The Business of Being Bafokeng
The Corporatization of a Tribal Authority in South Africa

by Susan E. Cook

In this essay I explore the tensions and contradictions inherent in the Royal Bafokeng Nation’s status as both community and corporation. As one of South Africa’s approximately 750 traditional communities, the Royal Bafokeng Nation is on the one hand part of a modern parliamentary democracy governed by a liberal constitution and on the other a traditionally governed patriarchy that preserves hereditary rule and communal forms of land tenure. As a corporatizing entity, the Royal Bafokeng Nation is also one of South Africa’s largest community-based investment companies, and it channels revenue derived from mineral deposits into a broad investment portfolio that in turn funds an aggressive social-development program. The legal, financial, and social tensions that arise when an ethnically based polity seeks to maximize its financial standing by becoming a player on the global commodities stage are the focus of this article. Rather than hindering its prospects for commercial success, the traditional elements of the Royal Bafokeng Nation—in both a legal sense and a cultural sense—are arguably the keys to its prosperity, now and in the future.

Introduction

As I put the finishing touches on this essay, a World Cup soccer match was being played in the Royal Bafokeng Stadium, a short distance from my office. As helicopters circled, vuvuzelas blared, and crowds of foreign visitors swarmed around the village of Phokeng, the tensions between an ever more commercially successful “ethnic corporation” (Cook 2005) and a struggling community of previously disadvantaged people had never been more stark, making this fertile ground for the inquiries of a linguistic and cultural anthropologist.

I first visited the Bafokeng community as a graduate student in 1995 while doing fieldwork for my PhD project on urban varieties of Setswana. My exposure to the political and economic contours of the Bafokeng community was limited at that time, but in subsequent years I became increasingly interested in the unique aspects of the setting, and I developed a collaborative relationship with a number of community leaders, including Leruo Molotlegi, who became the kgosi (king) about 3 years after I finished my fieldwork. A more policy-oriented series of conversations followed Leruo’s ascension to the Bafokeng throne, and I was persuaded, after 8 years as an academic anthropologist, to apply the tools of social theory to the Bafokeng context as a policy maker. With a theoretical grounding in political economy, a comparative perspective on social change, and the observational skills of an ethnographer, I have, since 2007, been actively engineering change rather than simply trying to record and analyze it. Does the hiring of a white American anthropologist suggest a crack in the facade of Bafokeng Incorporated (Comaroff and Comaroff 2009)? The Comaroffs would say no, it is exactly in the nature of the ethnic corporation to bring in hired guns to help incorporate the tribe and to commodify its culture. Who better, in fact, than an anthropologist, they would no doubt remark. To the extent that I write about these issues here, however, I do so in my personal capacity as an anthropologist of traditional governance and corporatization, from which vantage point I am also sometimes a character in the stories I am positioned to tell.

In this essay I explore the tensions and contradictions inherent in the Royal Bafokeng Nation’s status as both community and corporation. As one of South Africa’s approximately 750 traditional communities, the Royal Bafokeng Nation is an interesting case of South African–style democracy wherein a parliamentary democracy governed by a liberal constitution nevertheless recognizes and protects indigenous forms of governance that support patriarchal rule and communal forms of land tenure. The Royal Bafokeng Nation is also, however, one of South Africa’s largest community-based investment companies, and it channels revenue derived from mineral deposits into a broad investment portfolio that in turn funds an aggressive social-development program in 29 rural villages. What tensions arise when an ethnically based
poltiy seeks to maximize its financial standing by becoming a player on the global commodities stage? What contradictions inher in a communally organized and administered tribe using the mechanisms of the market to secure a measure of autonomy from state structures? Does the ethnic corporation become more or less traditional as it starts to deploy the tools and techniques of corporate governance alongside patriarchal governance? These are some of the questions posed in this essay, as well as in the article by Jessica Cattelino (2011, in this issue). While the Bafokeng case and the Florida Seminoles share some striking similarities, Cattelino’s essay explores the state/society divide as it is both practiced and produced in the context of the Florida Seminoles’ global business interests. This analysis of the Royal Bafokeng Nation’s process of corporatization draws into focus the power of the current legislative environment to shape the business strategies of indigenous groups.

The Royal Bafokeng Nation covers an area of 1,400 km² in South Africa’s North West Province and is home to approximately 300,000 people. The Bafokeng people date their arrival in the Rustenburg valley to around 1450 (Hall et al. 2008; Huffman 2007; Mbenga and Manson 2010). While the community forms an integral part of the state’s system of provinces, districts, and municipalities, the Royal Bafokeng Nation is also governed by a kgosi, a hereditary role (usually the eldest son of the previous kgosi). Christianized since the mid-nineteenth century and having long abandoned polygamy, the Bafokeng community has seen few serious succession disputes over the past five or six generations, with a direct father-son line leading back over the past 15 dikgosi (kings/chiefs; Comaroff 1978). The present leader of the Bafokeng is Kgosi Leruo Molotlegi, a 42-year-old architect and pilot who assumed the role of kgosi after his brother, Kgosi Lebone II, died in 2000.

Kgosi Leruo relies on a complex of traditional and corporate structures to lead and run the Bafokeng Nation. There are hereditary headmen (dikgosana), who attend to people’s day-to-day matters in each of the 72 wards (makgotla) that make up the 29 Bafokeng villages. These headmen are assisted by their wives (bommadikgosana) and by wardmen (bannakgotla). In line with the Traditional Leadership and Governance Framework Act (no. 41 of 2003),1 the law governing how traditional authorities may operate, the Bafokeng Traditional Council is made up of 11 community members, five elected and six appointed by the kgosi. The Traditional Council and the Council of Dikgosana together make up the Bafokeng Supreme Council, chaired by the kgosi, which debates and ratifies all major financial and policy matters for the nation. The community’s infrastructure and basic services are managed by the Royal Bafokeng Administration, effectively a local municipality. Royal Bafokeng Holdings, based in Johannesburg, manages the community’s mineral assets and investment portfolio, and the Royal Bafokeng Institute serves as an education reform agency for the region. The professionals in the Office of Kgosi–Treasury, Governance, and Planning manage the strategic alignment between the various entities and monitor and communicate the nation’s overall progress toward its stated goals to both internal and external audiences.

The “Platinum Tribe”

The governance structure of the Bafokeng Nation is not unusual in the communities recognized as traditionally governed in South Africa. A patriarchal hereditary system headed by a kgosi and divided up into wards is common to Tswana-speaking communities in both South Africa and Botswana (Schapera 1952; Schapera and Comaroff 1991). What sets the Bafokeng apart is the fact that they own their land and have successfully exercised their rights to both its surface and its underground assets. The Bafokeng have owned their land by title since the late nineteenth century. They were thus able to maintain their geographic integrity despite incursions by waves of white settlers, the first and second Anglo-Boer wars, apartheid-era laws, an oppressive Bantustan regime (Bophuthatswana under Lucas Mangope), and corporate raids on their mineral resources.

The founder of the modern Bafokeng Nation acquired his status not because he was the first Bafokeng kgosi (he was not) but because he focused his 57-year reign on securing the community’s legal hold on its land. The present kgosi’s great-great-grandfather, Kgosi Mokgatle (1834–1891), realized that it was not enough for the Bafokeng to own their land in the traditional sense. Starting in the 1840s, in the face of increasing incursions by Afrikaner farmers, Mokgatle, with advice from Paul Kruger, who was later to become the first president of the Transvaal Republic, decided that the community must begin to buy the title deeds to its land if it was to avoid total dispossession (Coertze 1988). To raise the cash to purchase select tracts of land, Mokgatle sent regiments of Bafokeng men to surrounding farms and the newly discovered diamond fields in Kimberly in the late 1860s and 1870s. A portion of the wages earned by these men was placed in a land acquisition fund (Bergh 2005). With the help of a German missionary (Christophe Penzhorn from the Hermannsburg Missionary Society [German Lutherans]), who agreed to buy the land in his name (thereby skirting the laws that prevented blacks from owning land), Kgosi Mokgatle began a historic process of acquiring the ancestral lands of the Bafokeng.

This history of land acquisition by the Bafokeng highlights two things. First, the Bafokeng established themselves as a private corporate land owner as early as the late nineteenth century. Bergh (2005:115) points out that by the beginning of the twentieth century, almost 20% of the land owned by blacks in the Transvaal was owned by the Bafokeng. Second,

although there was subsequent contestation over who rightfully owned Bafokeng land, the public and well-documented process by which the Bafokeng legally obtained their land put them in a strong position to assert their status as a private landowner for generations to come.

Platinum was discovered on Bafokeng territory in 1924 (Mbenga and Manson 2010). As owners of the land, the Bafokeng began leasing parts of their territory to various companies, including Gencor, now known as Impala Platinum, the world’s second-largest platinum mining company. As early as 1953, the secretary of mines wrote that “it would appear that the ownership of both the surface and mineral rights in respect of the land in question vests in the said Bafokeng Tribe and the land therefore ranks as private land for the purposes of the mineral laws” (italics added).2 The Bafokeng, in other words, were able to control their land and its resources as a private landowner under the prevailing Roman Dutch code.

The president of Bophuthatswana (the Tswana homeland recognized by Pretoria in 1977), Lucas Mangope, saw the Bafokeng as his rivals and enemies and presumed to negotiate mining contracts directly with Impala Platinum on behalf of the Bafokeng. This set in motion a protracted fight between the Bafokeng and the Bophuthatswana regime on the one hand and the Bafokeng and Impala Platinum on the other. The case against Impala, which hinged crucially on the issue of ownership of the land and the process by which any of it could be leased to an outside entity, was settled out of court in favor of the Bafokeng in 1999, 9 years after it was initiated. This case was a landmark decision against a major mining company in South Africa and earned the Bafokeng the nickname “The Tribe of Lawyers.”

In 1994, the homeland system went the way of apartheid, and the African National Congress–led government became the next in the long line of regimes to threaten Bafokeng control of their land and its resources. The new government’s Minerals and Petroleum Resources Development Act (no. 28 of 2002)3 was an attempt to undo the country’s long-standing legal principle that vested mineral rights in the landowner. The act, which came into force on May 1, 2004, seeks to expand opportunities for historically disadvantaged South Africans to enter the minerals industry by implementing new mining rights. It also reiterates the South African Freedom Charter of 1950 in its preamble, stating “South Africa’s mineral and petroleum resources belong to the nation and that the State is the custodian thereof.” But because the Bafokeng were already using royalties from mining to uplift the surrounding community, the Bafokeng’s lawyers argued successfully that their revenues should be exempt from nationalization for a period of 5 years, at which point the exemption could be reviewed. Another challenge came in the form of the Communal Land Rights Act (no. 11 of 2004),4 which sought to shift control of communally administered land from tribal councils to government-controlled land rights boards. To the extent that the act replaces traditional authorities and the customary laws and structures they use to administer land with more centralized and party-affiliated structures under the control of the central government, the Bafokeng opposed this legislation from the start. The act was declared unconstitutional in mid-2010 (Cook 2004), and the administration of privately owned communally administered land in the Bafokeng territory has been largely unaffected.

One provision of the Communal Land Rights Act was very much aligned to Bafokeng strategy, and despite the law having been repealed, the Bafokeng administration continues to pursue this cause. According to the act, communally held land is to be transferred into the name of the community that occupies it, effectively repealing the practice of registering communal land in the name of the government. The minister’s trusteeship over land is an artifact of racist and segregationist policies and is therefore anachronistic in contemporary South Africa. In the case of the Bafokeng, “the government officials in the Native Commissioner’s office, the Secretary for Native Affairs, the Minister of Native Affairs and the Bafokeng all regarded the Bafokeng as the owner of the land,” and further, “there is no recorded instance where the government of the Republic of South Africa sought to deal with Bafokeng land contrary to the wishes of the Bafokeng.” The Bafokeng therefore maintain that it does not take a genius (or a law) to effect the change in legal ownership from the state to the community. The Bafokeng administration has therefore applied to have ministerial consent removed from the administration of Bafokeng land. Some Bafokeng individuals have opposed the application, suggesting a preference for government oversight of the administration of the land. The outcome of the application is pending at the date of this writing. What is clear is that the history of Bafokeng land ownership and the worldwide platinum boom of 1996–2008 are a very powerful combination.

Overview of the Bafokeng Asset Base

Under the leadership of Kgosi Leruo, the Bafokeng Nation (through its council and kgotla-kgotla) established Royal Bafokeng Resources (2002) to manage the community’s mining interests (platinum and chrome) and Royal Bafokeng Finance (2004) to develop a nonmining investment portfolio. In 2006,

the two companies were combined to form Royal Bafokeng Holdings (RBH), which manages the community’s overall investment strategy and portfolio. RBH is mandated by the community (through representatives in the Bafokeng Supreme Council) to invest the communal purse for maximum return and sustainability. In its first few years, RBH has been staggeringly successful. In 2005 the community’s asset base was worth R8.8 billion; 2 years later, the value was R33.5 billion (approximately US$4.15 billion). Most of this growth can be attributed to the decade-long platinum boom, which saw the price of platinum rise from US$421/oz in 1996 to more than US$2,000/oz in 2008. Although the global economic recession that began in mid-2008 took a toll on platinum (an important component in the manufacture of catalytic converters in cars), the RBH portfolio nevertheless outperformed most major stock indexes and earned the community a 30% return on investment in its first 3 years.

Although RBH owns stock in approximately 20 companies at the time of this writing, about 85% of its dividends come from Impala Platinum. The other 15% come from smaller dividend streams and interest on R5 billion in cash holdings. This cash is both an asset and a liability. While dividends are not taxed in South Africa, interest earned on cash in the bank is. Given its levels of cash under management, RBH would have faced a 40% tax on its interest income (or approximately R220 million of the R550 million it earned in 2008) if it were not deemed a universitas persona, a not-for-profit organization that operates in the interest of and benefit to the community. The South African Revenue Service, under the direction of the South African Treasury, has long sought to redefine the Royal Bafokeng Nation as a corporation rather than a universitas persona on the grounds that it is a for-profit undertaking. The Bafokeng Nation’s response is that the development arms of the nation, principally the Royal Bafokeng Administration and Royal Bafokeng Institute, effectively reduce the burden on the state to provide basic services and infrastructure to the Bafokeng people, and because the state does not tax itself, it must not tax the Royal Bafokeng Nation. The alternative, as Bafokeng treasury executive Thabo Mokgatlha puts it, is for the community to be reclassified as a corporation, pay the tax on the interest income, and use the remainder of its assets in any way it chooses.

It is in this context that a philosophical debate is being arranged with National Treasury and SARS to persuade them to change the VAT legislation to accommodate communities that perform functions which would otherwise be performed by Government particularly because they would be funding their budgets.8

This debate is one of the reasons why RBH converted its royalty agreement with Impala Platinum into shares in 2007. Subsequent to the shares-for-royalties swap with Impala, the Royal Bafokeng Nation now receives only royalties from the Bafokeng Rasimone Platinum Mine, a 50/50 joint venture between the Bafokeng Nation and Anglo Platinum. If challenged by the state again, the Bafokeng lawyers and accountants say that they will argue that the living standards of community members will decrease if the royalties are expropriated by the state, constituting a breach of the constitution’s expression of the “real rights” of individuals living under the protection of the state. In this negotiation over taxes, the Royal Bafokeng Nation explicitly positions itself as a community and a not-for-profit enterprise assisting the state with its responsibilities, whereas the state would earn more tax revenue if it could convincingly argue that the Royal Bafokeng Nation is a private company.

RBH and Black Economic Empowerment: Big Deal?

In the current investment environment in South Africa, the Royal Bafokeng Nation’s status as a community investor, and in particular a black community investor, is again highly salient. Black Economic Empowerment (BEE) refers to a set of regulations in South Africa that determines how companies operating in specific sectors (mining, telecommunications, construction, etc.) must transform their shareholder base and governance structures to include more “previously disadvantaged” (understood to include black, “colored,” and Indian) people. State-awarded tenders are open only to those companies that comply with their sector’s transformation charters by selling shares to black investors or broad-based investment groups (such as RBH) and appointing black managers and directors. Large corporations in South Africa have thus, since 2005, been seeking empowerment partners to meet their targets. Many of these partners have been members of the small black elite who were already well connected politically and were able to amass huge personal fortunes through these new laws. Vocal critics of the policies have thus pushed through reforms to the original laws in an effort to pioneer more broadly based empowerment practices (Hamann 2004; Rajak 2006, 2008, 2009).

In contrast to these few wealthy individuals, RBH is a black-owned investor whose vision is to become the world’s leading community-based investment company. Niall Carroll, the CEO of RBH, calls this vision “social capitalism”: using the mechanisms of the free market to benefit the collective. Thabo Mokgatlha remarks that corporate South Africa is, by and large, very conservative and prefers “traditional investors” to broad-based investment groups such as RBH. Individual investors can be wined and dined and invited for a round of golf to discuss corporate strategies. Group investors are seen as unpredictable and harder to influence. RBH has a distinct advantage over other BEE empowerment partners, however: it pays cash. Where other investment groups rely on loans

and other forms of leveraged funds that can be complicated and time consuming, RBH has sufficient cash on hand to vie for major investment deals in the telecommunications, financial services, and energy sectors. Most of the big empowerment deals in the mining sector have been completed, according to Mokgathla, so RBH is looking elsewhere, including offshore, for its next big deal.

Mokgathla explains that there is another downside to the success of RBH. Many in the corporate world feel that the Royal Bafokeng Nation is overempowered. In other words, RBH is being lumped together with Patrice Motspe (the first African to make the Forbes 100 list) and Tokyo Sexwale (sometimes called the South African Donald Trump), who have grown their wealth by becoming empowerment partners to mainly white South African companies. The difference is that RBH is run not on behalf of a small group of individual investors but rather under the guidance of 300,000 shareholders. This is what is meant by “broad-based” investment, the assumption being that all 300,000 people benefit from the dividends from these investments.

To what extent is this actually the case, and what are the implications for RBH’s status as a preferred BEE partner if the benefits to the community are actually more of a drip than a flow? This is a persistent theme in policy debates within and around the Royal Bafokeng Nation. To date, the benefits of being “the richest tribe in Africa” have been communal and infrastructural rather than individual and financial: electrified homes with clean water, better schools and clinics, more paved roads and community halls, and so on. At kgotla kgothe and other public gatherings, people’s sense of frustration at not having more direct access to the communal purse is evident. From the perspective of the more communally minded, the kgosi is responsible for the well-being of the nation, and the nation is suffering; something must be done. This idea resonates with the political economies of precapitalist societies where the chief/leader was expected to maintain a surplus of grain and herds of cattle in the event of a shortage among the people. Through patron-client relations and networks of subchiefs (dikgosana), the surplus could (and should) be distributed as necessary to prevent starvation in years of poor rainfall or disease. In the current context, the implication is clear: it is unacceptable to many that the Royal Bafokeng Nation’s investment portfolio is valued in the hundreds of millions of dollars while unemployment is conservatively estimated at 40% and most Bafokeng households subsist on approximately US$100/month.9

How does the kgosi and his administration respond to these allegations? By espousing “Vision 2020,” the overarching vision of the Royal Bafokeng Nation that strives to create an enabling environment (read education, good security, and availability of jobs) so that members of the Royal Bafokeng Nation can prosper as individuals by the second decade of the twenty-first century. Dependency on a paternalistic regime, in other words, is no longer a necessary part of the plan. Achieving such a goal, however, is a long-term process with few successful models or precedents in Africa. The internal discourses of communalism, paternalism, and kinship-based favoritism are on a collision course with a newer rhetoric of individual empowerment, entrepreneurship, and meritocracy. And of course the criteria for membership in the nation itself become more and more salient as the benefits of membership become more pronounced. As Comaroff and Comaroff (2009) argue in Ethnicity, Inc., “inclusion and exclusion” are a key dimension to ethnically defined enterprise. But the direction of this trend is not a foregone conclusion in the Bafokeng Nation. While Comaroff and Comaroff (2009) argue (correctly, in my view) that “the more that ethnically defined populations move toward the model of the profit seeking corporation, the more their terms of membership tend to become an object of concern, regulation, and contestation,” it does not automatically follow that the Bafokeng powers that be will privilege “biology and birthright, genetics and consanguinity, over social and cultural criteria of belonging” (65). A recent case suggests another possibility. As the Royal Bafokeng Institute brings a higher level of academic opportunity and extracurricular options to the 45 schools on Bafokeng land, the benefits accrue not only to the ethnic Bafokeng children enrolled in these schools but also to the non-Bafokeng (who outnumber Bafokeng in some schools). When Bafokeng families whose children attend schools outside the Bafokeng territory (mostly middle-class families who can afford the higher fees at the former model C schools) recently threatened to disrupt programs unless their children were included, the response from the Bafokeng administration was that the educational programs are for those who entrust their children to their schools, and if you enroll your children elsewhere, tough luck. While this may appear anomalous within the specific formula for ethnic incorporation laid out by Comaroff and Comaroff (2009), their broader point bears out: “not all ethnically defined populations are caught up in it [the dialectic between the corporate and the cultural] to the same degree. . . . Not everyone need be equally embraced by the process. Or even embraced at all” (116). It may be that the Bafokeng middle class, having achieved their own self-sufficiency earlier than most, will be left on the sidelines while services are targeted at those in the greatest need irrespective of ethnic membership.

The Royal Bafokeng Nation’s 2009 budget for social and community-based spending was R1.2 billion (approximately US$150 million at June 2010 rates). Of this, 58%, or approximately R700 million (US$87.5 million), is allocated to infrastructure development and social programs. Education programs account for 29% of the budget, and 11% went toward the development of commercial and community-level sports. Aside from loans for university students and school lunches, very little of the budget is targeted at the individual

or household level. If the benefits are collective, how is the effect on individuals measured? What, specifically, constitutes evidence of service delivery and equitable distribution of communal resources? Is it the annual budget and spending priorities of the nation? Is it anecdotal feedback from the community members as they represent themselves to kgotla-kgothe and increasingly to the media? More and more, it will be longitudinal and ethnographic studies that examine changes in household circumstances over time. A socioeconomic household survey is conducted every 3 years to determine whether spending, savings, and expenditure on health and education increase. Will programs that fund environmental management, loans for university education, education reform at the primary and secondary level, and installation of waterborne sewage help alleviate poverty in the short term? Maybe not. The Bafokeng agencies must successfully address food security, primary health care, and accelerated job creation in order to bridge the gap between the traditional expectations of the community and the longer-term strategic aspirations of the administration.

The Lebone II project is a good example of the ongoing debate between equitable distribution of the community’s wealth and sustainable planning for the longer-term goal of poverty alleviation through human development. Lebone II, College of the Royal Bafokeng, is an independent school founded by the late Kgosi Lebone II in 1997. Initially intended as a selective private school for future leaders of the Royal Bafokeng Nation, the school and its vision have been transformed under Kgosi Leruo into a competitive independent school cum teacher-training facility at the center of Vision 2020’s strategy for education reform. Lebone II was designed to meet global standards of educational excellence, and its total enrollment is capped at 800 (kindergarten through grade 12), with the planned mix of students at 70% Bafokeng and 30% non-Bafokeng (including white, Indian, non-Bafokeng black, and international students). The curriculum prepares students for the South African national exams but also enables them to apply to universities anywhere in the world. The school’s new campus reflects the principles of green building, total integration with the local landscape and climate, and the school’s role as a “teaching hospital” for 45 schools in the Bafokeng region. The fee structure features a sliding scale, and all applicants take an entrance exam to determine academic ability.

For many Bafokeng, this unique and important institution is nothing more than an elitist institution satisfied with educating a few Bafokeng at the highest standards and leaving the rest to suffer the limited economic opportunities that inevitably accompany a diploma from the inferior state schools. The idea of Lebone II as a training center for 45 primary and secondary schools whose teachers and principals have never been exposed to high standards of content knowledge, pedagogy, teacher-parent interaction, extramural activities, and so on, is lost on many who are desperate for a pathway out of poverty. The rewards seem to be accruing to too few and to the rest too slowly. But even with third-party funding, Lebone II is an expensive project (in excess of US$56 million), and it will be at least 10 years before the families of the students enrolled there will reap the economic benefits of the resources being invested. Many in the community feel that this is an unacceptable use of the resources that their forebears worked so hard to secure a century and a half ago. This pervasive sense of entitlement to a piece of the Bafokeng cake is one of the most difficult challenges for the current Bafokeng policy makers, including me.

**Conclusion**

I have tried to show, through a discussion of the Bafokeng Nation’s status as landowner, its control over some of the world’s largest platinum deposits, and its resulting status as a major investor in South Africa, that the community’s long-term strategy depends on its status as both community and corporation. As a recognized traditional authority, the community is able to maintain patriarchal and hereditary forms of governance that exist alongside but in many ways supersede the state’s political mechanisms. As a universitas persona, the nation also enjoys tax-exempt status, enabling it to marshal its resources for the benefit of the immediate community rather than allowing its dividends to be dissipated by the national treasury and its highly bureaucratic spending programs.

On the other hand, the nation has embarked on an aggressive corporatization process in order to capitalize on its platinum interests and ensure the financial viability of the Bafokeng community in the postplatinum era (generally estimated to be 50 years from the present). Corporate structures, strict financial controls, and near-obessive adherence to corporate governance laws are some of the initiatives introduced by Kgosi Leruo in his first 10 years as leader of the community. Enthroned in 2003 wearing a navy blue suit under his leopard skin kaross (see S. Cook and R. Hardin, unpublished manuscript), Kgosi Leruo is at once a symbol of traditional authority and a corporate CEO. The language and procedures of the nation’s business and administrative arms are a combination of global corporate protocols and more local forms of deference to patriarchy, ancestors, and traditional social mores.

The bottom line, as it were, for the Royal Bafokeng Nation rests on a paradox. In order to successfully pursue its goal of being a major player in the global commodities market, the Bafokeng have adopted conventional corporate strategies and outlooks. As a community committed to perpetuating non-democratic forms of governance, the Bafokeng Nation has also clung to its status as a chieftainship, communal-land administrator, and patriarchal society. The financial advantage
in this is that the community, to date, has retained a tax-exempt status. The appeal in remaining a tribal authority extends well beyond the R220 million/year benefit, however. There is a cultural patina to RBH that despite Mokgathla’s comments about the drawbacks of being a communal investor lends it an aura of uniqueness, potential, and vision. “A poor community that has its act together,” as the former U.S. ambassador to South Africa, Eric Bost, put it, the Bafokeng Nation represents the convergence of need, political will, and resources—a highly attractive combination for investors, development professionals, and politicians alike. Bafokeng Incorporated, in fact, relies crucially on the simultaneous pursuit of tradition and modernity, the communal and the private, the local context and the global marketplace. And beyond the immediate (albeit ambitious) goals to achieve basic development and economic sustainability for the Bafokeng people, there are those who see the potential for the Bafokeng Nation to develop a policy/governance model with “contemporary relevance for the continent,” in the words of Celia Dugger (2010) of the New York Times. The World Economic Forum, the United Nations, and the World Bank all follow the Bafokeng approach to combating “the resource curse” with interest. With its relatively small area and population and its impressive resources and professional competencies, the Bafokeng Nation aspires to more than providing for people’s basic needs. Environmentally sustainable mining, the mass enrollment of girls in sports, early-childhood education, and decentralized HIV/AIDS treatment programs are only some of the localized answers to deeply entrenched problems that might yield far-reaching solutions.

It is ultimately the South African constitution and current political dispensation that have allowed the Bafokeng Nation to straddle the line between traditional community and private corporation. As the legislative environment changes, it is possible, even likely, that the Bafokeng leadership will have to shift its strategy in pursuit of its goals. At the present juncture, however, the nation’s dual status is allowing it to amass wealth and maintain nondemocratic structures in a way that many view, paradoxically, as progressive and visionary.

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Comments

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The Royal Bafokeng Nation uses an interesting structure to promote the well-being of its inhabitants: it employs the earnings from a wholly owned corporation to fund the running of the nation. “Royal Bafokeng Holdings (Pty) Limited RBH is responsible for the management and development of the commercial assets of the Royal Bafokeng Nation (RBN), with the overall business objective of maximizing returns to enable the RBN to deliver sustainable benefits to the community.”

The path it followed to this juncture was unusual: sending legions of young men to the mines in the 1800s to raise the capital necessary to purchase the land on which the nation had been living for 600 years; securing the mineral rights to its land; defending its rights against the Bophatswana representatives; defending its rights against the mining companies; and, finally, transferring many of the assets of the nation into an investment company.

RBH is a hybrid that holds itself out to be neither fish nor fowl. It represents itself to the South African Revenue Service as a universitas personarum, a not-for-profit organization that operates in the interest of and for the benefit of the community. It uses this designation to avoid paying taxes on its interest and royalty earnings, which, unlike dividends, are taxable. RBH, through the dividends it pays to its shareholders, provides funding for health, education, entrepreneur development, social development, and sports development. The amount budgeted in 2009 for social and community-based spending is R1.2 billion.

However, its structure is entirely corporate. The mandate of maximizing returns is clearly a profit motive. The ownership structure is designed to consolidate decision making. The citizens of the Royal Bafokeng Nation are not the owners of RBH. The Royal Bafokeng Nation donated its shares of RBH to the Royal Bafokeng Nation Development Trust (RBNDT), thereby relieving the supreme council (with its members that are elected by the people or appointed by the kgosi) of ownership decisions and delegation of powers within RBH. RBH’s shareholders are the named trustees of the RBNDT; thus, the RBNDT holds the distinction of being able

to exercise shareholder rights. RBH does not require that its audited financial statements be published and is not a listed company on any stock exchange.

The shares in RBH were recently donated by the Royal Bafokeng Nation (as universitas personarum) to the RBNDT. Up until this donation of shares, the shareholder of RBH was the Royal Bafokeng Nation. Shareholder rights were exercised by the supreme council of the Royal Bafokeng Nation under delegated powers. The supreme council in turn delegated certain powers to the kgosi. The kgosi exercised these delegated powers to elect directors, appoint senior management, and approve external auditors. With the donation of shares to the RBNDT, it will be the trustees of RBNDT, acting in concert, who will exercise the rights of shareholders, including the delegation of powers.\textsuperscript{11}

The shares of RBH are owned by the RBNDT. The board will consult with the trustees of the RBNDT, acting as shareholders in their capacity as trustees of the trust. The board will, or will instruct management to, provide regular briefings to the beneficiaries of the RBNDT as they are represented at the biannual kgotha-kgothe of the Royal Bafokeng Nation.\textsuperscript{12}

Approximately half of the earnings of RBH are paid out to the RBNDT, with the other half being used to grow the balance sheet and make investments. This amounts to about 3.5% of the value of RBH. While this payout ratio is relatively attractive, it is lower than what most endowments would use for funding an institution. One of the items pointed out in Cook’s article is the difficulty of finding suitable uses for the funds. The desire to spend wisely is understandable, but one wonders whether the level of funding could be higher, given the poverty of the nation and the lack of infrastructure. RBH’s status as an universitas personarum is at stake.

All in all, RBH, even if it is very closely controlled by the kgosi, is doing much for the Royal Bafokeng Nation. Yes, it is a corporation and its ownership structure makes it clear that the people of the Royal Bafokeng Nation have only indirect influence in the use of its dividends and almost no say in the governance of the corporation. However, the kgosi and the rest of the leaders are funding a nation with those dividends, and they are trying to provide for the future of that nation when the platinum runs out. Many believe that today’s prevalent corporate structure focuses on maximizing profit for shareholders at the expense of other stakeholders: employees, community, and the natural environment. The compensation structure for the managers of many corporations is skewed toward promoting short-term stock price increases. Plus, the cost of raising capital is made less expensive by having a lofty stock price. Corporations often speak of being good citizens and how they care about the other stakeholders, but many think these are just public relations ploys. Being a good corporate citizen is secondary to stock price. Through its ownership of the RBH, the Royal Bafokeng Nation is trying to do the reverse: stock price is secondary to being a good corporate citizen.

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Susan Cook has written an important account of the Royal Bafokeng Nation’s remarkable progress in blending social development with a world-class business holding company. Cook is insightful and forthright about the challenges the nation faces as it attempts to use its platinum resource to help tackle the poverty and unemployment that confront its people.

I read Cook’s article with fascination, having worked for more than 25 years as a lawyer and business advisor to Native American tribes and tribal businesses. These range from poor tribes trying to develop small businesses to tribes that have conquered poverty and operated renowned, highly profitable gaming and entertainment resorts that employ tens of thousands of people. I also serve on the governing body of Seminole Hard Rock Entertainment, operator of Hard Rock cafes, hotels, and casinos around the world. Viewing the Bafokeng’s efforts through this lens, I was struck repeatedly by parallels to the development experiences of Native America.

Native American tribes and the Bafokeng Nation both have engaged in long struggles to regain dispossessed land and resources and reestablish and affirm sovereignty and jurisdiction. Tribes and the Bafokeng both seek to develop businesses to fund social needs and address unemployment in challenging environments. Both wrestle with the challenges of trying to insulate their businesses from government meddling and micromanagement while at the same time ensuring that their business investments serve sovereign goals.

The Bafokeng Nation has made inspiring strides. While some progress is obviously attributable to the nation’s platinum reserves, the Bafokeng’s progress is also due to their enlightened leadership. Unlike most Native American tribes—where democratically elected tribal leaders often cannot stay in office unless they support ever-increasing amounts of distribution of business revenues to individual tribal members—the political structure of the kingdom, coupled with farsighted leadership, allows for a long-term development strategy focused on growing, diversifying, and using revenues generated by its impressive asset base. The nation’s focus on using revenues to improve education is wise; clearly, though, this strategy will take years before it can bear fruit.

Such a strategy is sound, especially given possible changes in the demand and price for platinum. Cook acknowledges, though, the inevitable tensions that arise as individuals question why the distribution of the nation’s revenues is not

\begin{itemize}
\item \textsuperscript{11} Royal Bafokeng Holdings (Proprietary) Limited, Corporate Governance Policy.
\item \textsuperscript{12} http://www.bafokengholdings.com/cc/files/Board_Charter_09.pdf.
\end{itemize}
greater. Observation of recent Native American history (and general democratic politics as well) suggests that grassroots community pressure for a liberalized revenue distribution strategy may mount even if this may not best serve the long-term interest of the nation as a whole. To address this pressure, it may be that the Bafokeng can set precedents using their assets in ways that provide more immediate benefits while still growing and diversifying revenues. Can RBH diversify its sometimes passive business investments to include, for example, greater funding of capital-hungry firms who will contractually agree to establish operations and hence provide appropriate and desperately needed new jobs in Bafokeng territory?

Indian tribes in the United States have adopted many different business models and employ a variety of corporate and governance structures. But tribes are united in their focus on restoring and expanding their sovereignty. This focus is echoed in Bafokeng’s efforts to vindicate land rights, to establish that tax treatment of RBH and of Bafokeng BEE qualification rights should rightfully reflect the fact that the Bafokeng business model is community based. Ownership benefits extend to the community as a whole, and dividends fund government infrastructure and services, which is identical to tribally owned businesses in the United States. Such tribally owned businesses have successfully maintained their nontaxable federal income tax status; it is to be hoped that the Bafokeng will achieve the same treatment.

I expect that the future of the Bafokeng Nation will include continued efforts to expand Bafokeng sovereignty, to establish, for example, the right to control local schooling in the kingdom as a means of improving education. Such efforts may well be aided by possible negotiation of consensual intergovernmental agreements between the Bafokeng Nation and relevant South African government entities. In the United States there are now numerous examples of tribal intergovernmental compacts governing the regulation of tribal gaming. Other agreements address the preemption of nontribal taxes and the recognition of tribal tax regimes, law enforcement cooperation and police cross-deputization, reciprocal recognition of tribal and state court judgments, and applicability of tribal air- and water-quality regulatory regimes. Such Native American precedents may well prove useful to the Bafokeng.

Perhaps part of the Bafokeng Nation’s future will include lessons learned from the experience of Indian tribes in the United States. Perhaps part of Native America’s future will include lessons learned from the Bafokeng Nation as it creates inspiring precedents for linking business success with grass-roots social development. Cook’s lucid article is an important step toward the occurrence of these worthy goals.

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