment to which the

deceased belonged. But nonetheless significant diverging strains were present. These were represented by the cattle passing to the daughters by way of dikgomo tsa letsele on marriage or under the tshwaiso custom. Such beasts were very likely to be lost to the descent group, as cattle belonging to a woman devolved primarily upon her daughters at death. Thus unless these daughters "married back" into the descent group from which the cattle came (and such a marriage was approved: see Schapera (1957)), they would pass into the control of another group; and this would happen each generation subsequently whenever a woman failed to marry into the descent group to which her mother belonged. There were, therefore, two primary categories of property in cattle present within this society: one formed of cattle devolving from father to son; and the other from mother to daughter. That in the second category increased every time further beasts were tshwaela'd to women or a father set aside dikgomo tsa letsele for his daughter on marriage.

Further "diverging" elements were introduced into the system of property devolution through a molao of Seepapitso I in 1913.<sup>6</sup> This legislative pronouncement required that daughters as well as sons should benefit under the tshwaiso custom and that daughters should also share in the distribution of any unallocated balance which remained of a man's estate when he died. At the same time, Seepapitso I announced that any surviving widow of the deceased should also be given cattle out of the estate as tatolo (Schapera, 1943; 1970). We shall see from the case histories in section III how this legislation was actually interpreted in the division of an unallocated balance. Bathoen II (Chief, 1928-1969) took these changes even further, as in the course of his chieftaincy it became established that where a man died without male issue, the unallocated balance should pass entirely to his daughters, to the exclusion of his male agnates. At the time Roberts was in the field (1968-1973) there was a conflict of view among informants as to the proper course of devolution for the unallocated balance where a man was survived by a widow, but no children. Some held that under these circumstances she should have beneficial enjoyment of the cattle as long as she lived, after which they would pass to the nearest surviving agnate of her deceased husband. A majority, however, held that the unallocated balance should pass to her outright and that if she wished she could take these back to be managed for her by the males of her natal segment. Whatever the exact scope of these normative changes, they greatly strengthened the "diverging" strains in the Ngwaketse system of property devolution.

## II. ACTUAL PATTERNS OF DEVOLUTION

While we have no quantitative data confirming how property actually devolves across the generations in this Tswana chiefdom, we feel able to make some tentative and impressionistic generalisations on the basis of observation during fieldwork. We noted that Ngwaketse males do in practice try to make sure that the devolution of the

greater part of their property has been settled before they die, and this seems typically achieved through the avenues of devolution prescribed in the ideal model. However, no two estates are exactly alike, and the relative importance of different incidents in the cycle of devolution differ sharply from case to case.

The first incident in the ideal sequence, the setting aside of "house" cattle by a man following marriage, is seldom followed today although Roberts did find a few men who had complied with this custom. The practice was traditionally linked to polygynous marriage, where it operated to provide an identifiable resource linked to each household, and since the general prohibition of polygynous marriages it appears to have fallen away.<sup>7</sup> However, we did notice that, wherever the traditional authorities sanctioned second or subsequent marriage following a divorce, they insisted on a retrospective allotment to the first house if there were surviving children.<sup>8</sup> This was seen as a means of securing evenhanded treatment of the successive houses in the property sphere.

Today, dispositions under the tshwaiso custom constitute the first important incident in the cycle of devolution. Men who have sufficient cattle seem almost invariably to tshwaela a beast for each male child; richer men make much larger allotments, perhaps earmarking all the calves born at a particular cattle-post in the year of a child's birth, or in the case of the very wealthy, all the beasts at that post. Obviously, the importance of this custom in the overall picture of an estate depends a good deal upon the success with which individual beasts which have been tshwaela'd happen to multiply. Although random observations can be of limited value when unsupported by quantitative data, we encountered numerous cases where an overall majority of the beasts passing devolved along this channel. It was our impression that dispositions of this kind form an important element of most estates.

The position with regard to the management of tshwaiso beasts seems to vary considerably from one family to another. In some cases married sons do not immediately form separate herds, and leave their tshwaiso beasts together with any others they may have acquired with the father's cattle. In other cases, fathers encourage sons to form and manage their own herds from an early stage; and where this is the case the tshwaiso beasts are handed over. It is also common in practice for a father to hand over the management of a portion of his estate to a married son without parting for the moment with title to the beasts concerned. In many cases men inform their sons that they can keep these cattle as their own long before they die; but in other instances this step is never taken with the result that the beasts concerned fall back into the unallocated balance.

While a man who owns cattle will invariably tshwaela his sons, he will not necessarily do this for his daughters. Nonetheless the practice of earmarking cattle for daughters is widespread; and these beasts frequently go with the woman on marriage to be looked after

with those of her husband. Other men provide cattle specifically for a daughter's marriage (dikgomo tsa letsele); and these also accompany her to her husband. But few men both tshwaela their daughters and provide them with dikgomo tsa letsele. Once beasts in either category have gone to be looked after with those of her husband, little distinction seems to be drawn between them; both devolve primarily upon her daughters.

Informal will-making is very widely practised in that most men who believe themselves about to die, and know that unallocated cattle remain, will leave some instructions among close kinsmen as to how these should be distributed. Directions as to distribution given before death seem to be taken very seriously by the survivors. Less frequently, a man may leave formal instructions with the Chief as to what he wants done with his property when he is dead (see e.g. case 5, below). A number of instances of this were quoted to Roberts in the course of fieldwork; and these suggested that such a step was generally taken only where there had been a serious quarrel in the family concerned, or where the testator believed for some other reason that his wishes would not be complied with by his kinsmen (see footnote 17 below).

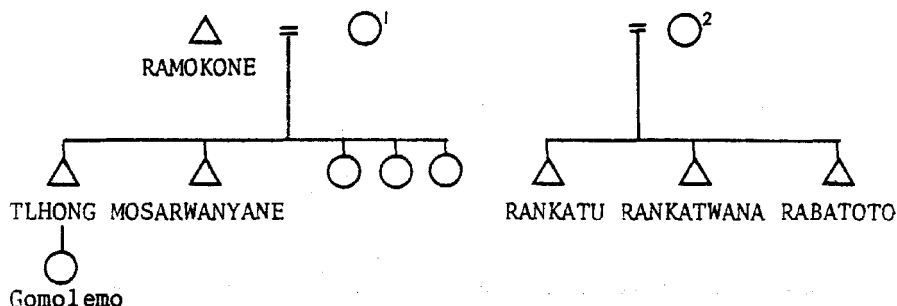
Where unallocated cattle remain over at a man's death, the relative shares in practice given to different heirs vary considerably from one estate to another; but the broad principles outlined in the previous section are generally complied with. The eldest son does almost always take the greatest share of any unallocated balance, and Ngwaketse seem to attach special importance to this. The share which he takes at this moment, while not necessarily large enough to confer any special material capability, underlines his succession to headship of the segment now that his father is dead.<sup>9</sup> The smaller numbers divided among younger brothers are sometimes divided equally, sometimes in accordance with relative seniority, sometimes in accordance with contemporary need. In all of the recently divided estates we know of, where a man left daughters they were also given some cattle; but invariably they did less well than their brothers. Overall, most cattle in practice devolve within the agnatic segment to which a deceased belonged; while a smaller but significant number devolve upon women in such a way that they pass ultimately into the control of other segments.

### III. CASES OF DISPUTE

Seepapitso I maintained written records of the disputes brought to his kgotla between 1910 and his assassination in 1916. No records were kept during the ensuing regencies, but his son Bathoen II resumed them when he became Chief in 1928. He continued to record, except during the years 1931 and 1933, until official records were started in 1936 under the Native Tribunals Proclamation (No. 75 of 1934).<sup>10</sup> These records enable us to compare stated norms with what was done in the context of a dispute. The following case histories

(drawn unless otherwise stated from the records kept in the Ngwaketse Chief's kgotla) show how the traditional rules of inheritance and the modifications introduced by Seepapitso and Bathoen were treated in disputes brought before them.

Case 1: TLHONG's Cattle<sup>11</sup>



RAMOKONE MONGALA METSEABANGWE, head of Maoto ward, had two wives. By the first he begat 3 daughters and 2 sons (TLHONG and MOSARWANYANE), and by the second 3 sons (RANKATU, RANKATWANA, RABATOTO). [The names of children who died young are omitted.]

TLHONG married Mmaserame Pilane, by whom (before divorcing her) he begat a daughter named Gomolemo. They had no other children. He died in November 1909, and RANKATU became guardian of his estate. (MOSARWANYANE was in a 'lunatic asylum' in Pretoria.)

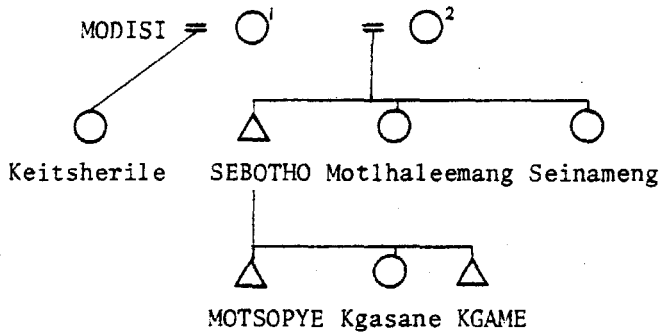
In December 1913, because of complaints about RANKATU (who was a spendthrift drunkard), Chief Seepapitso ordered that the livestock in TLHONG'S estate should be distributed as follows: Gomolemo, 20 cattle; MOSARAWANYANE, 50 cattle; RANKATU, 53 cattle; RANKATWANA, 15 cattle; RABATOTO, 14 cattle.

Even after this RANKATU held on to the cattle which had been set aside for Gomolemo, and only handed these over after Mmaserame had complained in February 1914 to the Chief.<sup>12</sup>

The case is interesting in that the greater part of the estate passed to TLHONG'S surviving male agnates in the absence of any male issue of his own. The fact that the largest share goes to RANKATU underlines his de facto headship of the agnatic segment now that TLHONG is dead (and MOSARWANYANE incompetent). All this is in accordance with the stated norms. However, the relatively large number of cattle set aside for Gomolemo indicates how Seepapitso was already interpreting the change in favour of daughters which he had introduced earlier in the year during which this dispute was heard. Mmaserame got nothing; but it would probably be assumed that she would retain control of the beasts set aside for Gomolemo

as long as she survived. This supposition is supported by the fact that it was Mmaserame who complained to the Chief when RANKATU retained control of the girl's share.

Case 2: MODISI's Cattle<sup>13</sup>



MODISI MAGANO, headman of Tsopye ward, had the following children by each of his 3 wives: (1) Keitsherile; (2) SEBOTHO, Motlhaleemang, Seinameng; (3) SETLANG, BAJAMMEO, SELALEDI, Khabekhabe.

SEBOTHO died, leaving the following children: MOTSOPYE, Kgasane, KGAME (the last two were begotten, under the levirate, by SETLANG, who afterwards married the widow in church with the result that these children became recognized as children of that marriage).

After some time, MOTSOPYE sued SETLANG, as guardian, for the cattle due to him from MODISI'S estate.

Seepapitso had all the family's cattle brought in and distributed them as follows:

- a. to SEBOTHO's sons MOTSOPYE 42, KGAME 9
- b. to SEBOTHO's brothers SETLANG 34, BAJAMMEO 16, SELALEDI 9
- c. to MODISI's four daughters (sisters of SEBOTHO etc.), and to SEBOTHO's daughter Kgasane, 4 each.

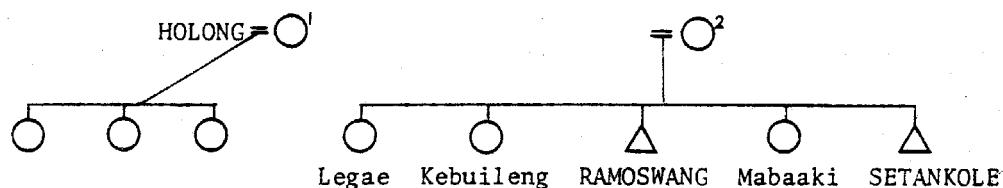
MOTSOPYE had been allocated 11 cattle under the tshwaiso custom; they were also given to him.

This case differed from the previous one in that the deceased was survived by sons. Here, as the traditional rules postulate,



the younger sons take progressively smaller numbers of cattle in declining order of seniority. Again in accordance with the traditional rules, MOTSOPE represents his deceased father, receiving the largest share to indicate his headship of the segment. As in the previous case the daughters of the deceased share in the boswa (the unallocated balance remaining on death), but each takes an equal number of cattle, fewer than those allocated to the most junior male. This suggests that Gomolemo's relative good fortune when TLHONG's cattle were divided had to do with the fact that there were no sons. The example also shows that even in the case of a relatively large estate it was not necessarily the practice to tshwaela cattle to each son.

Case 3: *HOLONG's Cattle*<sup>14</sup>



HOLONG had 3 daughters by his first wife, and 2 sons (RAMOSWANG and SETANKOLE) and 3 daughters by his second wife. His estate was divided as follows by Seepapitso (the record does not indicate why the matter came to kgotla):

(a) Two daughters in the first house each received 4 cattle, 6 goats, and 6 sheep; the other, second in order of birth, received the same number of cattle and sheep, but 7 goats instead of 6. (The sheep, it is recorded, had originally come from their mother's brother.)

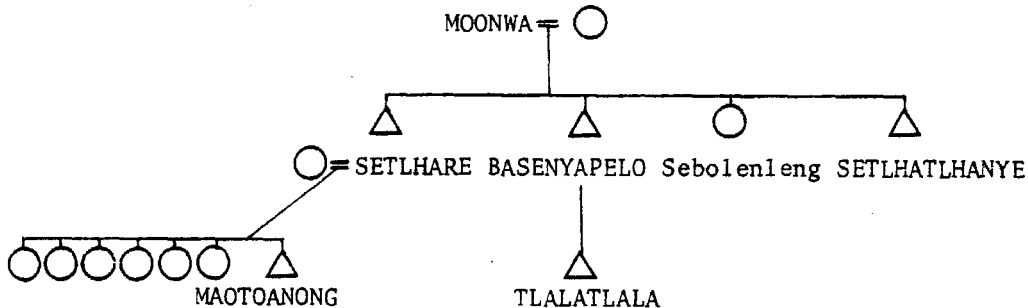
(b) The children of the second house were born in the following order: Legae, Kebuileng, RAMOSWANG, Mabaaki, SETANKOLE. RAMOSWANG received 6 cattle, and 4 goats, SETANKOLE 5 cattle and 6 goats, Legae 2 cattle and 6 goats, and the other two daughters 2 cattle and 4 goats each.

Some sheep had been set aside for RAMOSWANG under the tshwaiso custom; these were also given to him.

Here, as in Case 2, the sons received more cattle than their sisters, the largest share going to the more senior male. However, the shares taken by the two sons are proportionately smaller than in the previous case, perhaps because they both come from the second house. The relatively slight advantage of RAMOSWANG over his brother may be explained in terms of the former's good fortune under the tshwaiso custom. As in the previous cases the daughters also receive cattle. But although the daughters in each house received the same number of cattle, those in the first house each took more than those in the second. Perhaps this draws attention to the

genealogical seniority of the former house, even though the headship of the segment passes to the second because there are no males in the first.

Case 4: *MOONWA's Cattle*<sup>15</sup>



SETLHARE, eldest son of MOONWA, died leaving 6 daughters and a son (his youngest child) named MAOTOANONG. MOONWA's other children were: BASENYAPELO, Seboleng, and SETLHATLHANYE. MAOTOANONG, in due course, sued BASENYAPELO, as guardian, for his share of MOONWA's estate. At the division, Seepapitso first awarded *tshwaiso* cattle to each of the beneficiaries: MAOTOANONG, 5 cattle; BASENYAPELO, 17; BASENYAPELO's son TLALATLALA, 32. The (unallotted) cattle of MOONWA's estate amounted to 40 head. These SEEPAPITSO distributed as follows:

- SETLHARE's 6 daughters, 2 cattle each; MAOTOANONG, 17 cattle.
- BASENYAPELO, 7 cattle; Seboleng, 2; SETLHATLHANYE, 2.

Many features of this division again conform to the traditional rules. MAOTOANONG takes the largest share of *boswa* as new head of the segment under the principle of representation; his two uncles take correspondingly smaller shares in order of seniority. The case also illustrates vividly how the *tshwaiso* custom may operate to introduce a strong element of chance into the overall fortunes of different heirs in the process of devolution, and how because of the working of this custom the gross share devolving upon the new head of a segment need not be the largest. Although MAOTOANONG takes the biggest share of the *boswa* cattle, both BASENYAPELO and his son TLALATLALA end up with more cattle. The beasts allocated to them under the *tshwaiso* custom simply multiplied better than MAOTOANONG's. The case illustrates the sanctity which these *inter vivos* dispositions enjoy when division takes place; no *tshwaiso* beasts are taken from TLALATLALA on division. Once again, the females take in much smaller shares than the males; and again they receive equal amounts rather than shares graded according to seniority.

Two other cases recorded by Seepapitso indicate the strength which the "diverging" element in Ngwaketse property devolution revealed even at that time. The first concerns the making of a will under which the whole of a man's property was devised out of the

agnatic segment:

Case 5: TSHUGANE's Will<sup>16</sup>

In June 1915 two brothers, TSHUGANE and MATLOKO, came to the Chief's kgotla 'to speak about their estates.' TSHUGANE, the older, said he wanted his estate to go to his mother and to his senior wife; his mother was to be the 'main heir' (yomogolo mobosweng), and she would provide for his junior wife. (Presumably, though that is not stated, both marriages were childless.) MATLOKO, who in the old days would have inherited TSHUGANE's estate, said he had no objection to what his older brother had said, and that his own property was to go "to my children and my wife." The names of five senior members of the royal family, present in kgotla at the time, were noted in the record book as witnesses of the dispositions.

As we noted in the previous section, the traditional rules of inheritance recognised that a man might direct the future devolution of his property while he lived; but the procedure was seen more as a device to ensure that the rules were complied with (e.g. by curbing an eldest son deemed likely to dissipate the estate)<sup>17</sup> than as a means of departing from the established norms. Here the will made by MATLOKO seems entirely in accordance with the established rules; but TSHUGANE's disposition, which Seepapitso also upholds, goes much further than the recognised rules providing for female inheritance by deflecting the whole of a man's estate outside his agnatic segment.

The second case, dating from May 1916, shows that even at that time women could, on their own initiative, pursue in the kgotla their newly established rights of inheritance:

Case 6: RAPHANE's Cattle<sup>18</sup>

MATHINTSHE, after the death of his father RAPHANE (Lobeko ward), gave each of his half-sisters Binang and Banabotlhe 4 cattle, 3 sheep and 3 goats as their shares of RAPHANE's estate. Both sued him. Binang said she should have been given 10 cattle and Banabotlhe wanted 13 cattle and 20 sheep. MATHINTSHE said in court that he had given them enough, and that he had not yet made provision out of the estate for his younger brother SAMPISI. Seepapitso agreed that the sisters had been given enough cattle, but told MATHINTSHE to add 3 sheep and 1 goat to the small stock each had received.

Case histories appearing in the records kept during Bathoen II's chieftaincy indicate that he maintained and broadened the rights of women to inherit cattle which his father had entrenched. The following case shows that in an instance where both sons and daughters survived, the daughters continued even in the 1940's to receive

proportionately much smaller shares than their brothers:

Case 7: *MMUSI's Cattle*<sup>19</sup>

MMUSI died leaving a widow (Mmadikgope), 4 sons (OLEFILE, GEORGE, BAKOTA, RASEKGOPO), and 2 daughters (Kenole, Ngwanafela). At the division of the estate, OLEFILE asserted that the cattle left by MMUSI were 101 in number, and divided them thus:

OLEFILE	-	45 cattle
GEORGE	-	22 cattle
BAKOTA	-	15 cattle
RASEKGOPO	-	16 cattle
Mmadikgope	-	1 beast
Kenole	-	1 beast
Ngwanafela	-	1 beast

GEORGE and the other two younger brothers objected to this division and the headman of their ward, MOKGADI, took the matter to Chief Bathoen. Before the Chief, GEORGE complained that OLEFILE was concealing some of the cattle and that he and his younger brothers had been given too few of those that had been disclosed. Justifying a larger share for himself, he explained that of the 22 beasts given to him, 11 had been allocated to him during the lifetime of MMUSI under the tshwaiso custom and should not be taken into account at division. BAKOTA and RASEKGOPO made similar complaints.<sup>20</sup> Chief Bathoen was not much impressed by these arguments, but expressed concern at the very meagre provision made for the women. Negotiations followed, but agreement could not be reached and the Chief finally ordered that the cattle be brought together on a future date when he would himself divide them.

When the beasts had been collected, MOKGADI again brought the matter before the Chief. The cattle were found to number 111, and the Chief divided them as follows:

OLEFILE	-	24 cattle
GEORGE	-	24 cattle (11 <u>tshwaiso</u> )
BAKOTA	-	20 cattle (8 <u>tshwaiso</u> )
RASEKGOPO	-	21 cattle (10 <u>tshwaiso</u> )
Mmadikgope	-	6 cattle
Kenole	-	4 cattle
Ngwanafela	-	4 cattle

At the division it also emerged that MMUSI had not presented bogadi for Mmadikgope, and the Chief ordered her to be given a further 5 beasts. The remaining 3 beasts were given to Khukhwanyane, a wife of MMUSI's deceased younger brother, for whom bogadi also remained outstanding.<sup>21</sup>

The division made by Bathoen in this case is closely similar to those of Seepapitso which we have already considered in that it

recognises the primacy of the son who is to assume headship of the segment and distributes boswa cattle among the remainder in declining order of seniority. As in the divisions made by Seepapitso, the daughters receive equal shares. One departure which Bathoen makes is the separate provision for the widow even though her sons survive; this may reflect a growing autonomy on the part of women in the management of cattle, but also the fact that little confidence was reposed in OLEFILE, the eldest son. The fact that Bathoen explicitly awards the bogadi cattle to the women themselves, rather than to the surviving male agnates, is a further indication of a shift in ideas as to women and property holding. So far as the tshwaiso custom is concerned, the case provides another illustration of the principle that while seniority must be respected in the distribution of the boswa cattle, luck with beasts which have been tshwaela'd may alter the overall distribution. Here OLEFILE and GEORGE end up with equal shares, while the youngest brother RASEKGOPO does better than his elder brother BAKOTA.

Another case recorded by Bathoen confirms what we had seen in case 6 to the effect that women were at times prepared to go to the kgotla themselves to secure an appropriate share in an estate:

*Case 8: Baikathodi's Claim*<sup>22</sup>

Baikathodi Suping, of Moshupa village, was given 3 cattle out of their father's estate by her brother BOSASI. She refused to accept them, wanting more, and sued BOSASI. The village headman told BOSASI to increase Baikathodi's share. He appealed against the judgment to Bathoen and his appeal was upheld.

Several other important features appear in the case histories from Bathoen's chieftaincy. One of these is the application in a case of dispute of the stated rule that a daughter may inherit cattle from her mother in preference to the mother's male agnates:

*Case 9: BOSE's Cattle*<sup>23</sup>

During his lifetime BOSE (of Ranaka village) 'gave' his mother some cattle (number not stated). After both he and she were dead, the cattle (by now numbering 8) were taken by his sister Kgakololo. BOSE's widow sued for them, saying that BOSE had merely given them for his mother to use, and not as an outright gift. The village headman ruled that the cattle did indeed belong to BOSE's estate, and not to the mother's, so that Kgakololo was not entitled to them. She appealed to Chief Bathoen, who said that the cattle had in fact been a 'gift' (mpho) from BOSE to his mother, and that Kgakololo was therefore the rightful heir to them.

Outcomes like this underline the strong element of "divergence" in Ngwaketse inheritance. The consequence is that once cattle have

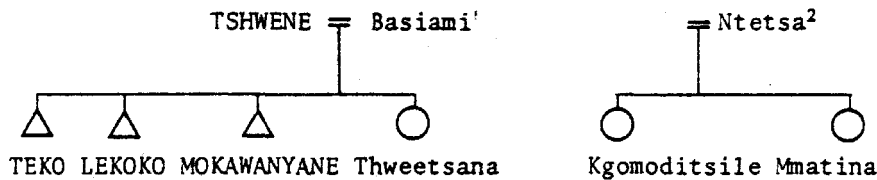
devolved upon a woman they continue to do so, with the result that the herd which they form may potentially move into the control of a new descent group each generation. The same point is implicit in the following case history:

Case 10: *Mogatsajane's Daughter*<sup>24</sup>

Mogatsajane Makgega was seduced by KGOSIMOLAO BABUANAO, to whom she bore a daughter. When he refused to marry her, she sued him. Bathoen ordered him to give Mogatsajane a cow as immediate support for herself and the child, and two more 'to create an inheritance for this child' (godirelela ngwana yo boswa).

This pattern of devolution also affected cattle acquired by a woman at other points in the devolutionary cycle, such as beasts earmarked for a married woman by her husband under the tshwaiso custom:

Case 11: *TSHWENE's Cattle*<sup>25</sup>



TSHWENE had two houses. To Basiami, long dead, were born TEKO, LEKOKO, MOKAWANYANE, Thweetsana. The woman in the second house was Ntetsa, who gave birth to Kgomoditsile and Mmatina.

During his lifetime TSHWENE earmarked a beast for Ntetsa, and by the time he was dead this animal had multiplied to make 7 in all. The estate was a small one and TSHWENE's two eldest sons argued that these 7 should not go to Ntetsa.

Bathoen upheld Ntetsa's claim to these beasts. The remainder of the estate was divided:

TEKO	6
LEKOKO	4
MOKAWANYANE	3
Thweetsana	1
Ntetsa (Second wife)	4 (+ 7 <u>tshwaiso</u> )
Kgomoditsile	1
Mmatina	1

These beasts which Ntetsa took would ultimately pass to Kgomoditsile and Mmatina, and be lost to the descent group if and when they married.

As Case 11 indicates, the right of a man's widow to an independent share of his estate was well established by this time. The case histories show that this right was recognised even where a woman was childless and chose to return following her husband's death to live among members of her own agnatic segment. Any beasts which she took would thus be lost to the segment to which her husband belonged. Three disputes illustrate this point:

*Case 12: PETER's Cattle*<sup>26</sup>

SEANEGO was a son born to PETER MOGWE in his first house, and Dirawala was a woman PETER had married later. After PETER's death, Dirawala took his herd to be looked after by her father, and the dispute came to a head when SEANEGO asked for one of the beasts to pay his debts. Dirawala refused to allow a beast to be given to him, so SEANEGO demanded division of the estate between himself and Dirawala. At ward level 4 were given to SEANEGO and 8 to Dirawala. Dirawala was discontented with this division and asked that the matter be taken before the Chief, who upheld it.

*Case 13: A Childless Widow*<sup>27</sup>

X marries, but has no children. Following his death, the wife takes the cattle back to be looked after by her father. X's father's younger brother's son then claims the cattle. Headman Makaba takes the dispute to Bathoen.

Bathoen: When a man dies childless, his estate today is inherited by his widow. But bogadi had not been presented by X, so the wife has no claim on the estate. The cattle must go back to the father's younger brother's son, except those which X specifically allocated to W's house when they set up together.

*Case 14: An Estate at Manyana*<sup>28</sup>

A Hurutshe tribesman who lived at Manyana (within the northern boundary of the Ngwaketse tribal territory) married a woman from the neighbouring village of Thamaga. Although childless, they lived together for years and accumulated many cattle through the sale of maize from a field which they cultivated together. When the man died, his brothers took control of the herd, but this was contested by the widow who wished to return with the cattle to her own people at Thamaga. The brothers refused to let her have the cattle, so she took the dispute to Headman Mareko Mosielele (traditional ruler of this branch of Hurutshe, and the holder of a recognised customary court). Mosielele directed that she be allowed to take the cattle back to Thamaga, where she and the herd remain to this day (1969).

## IV. NGWAKETSE INHERITANCE IN THE WIDER TSWANA CONTEXT

The described features of Ngwaketse inheritance are certainly not peculiar to this particular branch of the Tswana, for a similar pattern may be observed in most chiefdoms. The first of the following cases is taken from the Maletse Chief's kgotla; the remaining two from the Kgatla.

Case 15: *A Widow's Claim*<sup>29</sup>

Maria Leketo, a widow, sued her husband's younger brother MOLEFE for possession of livestock he was holding for her (now that her husband was dead). She said she wanted to go with them back to her parental home. The kgotla ruled that she was entitled to the animals, but that since she was alone [presumably she had no children] she should rather remain where she was, and MOLEFE would build a hut for her and look after the livestock on her behalf.

The stock for which she was suing were derived from animals originally given to her as lotshwao (tshwaiso) by her father when she was a ngwale (just initiated into membership of an age-set); and, she stated in court, when giving them to her he had said, etlare fa osena gonyalwa, dikgomo tsena etlabo ele tsabana baotlabatsalang lemonna wagago - "After you have become married, these cattle will be for the children whom you will bear by your husband."

This Maletse case strikingly illustrates how cattle allocated to a daughter under the tshwaiso custom become lost to her father's descent group when she marries. It does not appear from the record how old Maria was, but traditionally MOLEFE would have been expected to enter a levirate relationship with her to raise issue for his elder brother provided she was not past child-bearing.

The Kgatla case histories show that women have long taken an even larger share of the boswa cattle than they do among the Ngwaketse:

Case 16: *DITSHWENE's Cattle*<sup>30</sup>

DITSHWENE, of Mabodisa ward at Mochudi, had only one child (a daughter) by his first wife. After that wife's death he married again and begot several more children. He himself died in 1933. In February 1934, men of his ward came to tell Chief Molefi that DITSHWENE's children were growing up, and their mother said the estate should be divided among them before they began to quarrel about it. Molefi went to the family huts at the fields to divide the cattle (which were brought in specially from the veld) among the surviving widow and the children. He gave the daughter of the first wife 5 cattle; the widow 10 cattle; her eldest child, a son, 8 cattle; the next, a daughter, 6 cattle; the next, a son, 5 cattle;

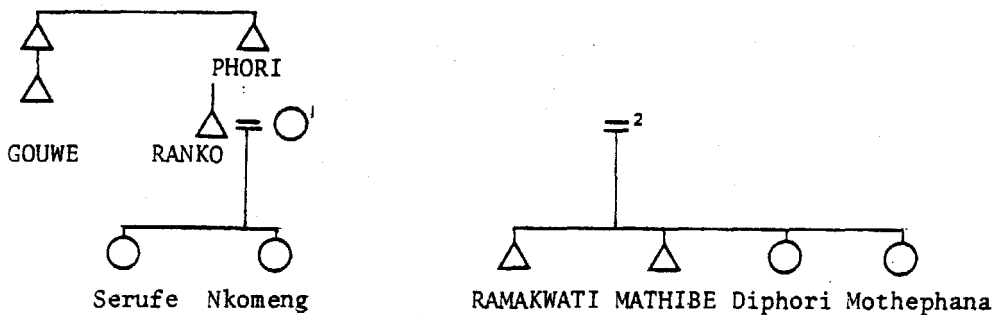


the next, a daughter, 4 cattle; the next, a daughter, 4 cattle; the youngest, a daughter, 3 cattle, "because she was still small and would ultimately inherit those given her mother."

In addition, 2 cattle each were given to the chief herdsman and to DITSHWENE's two ditlogolo (sister's sons) who were the herdboys of the cattle; Molefi took one himself and gave another to the people of Mabodisa ward to slaughter and eat 'in memory of DITSHWENE' (gomo-tlhoboga).

In the Kgatla case, the present Chief, Linchwe II (1963 - ), has taken the innovations favouring women even further. His practice since he became Chief has been to disregard genealogical seniority altogether and to divide cattle equally among surviving children, irrespective of their sex. The following case provides an example:

Case 17: RANKO's Cattle<sup>31</sup>



RANKO's father, PHORI, was born in Ramadiakobong ward, but went later to Morema ward and lived there for the rest of his life. Some say he was taken there as a child, while others suggest that he moved as an adult after his initiation and admission to an age-set. Whatever the actual circumstances, when PHORI married he set up his homestead in Morema ward where RANKO was born.

When RANKO himself married his first wife, he established his own homestead in Morema. Two girls, Serufe and Nkomeng, were born to that marriage. Following the first wife's death, RANKO married again and four more children survived to become adults: two boys, RAMAKWATI and MATHIBE; and two girls, Diphori and Mothephana. As often happens where Kgatla males establish successive houses, relations between the children of the two wives were strained. While RANKO still lived, RAMAKWATI and MATHIBE settled back in Ramadiakobong ward, where RANKO's father had originated.

Following RANKO's death, the two girls of the first house complained to the Morema ward head, Mothei; RAMAKWATI was "eating up" the cattle which RANKO had left, and had given them no benefit. Serufe argued that the cattle should be divided and she and her sister allocated some. Accordingly, Mothei, in his capacity as

headman of the ward in which RANKO had lived, set aside a day on which RANKO's cattle should be distributed. He arranged for them to be collected together and informed the senior members of Ramadiakobong where RAMAKWATI and his brother were living. RAMAKWATI and the Ramadiakobong men found these arrangements unacceptable. They replied that RANKO was truly a member of Ramadiakobong, so that it should have been up to them to make arrangements for division. But they did not object in principle to the idea that the girls should have a share. In the face of these disagreements, the respective ward heads took the matter before the chief for him to decide.

When the cattle were assembled there were found to be thirty in all. Linchwe divided them equally, so that each child received five beasts.

#### V. CONCLUSION

These case histories show that, despite the strong emphasis on agnation in Tswana ideology, a considerable amount of property in the form of livestock crosses descent group boundaries as it devolves from one generation to another. Although we have confined this account to the devolution of cattle, a similar picture obtains with respect to the devolution of arable land (see, Schapera 1943: 153-154). Thus, while homogeneous features are prominent in Tswana property devolution, diverging strains are also present.

This Tswana example seems at first sight to offer considerable support for Goody's argument. Diverging inheritance is associated with the use of the plough in arable farming, centralised political organisation, a significant degree of social stratification, the practice of dowry and approval of marriage with near kin. However, certain reservations must be stated. First, it is not clear to us that the form of diverging devolution practised in the Ngwaketse case operates to retain control of important items of property within "the elementary family" or "the smallest segment of a lineage" (Goody 1970: 637). Rather it seems a widely "distributive" system, when compared with a homogeneous one under which property devolves - for example - primarily upon the eldest son, with smaller amounts passing to his younger brothers. Further, it is interesting that the Tswana do not appear as an exception at all in the source (Murdock's *Ethnographic Atlas* (1967)) which Goody drew upon for his data. Perhaps this merely illustrates the weakness of the "inheritance" material which the compilers of the *Atlas* themselves draw attention to (Murdock 1967: 167), and can be dismissed as of little importance given the clarity of the overall trends. What is not clear, however, is how the various authors whose work was drawn on in compiling the *Atlas* saw "inheritance." Did they include the overall cycle of devolution across the generations, the process identified by Goody (1969: 57) and described for the Ngwaketse in this paper, or just those phases associated with the incident of death? We suspect that in many cases it was the latter, and that

many more cases of "diverging" inheritance would have emerged in Africa if the whole devolutionary process had been embraced.

We should also say something about the processes of "legal change" which appear to have taken place. The Tswana, with their centralised dispute settlement agencies and their overt legislative processes, are atypical of most small-scale societies in that explicit normative change can be observed. On one level, therefore, we can see how the changes came about. But that does not tell us why the changes were introduced, or why they have apparently been carried over into the behaviour of Tswana property holders. So far as the introduction of the changes is concerned, we may note that Seepapitso I of the Ngwaketse was closely advised by European Christian missionaries, and that his son Bathoen (like Linchwe of the Kgatla) assumed the Chieftaincy immediately following periods of education in European Schools. The readiness with which these changes seem to have been accepted is another matter. But we have shown the strongly distributive flavour which has long characterised Tswana property devolution, and observed the relative freedom with which property in cattle has passed across descent group boundaries. It could be said that changes introduced by their chiefs simply pushed the stated rules of the Ngwaketse a little further along a path which practice had already taken.

## NOTES

- 1 For detailed discussion of Tswana social organisation, see, Schapera, 1935; Schapera, 1938; Schapera and Roberts, 1975. See also Schapera, 1942, for a history of the Ngwaketse.
- 2 The following account of the ideal patterns of devolution draws heavily on Roberts and Comaroff, 1979.
- 3 Cohabitation within the household of the woman's father following agreement that the couple should marry, but prior to the establishment of a homestead among the man's agnates, was a common and accepted practice in the case of most Tswana chiefdoms: see Schapera, 1938.
- 4 Although Ngwaketse say that a man should tshwaela a beast for each son under this custom, provided he has the resources to do so, the case histories (see below) indicate that this practice was not invariably followed.
- 5 While this custom under which a father provided cattle for his daughter on marriage does not seem to have been universal among the Tswana, it certainly was not unique to the Ngwaketse. It is also reported for the Ngwato (keteetso) and Kgatla (serotwana): see Schapera, 1938; Roberts, 1970. Some anthropologists have asserted that dowry is never found in Africa outside areas where it has been introduced through Muslim influence: e.g. Radcliffe-Brown, 1950: 46; Goody and Tambiah, 1973. This view clearly requires qualification.
- 6 Tswana legislative procedures are described in detail in Schapera, 1943 and 1970.
- 7 Seepapitso I made a legislative pronouncement in 1915 forbidding younger men from marrying second or subsequent wives without his express permission. This rule was subsequently repeated and generalised by his son Bathoen II in 1931. See Schapera, 1943.
- 8 See Roberts, 1972: 224.
- 9 This argument is developed in Roberts and Comaroff, 1979.
- 10 An account of the history of these records is provided in Schapera "The work of tribal courts in the Bechuanaland Protectorate" (1943) 2 African Studies 27; recording in the Tswana courts during the postwar period is described by Roberts in "The survival of the traditional Tswana courts in the national legal system of Botswana" (1976) 16 J.A.L. 103.
- 11 Case No. 91 of 1913 (December 1913).

- 12 Case No. 11 of 1914 (February 1914).
- 13 Case No. 10 of 1914 (February 1914).
- 14 Case No. 16 of 1914 (February 1914).
- 15 Case Nos. 19, 22 of 1914 (March 1914).
- 16 Case No. 54 of 1915 (June 1915).
- 17 A typical example of the way in which this will-making procedure might be used is provided by the case of Otladisa Ntsimane, who died in the middle 1950's. The case was reported to Roberts in the course of his fieldwork during December 1969 by Alfred Mabe, Ntau Mogobe and Matubi Lentswe:  
  
Otladisa was dissatisfied with the way in which his eldest son had managed some cattle he had already given him. Accordingly he called all his sons together and gave them each some of his cattle to manage on his behalf (it is said that the eldest was given a single beast on this occasion). Later, shortly before he died, he gave directions that each son could keep the beasts which he had been looking after.
- 18 Case No. 27 of 1916 (May 1916).
- 19 Case No. 19 of 1944.
- 20 BAKOTA said he had received 8 beasts as a result of this custom, while RASEKGOPO claimed 10.
- 21 The uneven number of beasts is explained in each case by the fact that the spouses were dead. Bogadi seems invariably presented in an uneven number where the spouse concerned has died before presentation.
- 22 Case No. 44 of 1932 (March 1932).
- 23 Case No. 38 of 1939 (December 1939).
- 24 Case No. 37 of 1930 (June 1930).
- 25 Case No. 82 of 1964.
- 26 Case No. 5 of 1957.
- 27 Case No. 113 of 1967.
- 28 C. 1960; a case reported to Roberts in the course of fieldwork with the Hurutshe during October 1969 by Mareko Mosielele and Elias Tiro.

- 29 Case No. 27 of 1938 (at the Chief's kgotla, Ramotswa).
- 30 Reported to Schapera in course of fieldwork.
- 31 Case No. 51 of 1963 (at the Chief's kgotla, Mochudi). A fuller account of this dispute is given in Roberts and Comaroff, 1979.

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