The Palgrave Macmillan Settler Colonialism and Land Rights in South Africa

Possession and Dispossession on the Orange River

Edward Cavanagh

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For Jane and Mick

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Acknowledgements

The first acknowledgement of this book should be offered to South African President Jacob Zuma and the African National Congress (ANC), in this, the hundredth year since the passage of the first Union-passed Natives Land Act. Delivering the ANC anniversary statement in January, Zuma gave the strongest indication yet that 'our government will re-open the lodgement date for claims and provide for the exception' in existing land law, potentially allowing for historical acts of dispossession to fall within the hitherto restricted scope of land restitution. It should also be acknowledged that the specific nature of these reforms remained unclarified as this book was going to print. For this reason (and also because similar proposals have been bandied about at ANC gatherings over the last few years), I have not found myself compelled to amend a cornerstone argument of this book about the politicised version of South African history which resulted in the subscription to a strangely restricted definition of 'dispossession' by the Commission on Restitution of Land Rights between 1994 and 2012.

The research for this study was done hard and fast, and I have incurred many debts. I am grateful to the NRF History Workshop at the University of the Witwatersrand for its accommodation of my interests during my time in South Africa. I must also acknowledge the financial support of the Ford Foundation, a wonderful organisation with a commendable mission, and likewise the Moonee Valley Foundation, which sponsored my initial research trip to South Africa. The Cape Archives showed me all the documents I needed, and the University of the Witwatersrand library shipped in all the books I wanted. Thanks to both.

There are many scholars from whom I have taken inspiration, and they will find their name in footnotes. A number of individuals supported this research more directly, in one way or another. Julian Brown, Clive Glaser, Emile Coetzee, and Liezemarie Johannes deserve my biggest thanks. I am also indebted to Mathew Abbott, Mohamed Adhikari, Robert Arculus, Baas Badenhorst, Phil Bonner, Sam Challis,

Roger Chennels, Benjamin Collins, Jules Grey, Miles Irving, Samuel Kariuki, Jennifer MacLeod, Jared McDonald, Bongane Mkhize, Manie Opperman, Rehana Rossouw, John Strydom, all involved in the University of the Witwatersrand History Workshop and in the University of Johannesburg Historical Studies Seminar Series. In no way should my research be taken to reflect any of their opinions directly, though my research would not have taken the direction it has without meaningful interactions with all of them.

Orania is a place one hears a lot about from people who have never visited it, and while opinions may vary in substance, they tend not to when it comes to devotion. I am glad that I was allowed to spend as much time there as I did. It is important to acknowledge Liezemarie and Emile here again, for without their help in Orania this research could not have been undertaken.

Although I spoke the wrong language and came from the wrong country, my interactions with the community of Orania were always very pleasant, and I must thank them for remaining happily open to criticism and supportive of my research during each of my stays. Although I continue to profess scepticism of the ways in which Afrikaner nationalism is mobilised in Orania in order to strengthen a commitment to the exclusion of others from the town, I hope that one day the community will see merit in presenting their ideas, their culture, and their worldview to other South Africans, and importantly, receiving the same in return.

I experienced great difficulty sourcing information from the Commission on Restitution of Land Rights. This threatened to derail the project from the outset. After much insistence, and seemingly out of pure luck, I was provided with basic information about the land claim lodged to Orania. My requests for more information about this claim, and basic information about a handful of other claims in which I was initially interested, continued to be ignored, however, and I had no choice but to give up on those leads and work with what I had. Unfortunately, from what I have gathered during my time in South Africa, experiences like this are quite common for many researchers interested in restitution. This is a shame, and it is hoped that in the future this information will be more available to the public.

A portion of this research was conducted during my enrolment at the University of the Witwatersrand in 2011, an institution to

whom I owe much fealty, though it has been significantly expanded and reworked since. Some parts of Chapters 3 and 4 have appeared in 'The History of Dispossession at Orania and the Politics of Land Restitution in South Africa', *Journal of Southern African Studies* 39, 2 (2013). Some parts of the Afterword have appeared in 'Land Rights that Come with Cut-Off Dates: A Comparative Reflection on Restitution, Aboriginal Title, and Historical Injustice', *South African Journal on Human Rights* 28, 3 (2012). I am grateful to both journals for permitting the reproduction of some of this material here.

A Note on Terminology

I have attempted, as much as possible, to spell appropriately indigenous groups (such as 'amaXhosa' and 'baTswana', for example), but where I have stepped out of line with more thoughtful and modern conventions, I extend my apologies and I do not mean to offend. 'Khoekhoe' has become as popular as 'Khoikhoi' in recent times, and is perhaps more phonetically correct, so it is here preferred over 'Khoikhoi', and certainly over the pejorative 'Hottentot'. 'San' here refers to those hunter-gatherers who were called 'Bushmen'. I sparingly use 'Khoe-San' in the historical arguments of this book, and when I do it is when convenience permits their similar experiences to be seen singularly.

The terms 'coloured' and 'black' are problematic because they extend from apartheid classifications that are still in use today. Who were these individuals, and to what ethnicities do such labels *translate*? It is impossible for outsiders to know this with any certainty today let alone in the past; and, according to many scholars from several disciplines committed to a post-racialist sociology, it is a job offensively anachronistic to try. I have most problems with the homogenising coloured label, which subsumed into it all South Africans of mixed-descent, including those descendants of slaves brought to the Cape from around the world, and to make matters really difficult, most Khoekhoe and San descendants. 'White' is not so complicated but equally confused. While tempting to reflect on the constructedness of these categories with inverted commas, I would not want to patronise those identifying as white, black, or coloured (or a portion of each!), in South Africa today. I have also tried to be careful when using 'Afrikaner', particularly as a noun, for this is no homogeneous label either, as I explore later in the study.

Seldom do I differentiate between those *trekboere* (or 'emigrant farmers', as they were called by the British), on one hand, and those *voortrekkers* of the Great Trek (the more republican type of Boer) on the other hand. From the indigenous point of view, if permissible here to see the matter from it, the distinction was and still is

unnecessary. Both were Boers; like their English brethren committed to staying in South Africa, they were a community of *white settlers*. Here is another term, for the very same reason, that is not worth disintegrating. Some South Africanists may disagree with my use of the term 'settler' for all those who moved from elsewhere in the world to remain behind – the term tends to be reserved for the much-romanticised '1820 Settlers' from Britain – but, again, when seen from the indigenous perspective, what need is there for making such a distinction? Settler colonisers were settler colonisers, no matter what language they spoke or from which boat they disembarked.

There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. And yet there are very few that will give themselves the trouble to consider the origin and foundation of this right. Pleased as we are with the possession, we seem afraid to look back to the means by which it was acquired, as if fearful of some defect in our title; or at least we rest satisfied with the decision of the laws in our favour, without examining the reason or authority upon which those laws have been built.

William Blackstone, *Commentaries on the Laws of England* (1766)

Independent of printed statutes, there are certain rights which human beings possess, and of which they cannot be deprived but by manifest injustice. The wanderer in the desert has a right to his life, to his liberty, his wife, his children, and his property [. . .] to choose the place of his abode, and to enjoy the society of his children; and no one can deprive him of those rights without violating the laws of nature and nations.

Reverend Dr John Philip, *Researches in South Africa* (1828)

No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

Constitution of the Republic of South Africa (1996)

Introduction: Land, Sovereignty, and Indigeneity in South Africa

Settler Colonialism and Land Rights in South Africa tells two stories about land and belonging in South Africa. Complicated by moments of contest, collaboration, and coercion, these are not straightforward stories. But they are worth telling in order to reveal some of the continuities definitive of South African conflict, and to offer some points of comparison with other settler societies established across the globe in the last few centuries.

In 1991, a small town on the middle Orange River was suddenly transformed into a separatist and exclusivist Afrikaner polity. Its former inhabitants were resettled elsewhere, in a process that should sound familiar to scholars of South Africa and settler colonialism. This new polity at Orania was established, so the settlers claimed, in order to protect a culture and language under threat in a changing South Africa. They would eventually come to argue for a right to self-determination, inspired by the discourse of international law and, later, the terms of the new Constitution of the Republic of South Africa.[1]

This is an intriguing development in recent South African history. But it is not without its historical precedents. For hundreds of years, this particular region – the middle Orange River valley – has been a meeting place for individuals from many political affiliations; a terrain where several formidable polities emerged and settled in (if albeit sometimes temporarily). An example here is the Griqua people. Initially an odds-and-ends community of multiply affiliated individuals, the Griqua transformed themselves into a number of key polities in the early nineteenth century, each exhibiting its

own sovereign capacity. Of these polities, Philippolis – established in Bushman Country at an old London Missionary Society station in 1826 – was perhaps the most formidable. Few rival communities, be they baSotho, baTswana, Boer, Khoekhoe, San, or any other hybrid formation, could escape its dominance of the valley and lands to the north during the 1820s and 1830s.

This book compares the two cases of Afrikaner Orania and Griqua Philippolis. I examine them with a focus on the intersection of history and law, analysing the concept of property in land as a means to understanding sovereignty and the question of rights in South Africa's past and present. Throughout this book, property refers not so much to any codified practice, but rather to a socio-legal understanding of things possessed. A rudimentary functionalist approach of this sort allows for a more satisfactory exploration of questions regarding non-European land use than stricter approaches. So when I describe the property relations operative within the 'land regimes' developed by the Griqua and the Afrikaners (as well as those land regimes that were erased by each), I am referring to all practices pertaining to the usage of land, whether or not these practices are familiar to our current understandings of property. The laws of a land regime, written or unwritten, can regulate any number of matters – among them who can alienate land and who can acquire it, the extent to which one owns that land, how social and political order is built upon these foundations, and, importantly, how cognisable the tenure is to outsiders.[2] In short, I set out to explore in this book how, why, and for whom land was used in Philippolis and Orania.

In a sense this is local history, but a kind that communicates with global issues. Land regimes – or property regimes as they are also sometimes called in the study of land[3] – have appeared in a number of different forms across the world. Historically, buried within these land regimes is a plurality of meanings and interests, and often several narratives of possession and dispossession, for historians, archaeologists, and anthropologists to uncover. Stretching human history over a vast plane, we might note that social groups with common interests have always united to create their own land regimes – 'amalgams of law and custom' – specific to their own contexts, tending to be drastically different from each other save for a universal underlying connection between humans and place.[4] These regimes may be liberally or strongly governed, hierarchical

or classless, individualist or communalist – or any combination of these (and other) characteristics. But why do they come about in the first place? There is no simple answer to this question, for there are many reasons that encourage communities to manufacture property out of land and avail it to particular interests for use, and scholars from many disciplines have argued around this for decades. The acute (if now somewhat yawnable) claim that property is a 'social construction' reveals only a piece of this puzzle, whereas the different economic contexts, legal cultures, and prejudices that emerge uniquely from place to place across different periods of history reveal many others.[5]

Griqua Philippolis and Afrikaner Orania, it is hoped, integrate into comparative frameworks as examples of socially constructed land regimes with specific purposes, for each was created by very different communities within their own unique contexts. That these two polities are situated within the same geographical space has methodological implications too, for potentially there are countless other local histories of human occupation across the world that might allow us to open our eyes to the causes we sometimes forget lie behind the *corpus* of property. In other words, what this study also hopes to show is how local history can trouble us to consider (and reconsider), paraphrasing Blackstone's famous remark, the origin and foundation of a 'right' to property.

I am also interested in providing an analysis of what makes some land regimes last and others crumble, how some rights to land are honoured and yet others are disregarded. In other words, when land is made property by communities, and subsequently various interests come to enjoy rights to that property, how do we explain why some of those rights are protected and yet others are potentially extinguishable? I specifically ask why the San people's rights to land in the mid-nineteenth century, and the rights of squatters inhabiting Orania in the 1980s, were so easily disregarded by the newcomers.

I argue that sovereignty decides this, and to that end I show how both Philippolis and Orania participate in, and are dependent upon, the larger sovereign orders to which they belong. However, with the meaning of 'sovereignty' as contested among scholars from many fields as it currently is, it will be important here to clarify at some length what is meant by the term in this study. Regardless of whether we are referring to Iron Age Africa, pre-Westphalian medieval Europe,

or the post-colonial globalising world of recent decades, 'property' and 'sovereignty' – however they may be considered co-dependent or even symbiotic constructions – are discrete categories which ought not be confused or made Eurocentric.

Scholars have long debated the distinction between property and sovereignty, in literature too vast to exhume here.[6] Particularly relevant to this study, however, is the literature devoted specifically to possession and dispossession in settler colonial situations similar to South Africa. One must start here with Francis Jennings, whose influential *Invasion of America* (1975) comes with an important argument about the legal means by which indigenous North Americans 'lost both sovereignty and property'. 'The distinction', he continues, 'must be closely attended to.' Though he is writing about the history of dispossession in the USA, his remarks on this distinction are strikingly universal, and perhaps just as valid for South Africa:

> Abstractly property is a legal right derivative from the sovereignty that recognizes and enforces it. When an old sovereign power departs, its laws and institutions go with it. The new sovereignty creates its own laws. Although they may be word for word the same as formerly, their source of authority and enforcement is the new sovereign. So also with property: it does not legally exist until recognized by the new sovereign. Prior possession may be generally accepted as a moral right, but legal sanction is required to create property right.[7]

Following Jennings several scholars devoted to explaining the legal history of American Indian dispossession have emerged, of which few are more notable than Stuart Banner. In *How the Indians Lost Their Land* (2005), Banner finds it necessary to distinguish between 'the acquisition of *property* in land [and] the acquisition of *sovereignty* over territory. Property means ownership; sovereignty means the right to govern.'[8] Banner's understanding of sovereignty as 'based on an assumption of white superiority' might not be as useful in my context as it is in North America, because as I show in this book, people of all hues have exhibited varying degrees of sovereignty in South Africa, both in the past and in the present day. Very much in common with my own understanding, however, is Banner's understanding of property – regarded 'in its most culturally neutral sense, to mean only

the intellectual apparatus by which a group of people organizes who will get to use which resources located on which land'.[9] My approach to presenting the narratives of dispossession, then, has taken much inspiration from Banner's work, as well as from Jennings and others in the same tradition.[10]

My approach has also benefited from the insights of another historian, John C. Weaver. In his comparative work *The Great Land Rush*, an analysis of the advance of settlers onto the lands belonging to other peoples, in Australia, New Zealand, South Africa, Canada, and the USA, Weaver distinguishes between sovereignty and property as follows:

> Property interests pertain to private law, and its subject matter is *interests*; sovereignty, in contrast, relates to public law, and its subject matter is the arrogation of power to make rules. Sovereignty became one culture's mechanism for perfecting the conquest of another culture. Sovereignty permitted acts that defined and enforced property rights and authorised the decrees, ordinances, and statutes that helped pry first peoples loose from their interests in land by curtailing their ability to do with a territory whatever they pleased.[11]

It is important to be clear on this distinction, as it pervades recent history just as it does prevailing property jurisprudence. The notions of 'public law' and 'private law', however, for all their help in placing property into the juridical framework we recognise today, speak not to an open frontier scenario but rather to a more modern conceptualisation of sovereignty as something that is vested in the nation-state, maker and keeper of laws. I do not want to suggest that Weaver misunderstands this. The 'one culture' to which he is referring in his brilliant book is that crafted by settlers. It would be the settler state regimes that 'monopolized sovereignty' towards the end of the nineteenth century, using the law to circumscribe severely the rights of those few remaining groups of indigenous peoples whose rights to land had not yet entirely been erased by that time.[12] But that came later; what about early on?

Indeed, there was no public/private divide in colonial sovereignty's nascence, when often multiple nations competed for the same bit of land, river, or sea. Before the rise of the settler states, sovereignty

on frontiers tended to be multifaceted, not monofaceted. From the time newcomers made their way to the lands of other societies, in South Africa as elsewhere across the globe, sovereignty manifested variously in a series of contests between groups of colonisers and groups of indigenous peoples. This was a tussle often between multiple interests, over whose claims to authority – generally, over people and land – were strongest and supported by might, and importantly, recognised by all kinds of outsiders. In this moment, jurisdictions were jumbled, subjectivities were pliable, and legal cultures were co-existent. Colonialism is not neat.

As some scholars helpfully propose, sovereignty in these contested colonial contexts may be conceptualised as forming a number of layers, each representing a competing form of authority over people and places.[13] The political geography of the greater Philippolis region, throughout the nineteenth century, I think presents a fine example of layered sovereignty – with San, Griqua, baTswana, baSotho, Boers, and hybrids in their own communities vying for positions of power, all the while peered over by an administration in Cape Town with an umbilical connection to privy council, colonial office, and parliament in England. But, as we know, this political clutter was ephemeral. Ultimately, in the Transorangia, it would be a settler polity formed out of Boers and Britons that would rise to a position of dominance from around the mid-nineteenth century, after which point these different layers began to disappear, or otherwise came to be constructed as 'primal' and therefore manipulable by missionaries and statesmen.[14]

This was quite similar to that which happened over the same conjuncture in North America and Australasia, as Weaver and several other scholars in the same field describe. Settlers during the nineteenth century modified the colonial legal system – in particular, the concept of property – for their own benefit, disavowing indigenous rights in the process. Legal pluralism would be rejected in favour of a more 'perfect settler sovereignty' in this moment, with settler nation-states becoming brick fortresses inside which colonised peoples would seemingly be stuck forever after.[15]

This circumstance is not as historically distant as some might assume. Indeed, from these foundations we can easily segue into a contemporary context. In the world today, cluttered with nation-states increasingly bonded together by globalisation, many sovereign

entities continue to house ethnic minorities – in the case of settler locales, specifically indigenous minorities. Frontiers between natives and newcomers, however defined, can still be identified in both hemispheres, and perfect settler sovereignty very much still exists. Indigenous peoples, rather than endure the increasingly difficult task of inventing new political orders and land regimes, are instead forced to cohere with existing ones in the twenty-first century just as they had to in the nineteenth and twentieth.

In this different – but not too different – context, there has emerged a more empirical and concrete understanding of sovereignty, particularly favoured in international relations scholarship, that is helpful for our purposes. Generally, nations become sovereign, we accept, when they are recognisable to others as such, when they enjoy exclusive authority over land and subjects, and possess the institutions and coercive ability to maintain the status quo.[16] During the twentieth century, in the wake of devastating wars and the disintegration of European empires, this was the sovereignty template rolled out across the world – a process that was complicated by the existence of confused political orders and multiple land regimes made homogeneous.

Turning back to South Africa, we can observe how it always struggled to accommodate this sovereignty template. Settlers there as elsewhere across the world had gone about monopolising sovereignty and denying indigenous rights in piecemeal fashion during the period of imperial supervision, yet into the twentieth century there remained the tatters of former layers always at the ready to contradict and create problems. Nominally, state sovereignty belonged to the Union of South Africa (1910–61), and later, the Republic of South Africa (1961–), emancipated from the Commonwealth; but the situation was always complicated. Federalism was never so conveniently installed into the country as it was elsewhere in the settler colonial world, with the Union interacting uneasily with provincial settler governments in Transvaal, the Orange Free State, Natal, and the Cape Province from 1910 onwards. Nevertheless, the state was clearly configured in such a way for the settler minority, with them and no one else in mind as full citizens. Although there were two main kinds of white settlers, divided by language and tradition, they sat together in their position at the top of this social pecking order, sharing supremacy in the region for most of the twentieth century.

There were many kinds of natives, and all sorts of others: a community with both old and new attachments to the land. But these various degrees of indigeneity were erased by codified racial categories in the twentieth century, resulting in an artificial social order that was suitable for an industrialising national economy and thus beneficial to a select bourgeoisie. Outside of their own special places, non-whites were for the most part politically impotent. Standing aloof from the state were a few colonial Protectorates; within the state there were a few large reservations and, after the 1960s, several manufactured polities known as Bantustans. Each of these Bantustan 'homelands' was an artificial geopolitical entity housing a variety of ethnic/national groupings, and most came with their own kinds of customary jurisdictions – but totally sovereign they never were.[17]

When the winds of change swept across Africa to mark the end of empire, they came in strange and unpredictable swells south of the Zambezi. Only Britain's Protectorates transformed into large, independent nations at first; and strange though these nations appeared (particularly landlocked Lesotho, like a large independent island in the country), this fate of 'independence' was the National Party regime's unrealistic aim for the more fragmentary Bantustans too. As long as the underserviced Bantustans were spread out so erratically in patches across the country, the Bantustan-cum-nation project would never have worked, however. It is unsurprising that the plan fell apart when the apartheid state's coercive capacity and recognisability as ultimate sovereign were increasingly called into dispute by an endogenous struggle movement and the international community from the late 1980s onwards. Apartheid's days were numbered, and eventually expired.

The era of full democracy beckoned in 1994. South Africa, the same sovereign entity as the earlier Republic, received a makeover. With the state's bureaucracy reformed, and constitution rewritten from scratch, the new government fell under the mandate of the African National Congress (ANC): a party that has enjoyed comfortable majority support at national level and has possessed significant influence in the public service from 1994 to this very day. But the ruling ANC merely took the reins off the National Party, inheriting its former legal tradition and ideas about property, along with several other gifts, many unwanted.

Orania, a government-built labour camp constructed in the 1960s before its purchase by Afrikaner separatists in 1990, was witness to these huge transformations. It was, and still is no sovereign entity, for the contested days of layered sovereignty, when small polities like the Griqua could boast a sovereignty of their own, appear well and truly over.[18] Instead, as I argue in later chapters, the Afrikaans-only Orania movement would use the rules and regulations of the sovereign Republic (in both its pre- and post-1994 manifestations) to its own advantage. The new community at Orania would do so in order to preserve the unique land regime and exclusionary culture developed for itself, however contrary to the liberal-left, post-racialist consensus of the 'new' South Africa, and to the chagrin of ANC personalities.

This book is about land rights, and the different regimes that create and erase them, acknowledge and ignore them. By evoking the term 'land rights', I am referring to something more complex than that which its meaning in popular discourse sometimes conveys. I think it is important to return the notion of *property* to this concept, providing we can do so without relying too heavily on the European canon of 'property law', bourgeois notions of landedness, or any settler-centric understandings of exclusive possession. I understand land rights as those rights of individuals or groups to enjoy some kind of relationship to land, whether access, use, exploitation, ownership, or something else springing from their own land regime. With this in mind, my study sets out to provide a descriptive analysis of how a variety of land rights have intertwined through time within a particular space, with respect to the legal–political contexts that thread into each and the greater sovereign order in which they participate. This is a historical study, but within it exist a number of commentaries about the present. I come to the land question mindful of the specificities of South Africa's past and present, but the essential argument in this book is designed to combine with larger transnational debates about land rights and settler colonialism. What is presented here is an appraisal free of exceptionalism, in the hope that it may provide some points of comparison to other settler locales where the restoration of past (and often, by consequence, 'indigenous') land rights in present political contexts is also a modern, definitive feature.

The meaning of 'indigenous' is never straightforward in any context, yet it is fair to say that the concept is particularly problematic in South Africa by virtue of the country's unique human history. The appropriation of the term in this book, I am also aware, is made further dubious by the very different historical contexts with which I am concerned. Before the arrival of Europeans and the commencement of settler colonialism, South Africa was home to a complex population: some had been there far longer than others, who had been there longer than others still.[19] The boundaries between these different communities were often slightly blurry, becoming more so after a Dutch trading company established the foundations of settler society at the Cape and imported a large number of slaves from Africa and Asia from the mid-seventeenth century onwards. By the nineteenth century, for all the social and ethnic distinctions definitive of the non-settler population, each group became a kind of common colonial fodder as settlers rose to their position of dominance and spread out across the land.

If we are to understand South African settler colonialism, it will be insufficient to regard the nineteenth century as a period in which indigenous people simply figure as polar opposites to the colonising population. I want to propose that we see indigeneity as a relative condition instead. South Africa's most indigenous people were the hunter-gatherer San. After the San came a succession of other indigenous groups, many of whom experienced ethnogenesis separately, or otherwise migrated southwards into the region, at a later date. For my first case study in the middle Orange River, then, the San are considered more indigenous than the Griqua, and the Griqua (along with neighbouring Khoekhoe, baSotho, and baTswana populations) more indigenous to that land than the least indigenous *trekkers*. Although this succession of human occupation will seem straightforward to some (and perhaps annoying to others), unless it is properly acknowledged this historical study of land regimes and property rights will be misleadingly incomplete.

With regard to the twentieth century, however, indigeneity becomes a far more complex matter for historians of South Africa to explain. Racial categories, codified from above, pervaded all forms of settler discourse in this period – homogenising a diverse, multicultural population into universally coerced and conquered subjects of the settler state, boxed up into a few labels. Words like 'coloured',

'Indian', and 'native'/'Bantu', fundamental to the everyday functioning of apartheid, were applied with specific meanings in mind that barely corresponded with the different experiences of South Africa's colonised population. And this population, as we have seen, was extremely diverse. The non-settlers comprised descendants of slave and non-slave communities listed above, along with many (indeed, nearly a majority) of mixed descent. On top of this, there were a number of new groups, among them labouring migrants from across southern Africa who relocated to Johannesburg and Kimberley to work for the mines, and 'coolies' (indentured labourers) from south Asia who were used in plantation settings mostly in Natal. What was indigenous and what was not lost much of its relevance in the twentieth century.

In the 1980s and 1990s, the last decades of apartheid segregationism, the principles underlying South Africa's racially stratified society were slowly abandoned in both official and public discourses. And yet, during this 'transformation' – from a strictly ordered society sequestered by racial categories, to an all-inclusive, race-blind, democratic polity – the opportunity to redefine 'indigenous' in a fashion both historically accurate and presently meaningful was not taken by those steering this transition. It was in no one's interest to do so. For this reason today, indigeneity in South Africa is quarrelled over and contested by many, while wholly ignored by many others still. In such a context, therefore, it may be somewhat moot whether or not we regard the community of mostly coloured individuals living in Orania in the 1970s and 1980s as traditionally 'indigenous' – particularly when it appears none of them identified themselves explicitly as such during the removals of 1989–91. Yet, when we consider their occupation of the region both relative to the people who were there before them and to the exclusivist Afrikaners who came after them – in the same way indigeneity is understood relatively in the first study of the San, Griqua, and Boers of Philippolis – we attain a valuable perspective on the land question in Orania and the wider region in which it resides. We are then provided with a number of clues as to how land restitution and indigenous rights are (mis)understood in post-1994 South Africa – issues which are teased out at the end of this book, as I attempt to situate its findings in a broader debate about race and post-apartheid transformation.

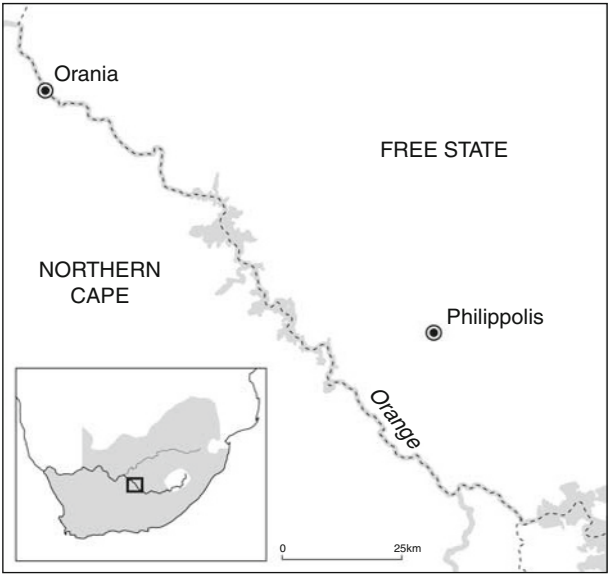


Figure I.1 A map of the middle Orange River

Paying homage to a broader field of settler colonial studies, *Settler Colonialism and Land Rights in South Africa* is nonetheless an intimate study of *the local*: Orania and Philippolis are situated within 100 km of each other on the same stretch of river, and I chose them, from the outset, mainly for that reason (Figure I.1).

During the course of this research, however, the most common criticism I encountered was that spatial vicinity is never in and of itself a valid justification for comparing two case studies; that their distance in time and context (and colour, by implication) will restrict me from reaching any neat conclusions. The point is reasonable, but one I am not persuaded by, for I think there are many similarities between the two locales, as I prove throughout the course of this book. Both settlements were formerly home to prior inhabitants, and these inhabitants had to be transferred away. Both communities emerged out of contested and dynamic political contexts – situations that would determine how they saw themselves and others. Land regulations were devised within these respective contexts, in direct response to specific external pressures and the demands of

the market. Internally, they were both tightly governed. Externally, to various institutions and individuals, they argued for their 'rights' – mainly rights to land and to special treatment – all the time. Indeed, in a way, this study is a historical exploration of the effective deployment of 'rights talk', and to that end, my argument carries across two centuries right up to the present day using Orania and Philippolis to do this.

Though I do not directly argue as much here, I want to make the suggestion that many land regimes, and not just a few, may be excavated from this particular space – and, indeed, several other confined spaces of South Africa – within and between these windows of history. Though this book fast-forwards from a pre-apartheid drama to a late-apartheid drama, this is not to suggest that the Orange River dries up in the meantime to become barren of stories about people relating to land in their own ways. The contrary is true. For a telling example, a little further up river, wedged between the administrative territories of British Basutoland and the Orange Free State, we find the Herschel District, once home to a thriving African peasant community with its own flexible land conventions and lax hut tax. The community became pauperised after the Union of 1910, when land regulations were forced upon them by the settler state, and then, like many other makeshift communities in the northern Cape and the southern Free State during this period, they were settled and resettled according to the labour demands of the white agrarian economy.[20] The concept of 'private property' was instilled, in this early twentieth-century moment, with axioms from a largely invented body of 'customary law' and a series of draconian land law statutes, before, under high apartheid, both bodies of law were inevitably caught up in the larger project of Bantustanisation.[21] Herschel fell first within the jurisdiction of Ciskei, until 1975, when it was transferred to the Transkei, primed at the time for a faux independence. The political history of Herschel contains many idiosyncrasies, but the fundamental conflict definitive of it (i.e. land) is universal. Informal land regimes like those in this region were developed, then overturned, and then manipulated right across the country in the period between 1870 and 1980 – it was a common means by which several African peasantries 'rose and fell'.

The structure of this book is not meant to suggest that there are no stories to be told about peoples and place on the Orange River

before the arrival of the Griqua either. On the contrary, there is much to learn about interactions between hunter-gatherer San and agro-pastoralist 'Briqua' – this was the Khoe term for Bantu-speaking Africans[22] – during the period between the fifteenth and nineteenth centuries.[23] Moreover, these stories have the potential to overturn the myth that the San had no idea about property. For instance, when cattleless baPhuti (southern baSotho) moved into San country in the early nineteenth century to reside with them in caves near the Tele River (a tributary of the upper Orange), they were accepted into the community on the condition that the San 'owned' them. When baPhuti reaccumulated stock, however, the San believed they 'owned' these animals too, and the communities warred – apparently, over the concept of property – until the San were defeated by the technologically superior baPhuti, and subordinated within a new land regime thereafter.[24] The story does not stop there. In 1879, Moorosi, chief of this breakaway baSotho community of baPhuti on San land, organised a rebellion against increasing interference with his methods of cattle accumulation and the unlawful apprehension of subjects from his jurisdiction by colonial forces.[25] In the end, his rebellion was put down not by Boers or Britons, but by baSotho troops from the Quthing District of Basutoland (just a little further up the Orange River), who enlisted only after being warned by Cape administrators that their own lands would be confiscated from them if they did not fight Moorosi.[26]

All of this is to say that the South African landscape is not a battlefield of white and black – or, at least, it is not only that. It is a landscape marked by a number of levels of occupation and dispossession. Although in this book I am interested in identifying the historical complexities pertaining to just two case studies, I do so in order to make an argument about land restitution and historical redress. This is an argument that emerges towards the end of the book, where I aim to relate not just to research on southern Africa, but also to research on the broader, world-historical phenomenon known as settler colonialism.

Here is a good place to provide a brief discussion on what is meant by 'settler colonialism' in this book. Settler colonialism is different from other forms of colonialism, insofar as the colonising community remains behind after the end of empire, to capitalise on an unequal social relationship with the colonised population, governing

itself and others independently from the imperial metropole. Typically, unlike other colonies which transform into self-determining nations during the era of decolonisation (with strikingly universal teleological predisposition, so it would seem from the literature[27]), settler colonies perform no such transformation and sovereignty remains held by a settler state which creates the political configuration for indigenous individuals to weave through in pursuit of redress and restitution.

South Africa appears to muddy the distinction between settler colonialism and colonialism, because the two forms have 'interpenetrated and overlapped' in the area for some time, and the democratic elections of 1994 seem to mark the end of something if not colonialism.[28] Nevertheless, it is worthwhile to regard the South African state as a place with a settler colonial past *and* a settler colonial present – first, because it allows us to connect with a transnational framework of enquiry, and second, because I think that South African history, for all of the upheavals and struggles that define it, turns up more instances of continuity than change, if we look hard enough.

'The colonizers come to stay – invasion is a structure not an event', writes Patrick Wolfe of settler colonialism, among the first to get the ball rolling in this still quite new body of transnational appraisal.[29] As he would later clarify, settler colonialism has two definitive characteristics: 'Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base.'[30] When stressing this point, Wolfe often pairs it with a metaphor delivered off-the-cuff by Theodor Herzl in the introduction to his vintage piece of propaganda for Zionism, *The Jewish State* (1896): 'If I wish to substitute a new building for an old one, I must demolish before I construct.' The inclusion of Israel/Palestine into a generalised line of theoretical reasoning about settlers and natives is not universally accepted among scholars, a dispute I will not engage with here.[31] But following Wolfe, it is worth pausing on the dialectical relationship that emerges from Herzl's metaphor. It vividly symbolises the settler colonial contest; it ties in again to another of Wolfe's succinct axioms – that 'settler colonialism destroys to replace'.[32] Resistance must be cleared away before settlers can move in and occupy the land exclusively.

Wolfe maintains that we see settler colonialism primarily as a contest over *land* rather than *labour* – a social formation embodying 'a logic of elimination' at its core. Yet, if we follow this lead to its logical conclusion as he and others have, South Africa starts to appear less like a settler colony and more like a classically exploitative colonial formation.[33] Its rancid elements of slavery merely superseded by the mass-proletarianisation of the colonised population after industrialisation, South Africa was different to other settler societies because its colonisers asked very different things of the colonised. Settlers were always a minority dependent on 'native labour'. The 'natives', for their part, were ultimately contained by segregation rather than targeted for destruction, and today they have reached a kind of political independence that settler-colonised peoples elsewhere will unlikely attain. Unconvinced by this line of reasoning, *Settler Colonialism and Land Rights in South Africa* unequivocally establishes that South Africa was a site of settler colonialism. It is a fairly unobjectionable claim that settlers 'came to stay' on indigenous land in South Africa, but this book goes beyond that. Towards the end of the study, I make the more provocative suggestion that contemporary South Africa still carries the hallmarks of settler colonialism, despite the best intentions of the anti-apartheid movement to erase them. The transformative recipe of democracy, reconciliation, and anti-discrimination has not equated to liberation for minorities in South Africa (nor has it anywhere else where settlers have stayed behind, as any Aboriginal Australian, New Zealand Maori, or North American Indian will testify). The political and institutional organisation of South African settler society, though commandeered by an outwardly pro-black and pro-poor regime in 1994, has remained for the most part intact. The discourse of transformation has remained faithful to a black and white binary, even though the boundaries between these two catch-alls have been blurred by immigration, miscegenation, and aboriginality for many years, even before apartheid was installed. The politics of transformation have been noble but deliberately (and strangely) short-sighted: land restitution and other programmes of restorative justice, like the Truth and Reconciliation Commission, have addressed present and recent injustice, but they have left foundational acts of dispossession, annexation, and subjugation unscrutinised.

The experiences of both modern Orania and nineteenth-century Philippolis, and the discourses of entitlement and restitution they continue to inspire, are mobilised in this book to support such an argument. Moreover, both case studies can be regarded as settler colonial narratives in and of themselves. These are narratives about communities moving into new regions, carrying with them a sense of special entitlement to land. These narratives are also about the other people, whether in the area before them or after them, who are either to make way for, or conform to the new design. Here I take my inspiration from historian Lorenzo Veracini, who in recent years has developed a theoretical exploration of settler colonialism that remains unrivalled. One of Veracini's main achievements in *Settler Colonialism: A Theoretical Overview* (2010) is his complete reimagination of settler geographies by describing what he calls the 'population economy' of settler colonialism. Borrowing and significantly expanding from a term first formulated within Zionist expansionist thought, he lists a number of 'transfer' strategies deployed by settlers to remain at the top of the social order of things.[34] There are many discursive strategies of transfer, as he makes clear in his extensive typology; but probably the most decisive of these techniques are the physical ones – grizzly strategies such as forcible deportation and removal, mass genocide, and the like.[35] Paraphrasing Veracini with respect – his transnational argument is elegant but complex – indigenous peoples (and various 'others') have to be *transferred away* before settlers can be *transferred onto* the land and stay there.

Transfer is identified in both of my case studies. In fact, in my analysis of Griqua Philippolis it appears twice: the Griqua transferred the San people away from the region in order to create their own polity, and 40 years later the Boers did virtually the same to them. The latter removal is standard settler colonialism, and yet so may the former be if we can disengage with the colour-coded binaries that seem mandatory in our appraisals of colonial and settler colonial encounters. With regard to Afrikaner Orania, I identify only one transfer: it took place when the town's new settlers realised there were people living in their *volkstaat* who, due not to linguistic but rather genetic endowment, were ineligible to pass as white Afrikaners and continue living in the town.

* * *

I am not the first to write of the nineteenth-century Griqua with the land question in mind; nor am I the first to bound out across the ever-shifting frontier of South Africa with the suggestion that we clear our minds of preconceived notions regarding property. Indeed, it was a classic observation made by many of the early liberal historians that certain legal ideas pertaining to land use and ownership brought by settlers conflicted with indigenous ideas, to the terrible disadvantage of those who were there in the first place. It was W. M. Macmillan in *The Cape Colour Question* in 1927 who first wrote, with respect to South Africa, how 'the details of our [i.e. settler] law of property are highly conventional, and very largely depend on the accidents of history and individual point of view'. The 'most fruitful matter of friction with the African natives' was, as he put it, a strangely 'sacred' idea of 'individual ownership of land' that was favoured by Europeans on colonial frontiers.[36] A claim like this relies here, necessarily, upon a homogeneous image of 'Europe' with which I have only a few qualms given Macmillan's context, but perhaps more dangerous is the attempt to see property from the eyes of 'the native'. This ethnohistorical liberty drew Macmillan into making simplistic generalisations. 'The so-called savage, like the poorest of our own poor, readily shares his last bite with his fellows', Macmillan goes on, romantically:

> But at the same time, if he 'owns' not so much as one sheep, he regards the nearest 'fountain', and the beasts that share it with him, as in some indefinable way 'his'. If the trekking Boer, with his developed sense of individual property, chooses, as he must, to water his cattle at the Bushman's fountain, then the Bushman who lives by his skill in the chase, and to whom beef is more palatable than mutton, justifies his action of 'theft' by immemorial custom, which gave him a 'right' to animals using his water-hole.[37]

Similar sentiment shows up in the work of Macmillan's contemporary, J. A. Agar-Hamilton, who in his book *Road to the North* (1937) expressed dismay at imported discourses of territoriality and sovereignty – lamenting how 'the whites approached their relations with the natives with minds prepossessed by European notions of landed property', with the reality for indigenous groups, as he saw it, being quite different.[38] 'The tribes themselves overlapped':

> Cattle stations belonging to the BaThlaping penetrated the fringe of those attached to the BaRolong, while Thlaping clans were scattered through territory claimed by the Griquas. Yet to the natives the problem seemed simple enough. Jurisdiction was personal, not territorial: each clan rendered allegiance to its own chief and there was little difficulty until the white man introduced his theories of territorial domination. The same fountain might even be shared by different communities, and their placid common sense solved problems that would tease the juridical ability of the League of Nations.[39]

Macmillan and Agar-Hamilton, and probably others like them, expressed great regret about the phenomenon they described. It is quite true to say, however, that Macmillan's 'Bushman' and Agar-Hamilton's baTswana are identified more for their rhetorical value than any other reason – a nominal hat-tip supposedly lending weight to their sympathetic generalisations.

It would not be until 1961 that serious issue would be taken with these kinds of summations. The historian Martin Legassick, who in his mammoth PhD dissertation focused on the politics of missionary activity and the formidable, state-like polities of baSotho, baTswana, and Griqua communities in the Transorangia, argued that

> areas of jurisdiction overlapped and intermingled. It has been argued by many that this overlapping was a consequence of the 'personal jurisdiction' in non-white political communities: that chiefs had authority over subjects and not territory. This argument is untenable; [...] traditional Sotho-Tswana communities (and Khoi and San communities as well) all recognised some form of territorial dominion. Those *settled* within that territory owed obligations to its ruler.[40]

For Legassick, these kinds of land arrangements discontinued by the 1870s, supposedly after which point property relations changed: the system of outright land ownership became increasingly rigid. Legassick's work is very important, and remains so today; particularly respecting the missionary enterprise in the region, it has come in handy on many occasions during the preparation of this study. Yet he closes his analysis not in the 1870s but in the year 1840, and

the Philippolis Griqua receive scant attention in his otherwise monumental work. For them, we have to turn to the work of others, and thankfully we are blessed with three strata of solid historiographical foundation: the breakthrough provided by J. S. Marais in 1939; more solid and in-depth research from Robert Ross in the 1970s; and a clear, complete, and complementary re-reading of both in the writings of Karel Schoeman in the 1990s and 2000s.

Marais – if, however, we may consider it unfortunate today that he piled the Griqua and others like them into a great mass he saw as *The Cape Coloured People* – was the first to provide a close reading of key documents relevant to Griqua Philippolis and identify the intricacies of the Griqua state.[41] He considered land and jurisdiction matters of considerable import, and provided a narrative in which the Griqua Captains gradually lost their ability to supervise not only the growing number of land-hungry *trekboere*, but also their own subjects. His reading of history is insightful, though a little outdated now; the work of Ross and Schoeman took these ideas to a whole new level of clarity and insight, and it is from their work more than Marais's that mine takes its inspiration. Ross gave us an incredibly vivid picture showing how the Griqua state worked; pairing this with a sound economic understanding of South African history, he delivered a concise adjudication on the rise and fall of Philippolis and, likewise, the rise and fall of Kokstad in his book *Adam Kok's Griquas* (1976).[42] Schoeman's work complements Ross's well, as it is slightly more sensitive to the social dynamics of the Griqua community at Philippolis, and more detailed (he often allows his quoted sources to run and run over several pages).[43]

Since I am calling upon the same, very limited, source base that both of these historians have used – and here I should acknowledge my indebtedness particularly to Schoeman for his reproduction and translation of many in his two collections, *Griqua Records* (1996) and *The Griqua Mission* (2005)[44] – I do not, in this study, dispute any arguments made by them. Both, after all, are sensitive to the question of land, central as it is to the history of the Griqua; and both understand well the place allotted to the Griqua in the agendas of the Cape administration and the Orange Free State.

The main original contribution I offer in my findings, and where I depart from these authors slightly, relates to the place of the San in the Griqua narrative. By exploring how the Griqua, and later

the Boers, conceived of themselves on 'Bushmanland', and how, after the San were obliterated in a succession of genocidal moments, both Griqua and Boers considered their possession of this country as natural, I hope to present a new perspective on the land question, problematising any clear settler/native binary along the way.[45] Peering into settler discourse, I consider the most important person neither the famous republican Jan Mocke nor the loyalist diplomat M. A. Oberholster, as other historians have inferred, but the humble pastoralist Johannes Coetzee (occasionally spelled 'Coetze'), whose vocal complaints about Griqua atrocities and land treaties had perhaps just as much influence on British policy as anyone else's did.

When it comes to the existing literature on Orania, however, the historian is far less blessed, and it is in the chapters I devote to it that I present my most original research. There have been a few theses and articles that have surfaced in the last decade which are eye-opening and valuable, but none in which the land question is approached directly.[46] Neither has the removal of former residents been described by anyone yet (though it has been called a 'transfer' by Veracini in a recent opinion piece for *Settler Colonial Studies*).[47]

To understand properly the Oranian land regime, I had to make several excursions to the *volkstaat*, where I interviewed residents and pleaded for paperwork, later translating this material from Afrikaans; in the process, I had to seek literature and opinion on the strangely South African tenure convention known as the 'share block'. To work out what happened when former residents were transferred away and the new settlers came in, I battled to persuade several indifferent individuals employed by the Commission on Restitution of Land Rights to provide me with a copy of their investigation. Newspaper articles and opinion pieces on Orania exist in abundance, which are helpful but need to be read with great caution, coming as they often do with biases and inaccurate details.[48] With Orania, in sum, I had my work cut out for me.

* * *

Following this introduction, the next two chapters will deal with the Griqua of Philippolis. In the first, I discuss the erasure of past interests in land and the creation of the Griqua state. A contest takes place on this land, part of a large area that was once known as the 'Bushman Country' by early observers. Indeed, Philippolis itself only

got its name in 1822, and the 'station' founded on this land was to exist predominantly for San converts. And so it did, until the end of 1825, when a change in London Missionary Society policy paved the way for Adam Kok II and his Griqua to assume the land for his own subjects. Within a few years, the San of this little station, and likewise the independent San bands of the surrounding region, became the targets of the Griqua. They had to be removed from the country before a new, pastoralism-based economy, supported by individual land tenure, could emerge in Philippolis. The Griqua were active agents in the colonial genocide of the San, I argue.

In the following chapter, I illustrate how the Griqua land regime was put together, and how others recognised it. Perpetually imperilled by white settlers caught up in the great land rush, their land regime destabilised. To describe this, mostly I show how Kok had his jurisdiction weakened and eventually taken away from him, as the currents of settler discourse gradually impeded administrative decisions, leaving him powerless to administer his state. His land regime was destroyed, and he removed with his subjects to 'Griqualand East'.

The Afrikaners of Orania then receive two chapters, in which I pursue identical lines of enquiry. First, I note how the erasure of past interests in land was a fundamental requirement for the *volkstaat* to emerge. The town was state property for slightly over two decades: it was used as a settlement for both professional and labouring employees of the Department of Water Affairs. For a number of reasons, however, by the 1980s, the department decided to wind down their projects on the Orange River, and Orania was eventually placed on the open market in 1989. Shortly after Carel Boshoff III and the Orania Bestuurdienste purchased the land (and improvements) with the intention of establishing a *volkstaat*, however, it soon became evident that the land had residents who were reluctant to move out. These people had to be removed for Orania to become the model Afrikaner town many hoped it would become.

In the second chapter I devote to Orania, I describe the peculiar system of property relations developed there, based upon a 'share block' model. Settlers do not enjoy freehold or leasehold tenure, but instead have a share which bestows usufructuary rights upon them. In order to ensure that only candidates deemed appropriate by the overseeing company buy shares and live in the community, a strict

screening process has been put into place. In the last decade, this system has faced several challenges. Private interests have sniffed around the *volkstaat*, looking for investment opportunities; provincial law has changed to put pressure upon the representative system developed by Orania; a land claim was lodged to the town by those former inhabitants who were removed in early 1991. Each of these events is covered in detail.

With an understanding of the land claim made to Orania, we are provided with an opportunity to foreground both Griqua and Afrikaner land regimes against a bigger picture, one illustrative of ongoing debates about reconciliation and land reform. This I do in the afterword, where my reasoning for jumping from the pre-apartheid period to a late-apartheid period becomes clear, as I set out to explain how an artificially restricted and deliberately politicised history of 'dispossession' came to influence the programme of land restitution. For better or for worse (depending on whom one asks), this has made restitution in South Africa unique compared to other settler colonial locales.

As I argue throughout this book, the decision as to which rights to land can be protected and which can be considered extinguishable is generally made by those with the strongest claims to ultimate sovereignty. That this reality is as true of the post-1994 programme of land reform as it is of ancient Bushmanland suggests that we need to become more critical of the strategies set out by the state to answer the 'land question' in South Africa today. For if the many historical contexts appearing in this study reveal one universal condition, it is that the polity with sovereignty often does irreparable damage to the land rights of others.

1
The Erasure of Past Interests in Land at Philippolis

The San and the Griqua have captured the imaginations of many in South Africa for a long time, if for very different reasons. Both labels are deeply problematic for they elide the complexities of ethnogenesis, the dynamics of inter-community politics, and the function of colonial discourse, as will probably become clearer throughout this book.[1] Yet in the absence of any alternatives, 'San' and 'Griqua' are applied here as they are by others now and in the recent past: the former to the oldest cultural group in the African sub-continent, the latter reserved for those comprised of many strands, who experienced ethnogenesis much later and expanded across the Transorangia region as they did.

The relationship between the San and the Griqua in the early nineteenth century forms the main subject of this chapter. The narrative also features a number of other characters, among them some missionaries, a few notable representatives of the British colonial government at the Cape, and a number of aggravated white farmers who moved into the region as well. Out of these interactions and others like them, the land question definitively emerged as one of the most pressing ideological contests in South Africa. Whose laws regulated land on the frontier? Which conceptualisation of property ought to prevail? At stake here were the rights of those with interests in land – specifically, in this chapter, the land in and around Philippolis.

Various communities used this land and competed over it, until in 1826 it was alienated by a group of missionaries who had negligible right to it in the first place. These missionaries, by intention or accident, gave it over to the Griqua in full. After this, the remnant

interests in land of the region's earlier inhabitants had to be annulled, in order for the Griqua to transform the region into an exclusively Griqua domain and expand its borders northwards across the pasturage of the Transorangia. In this contest over rights, a contest marked by a series of violent dispossessions, the San lost out to another, more powerful, group, in what was for them a most apocalyptic period of history that historians are only now coming to terms with.

The San were victims of colonial genocide, as a number of other indigenous groups were across the world during the period of European expansion. Until recently, however, there has prevailed some reluctance among historians to consider South Africa within the comparative frame of genocide studies, due perhaps to the great shadow cast by apartheid over other periods in the South African past.[2] Mohamed Adhikari's recent research has broken new ground in this respect. As he succinctly shows in his accessible study of genocide during the conquest of South Africa, San society was annihilated by the end of the nineteenth century, and a classical settler society was erected over the top of it.[3] In this chapter, I describe how this process occurred in greater Philippolis and advance his thesis by suggesting that the extermination of the San accorded not only with the interests of the white Boer population, but other groups, like the Griqua, as well.

* * *

The Griqua people had ancient links to southern Africa, like many groups did – though they were relative newcomers to the lands north of the middle Orange River. The adoption of the name 'Griqua' – adapted from the 'Grigriqua' (Khoekhoe) of the western Cape coastal belt – was roughly coincident with their ethnogenesis as a group, in the early nineteenth century. They were formed out of a collection of rather diverse peoples: initially among them was a large proportion of Khoekhoe and Bastaards, along with the odd San and a few runaway slaves; but their communities soon came to incorporate large numbers of baSotho and baTswana.[4] What separated the Griqua from most others was their social and political organisation.[5] Manipulating the uncertain geopolitical conditions of the regions in which they settled, and eagerly making use of the enthusiastic missionaries

deployed by the London Missionary Society (LMS), they established powerful polities in their own right.

To the distress of the missionaries, the original Griqua state, Griquatown, had in the 1820s become split into a number of factions. The controversial installation of a new leader, Andries Waterboer, inspired a contingent of rebels (known as the Bergenaars) to attempt an overthrow of the government in favour of one of the more traditional Griqua leaders, such as Berend Berends, or a member of the Kok dynasty.[6] A number of meetings were held to no avail, before the Griqua eventually split into four groups that went their own ways. Many moved to the nearby Campbell settlement, while others sought to establish a new Griqua polity.

In 1826, with the permission of LMS superintendent Dr John Philip, some of the dissenting Griquas were allowed to move east and settle at Philippolis, a missionary station 200 km to the southeast of Griquatown, established in 1822 for the San.[7]

* * *

The Philippolis region – the land of the middle Orange River – like much of southern Africa, was originally the domain of a hunter-gatherer population of San (or 'Bushmen'). Whether the San *owned* this land or simply *occupied* it is a moot point, as will be clear once a patchwork of human history in the region is unravelled.

Like other indigenous hunter-gatherer communities across the settler world today, the San are commonly esteemed in the popular imagination to have a 'special' or 'mystical' relationship to land, but seldom has this relationship been considered orderly, governed by norms and laws, or even cognisable to courts.[8] This estimation deserves our closest interrogation. The conventions that dictate, say, the value given to semi-permanent hunting camps, or when a community moves onto new land for foraging, or how one group shares the produce of a particular area with another migratory group – although never codified into the written form – are far more complex than many assume, and were certainly central to the political organisation of San communities of Bushmanland-proper for tens of thousands of years.[9] Or so they were until established property relations were further complicated by increasing interaction with relative communities, the herding Khoekhoe, just in the last 2,000 years.[10]

New kinds of ecological adaptation (considering the land for pastoral use, and not exclusively for foraging, for instance), the introduction of improvable chattel property in the form of domesticated animals, and the addition of semi-fixed dwellings, all combined to inform the types of land regimes developed by communities in this period.

These indigenous systems of property relations which evolved in South Africa, at the hands of hunters and herders, while never placid or static during this period of history, were heavily rattled by the southern migrations of agro-pastoralist Briqua, and, more devastatingly, by the commencement of company colonialism in 1652. As colonisation intensified at the Cape, and settlers (and their slaves) came to stay, local communities of Hottentots and Bosjesmen were split apart; indeed, their numbers fell away just as gradually as European and Briqua populations strengthened over the same period. The 'Khoe-San' – for their populations were never discrete, and the distinction always blurred, scholars argue[11] – adapted to these changes. Out of fear from disease, servitude, and murder, most kept their distance from the dense coastal settlements, and continued life as they otherwise would – hunting, gathering, and herding – sometimes cooperative with other groups, and sometimes antagonistic.

By the late eighteenth century, the middle Orange River region, beyond the frontier of settlement, had become a busy meeting place. San, who foraged across the area and hunted native animals ingeniously, and Khoekhoe (mostly Korana groups), who on top of this established seasonal herding routes between the springs punctuating the patchy pastures, were no longer alone. One could also find the southwardly spreading populations of baSotho and baTswana: those Briqua only emergent in this region during the fifteenth and sixteenth centuries were now everyone's neighbours. Entrepreneurial trekboere, in the first of many waves of white pastoralism, were making their way there too. And there was also a growing number of outcasts who had fled an expanding Cape society, among them the mixed-descent (European-slave and European-Khoe-San individuals) Bastaards.[12] This was a meeting place that soon became incredibly volatile, and sadly it would be the San, particularly those who held on most strongly to their traditional hunter-gatherer ways, that were most victimised.[13] Into this context stepped the missionaries.

The LMS – before their cataclysmic Christianising campaign across southern Africa from the mid-nineteenth century onwards – were

only tentatively venturing into the South African interior in the first two decades of the century.[14] After the rise and fall of the Sak River mission (1800–06), and following a number of exploratory expeditions after this, it quickly became apparent to the LMS just how destitute the San people, on the fringes of Cape settler society, had become. Their plan to offset their complete annihilation was to create a number of stations for the San, between 1814 and the mid-1820s.[15] Among them was Philippolis, just north of what would become the Orange River border, established in early 1822. Seemingly like the other LMS stations, Philippolis stood on land that was not formally ceded by prior inhabitants.

According to one estimate, within six months of establishment Philippolis had become a base for approximately 80 San, with just 20 or so actually living at the station. All were under the instruction of the 'Native Teacher', a Bastaard called Jan Goeyman.[16] Goeyman was eventually replaced – or rather, demoted and ignored – by James Clark of the LMS in 1825, by which time several families of Bastaards and Khoekhoe, many from nearby Bethelsdorp, had also congregated in Philippolis, apparently living in amity with the San there.[17] On top of this, a number of white trekboere – ignorant of the LMS project and tenuously loyal to the Crown – were making their way through the region, in their early expeditions away from the colonial settlement in search of springs and pastures.

It was around this time, in 1825, that Dr John Philip of the LMS crossed the Orange on an important tour. He would soon head to England for an extended visit, and so desired to tie up some loose ends on the frontier. One of the main issues he wanted resolved was the political conflict that had recently broken out in Griquatown, between those loyal to Andries Waterboer and those opposing him. About this, he is said to have given a number of instructions to his stationed missionaries: Waterboer, primed by the Griquatown missionary John Melvill, was to be supported as leader, and Adam Kok II's followers and any other dissenters would have to comply with this mandate, or move out to settle elsewhere.

Another pressing issue for Philip was the state of the San mission stations, which in his eyes were failing miserably. Recalling his 1825 visit to Philippolis and general tour of the South African interior in 1842 (though perhaps with the haze of time distorting the specifics), Philip described the oppression of the Bushmen. 'The Boers who

had been recently settled in the new District so lately added to the Colony', Philip complained, 'had found their way across the river, and were beginning to annoy those [...] conducting of the mission and to oppress the Bushmen, under the pretext of searching for stolen Cattle, and runaway Bushmen, and Children, who they alleged to have been contract[ed] to them, and promised them by their parents.' In this country there was 'no authority', he explained. 'The missionaries were set at defiance, the Statements of Bushmen were disregarded by the Boers [...] and the Bushmen were unable to protect themselves.' The solution was, as Philip reckoned at that time, to rally the Griqua to his cause – those 'under the residence of Adam Kok [II], one of our Griqua Chiefs and the father of the present Chief of Philippolis, whose territory lay next to the lands of Philippolis'. As Philip recalled, Kok 'proposed to protect the Bushmen against the aggressions of the Boers', in exchange for permission 'to reside at Philippolis'. But the two had to reach a deal, and land was at the centre of that deal:

> To this proposal I gave my consent on this condition, that he not to dispossess the Bushmen of such lands as they might require nor consider himself or his heirs as having any right to sell any part of the Country or to give a lease of any part of it, except to his own people, and that he and they were merely to have the use of the lands as belonging to a Missionary Institution.[18]

With the Philippolis San in such a miserable condition, and Kok II still loyal to the LMS and eager to relocate, Philip apparently gave instructions to kill two birds with one stone, as the above recollection makes clear. When, early in 1826, Peter Wright of the LMS arrived to relieve Melvill of the Griquatown posting, the plan was put into action, and a *mariage de convenance* was hastily arranged for Kok II and the restless Bergenaar faction, on the condition that the San receive protection. But just how this took place, and what happened afterwards, would become the source of a bitter feud between Clark and Wright – and a great worry, of course, to Philip.

As Clark remembered the event, he was in Philippolis and caught off-guard when Wright arrived citing instructions from Philip to 'form a station among [the Bergenaars] where he choosed, even at Philippolis'. Following this, 'Mr Wright proceeded to the Bergenaars

and gave them Dr Philip's authority to occupy Philippolis, which they consented to do.' Clark, a little unsure of his role, did not object; he handed Philippolis over to Adam Kok II in July of 1826. '[N]ot doubting Mr Wright's authority', he recalled, 'we called in the Bergenaars to Philippolis, and I even gave them the station over in Writting [sic], in order that they might be inclined to protect it.'[19]

That Philippolis had fallen out of the LMS's hands and straight into those of Kok II quickly became a source of regret to both Clark and Wright. When the situation became embarrassing, White deflected the blame onto Clark. Clark, claimed Wright, was originally behind the bringing of the Griqua to Philippolis, and it was he who 'remov[ed] the Bushman Station'. The two argued about the issue. For Wright, the terms of the agreement between Clark and Kok II were most distressing. As he wrote angrily to Clark in May 1826:

> From the document put into my hands which you have to A. Kok dated 22 July 1826 [i.e. a receipt of the agreement between Clark and Kok II[20]], consisting of four separate strange articles, I find you have not only ceded the station to all intents and purposes to the Captain and his people, which is an act neither you nor the Missionary Society had power to do, but you ceded the *missionary also*, whoever he may be, for ever, so that by your paper he is become to all intents and purposes a subject of the Captain of Philippolis.[21]

That the land and the houses on them were 'ceded' to Kok II was a step too far, Wright claimed. After all, in Philip's appraisal (or, perhaps, as Philip remembered his judgement), the Griqua were 'merely to have the use of the lands as belonging to a Missionary Institution'. Clark, in defence, claimed first that Wright had misinterpreted Philip's wishes for the prior inhabitants of Philippolis, and second he argued that Kok II could not be considered the leader and landlord of Philippolis, because his Bergenaar subjects – seemingly displeased with the social experiment that the LMS had in mind for them – abandoned Philippolis and fled north, meaning that Kok II could not fulfil his own obligations in the contract. As Clark (referring to himself as 'Missionary to the Bushmen') put it to Andries Stockenström at Graaff Reinet in September 1827, 'whatever power Dr Philip may have given Mr Wright in this case, yet for the honour of Dr Philip',

> he did not mean to deprive a poor people just emerging out of *Heathenism* of their houses which they were encouraged by their Missionary to build in the prospect of enjoying them [...] and I must further add in behalf of Dr Philip that his allowing the Bergenaars to occupy any part of the Bushmen Country was [...] to lead these people off from their Marauding practises, and bring them to a Settled State of Life – Their leaving Philippolis, however, did not answer the end intended, and it surely cannot be argued that because their Kaptain Adam Kok and a few of his relatives remained, that he can still claim dominion and possession of the Bushman Country, and fill it with Korannas, Caffres and other Griquas, to the prejudice of the poor Bushmen and of the original inhabitants of Philippolis, placing the former out of the protection of the Colony and depriving the latter of their property unless they became Griquas, which is neither their interest nor in their power to be [...][22]

Importantly, Clark here admitted that Kok II, at one time, had 'dominion and possession of the Bushman Country' around Philippolis. Most probably, these were rights granted to him in the 'four separate strange articles' of the original treaty, and not given to him by Wright or Philip; but in the end, it did not matter whose responsibility it was. Philip was off the continent and could not intervene. Kok II, in the meantime, happily accepted dominium and would not relinquish it easily: within a few years, Philippolis became the base for over a hundred Griqua farmers. They were spread out to the north across 700,000 ha or so of land, most of which was originally a kind of commons among its former users, and was presumably *not* part of the original transaction made between the LMS and the Griqua, yet it became assumed outright by the expanding Griqua. 'They had come to stay', according to one historian, on land which had been occupied by San hunter-gatherers for thousands of years before them.[23]

The question of how Philippolis was acquired, alienated, and eventually transferred to the Griqua would later attract the attention of outsiders. Kok II's right to the land was not scrutinised (for the moment, at least). Instead, it was Philip who attracted criticism, for acquiring the land, then authorising the creation of the station, and ultimately handing it over the Griqua. To the missionary James

Archbell, there were a number of unanswered questions about the lawfulness of title in Philippolis. He put these questions to the secretaries of the Wesleyan Society with which he was affiliated, as follows:

> What right had the Dr. to go into that country at the first and to claim possession there? What right had he to take the Griquas there? Who were the original proprieters of the soil as claimed? Did Dr. Philip or his agents purchase it? Where are the documents?[24]

While it is true that competing missionary groups always sought new ammunition for their battles for the souls of native Africa, Archbell's questions seem more than merely hyperbolical, as Andries Stockenström espoused similar astonishment at the transaction. Unlinked to any particular missionary group, Stockenström was a servant of the Cape administration, yet no less a settler – occasionally identifying himself as a 'colonist' in his correspondence.[25] In February 1836, before an extensive Commission of Inquiry into the treatment of indigenous peoples in Britain's settler colonies, Stockenström was interviewed on the matter by William Gladstone:

> *Are you aware whether the missionaries have taken possession of the country in the name of the London Missionary Society?* – I believe, with respect to Philippolis, the thing has been done; I at least saw a paper to that effect given by Dr. Philip, or in his name. It was a Bushman establishment, where some missionary of the Society had established a mission under a Mr. Clark [. . .]
>
> *Did that missionary take territorial possession of the place?* – The establishment as a missionary establishment was ceded by Dr. Philip to the Griquas. The Griquas established themselves there, and cultivated the soil, and most of the Bushmen disappeared.
>
> *Do you mean that the possession of the soil was ceded by Dr. Philip to the Griquas from the Bushmen?* – Yes, a paper was shown to me by Mr. Melville [sic] at the time I visited the place in 1830 or 1831.

> *Did you dispute the right of Doctor Philip on behalf of the British Government?* – Not at all. I said the Bushmen had a right to be there.
>
> *Were your remonstrances attended with any effect?* – It is a Griqua establishment now.[26]

George Grey then relieved Gladstone, and seeking clarification on some of the particulars, asked if Stockenström knew 'whether Dr. Philip claimed a proprietary right to the site of Philippolis, either personally or on behalf of the society', to which Stockenström replied, 'I do not know upon what grounds he claimed it, but he did the act, for I saw the paper' – presumably referring to the same treaty of agreement which took place on 22 July 1826.[27]

That Gladstone and Grey seem just as astonished as Archbell and Stockenström about the land question in Philippolis – if not, *more* astonished – is suggestive of how strange and irresponsible the transaction was regarded by the commissioners of this famous inquiry.[28] But the scandal of Philip's 'proprietary right' faded away soon after the report was printed, presumably because the Griqua were such loyal subjects of the Crown, favoured at the time for their role policing the borders and collaborating with the Cape administration.[29] From the late 1820s onwards, only white settlers would raise the issue; though they would do so not to discredit the LMS's right of alienation, but rather to dispute the Griqua's right of acquisition. This crucial development is considered in the next chapter.

* * *

Meanwhile, back in Philippolis, tension between the 'Old Inhabitants' (as the station's *Bastaards* and Khoekhoe were called), the San, and the incoming Griqua soon boiled over into violence. Kok II, laying the foundations of what he hoped would become a mighty Griqua state, could only unite those he saw fit to become 'Griqua', and expel those he thought hindrances.

The decade that followed 1827 was a period in which the 'Old Inhabitants' and the San would have very different experiences. Both, of course, had the option of removing with the LMS to their soon-to-be established Bushman Station on the Caledon River. But this was

an option with little purchase among the 'Old Inhabitants', most of whom seemed, instead, to have been 'quickly incorporated' into the Griqua community.[30]

Unlike the 'Old Inhabitants', the San, with a few exceptions, were considered unworthy of burgher rights in the Griqua polity, however. Those who did not set off for Bushman Station in 1827–28 lingered about and waited for an offer of employment from Griqua settlers, or were otherwise expelled. Many, perhaps most, joined up with semi-independent bands in the outskirts of town to continue hunting and gathering as they had for generations. But things had changed in the last hundred years or so. Game was seriously depleted. Slave-raiding – the commodification of San humanness as labour for the Boer economy – had become rife. Subjects loyal to the Griqua state of Philippolis had spread out over a large area of grazing land, and they moved their stock from place to place as ecological realities demanded without consideration for other usage patterns. To top it off, there was a serious drought in these years, by which time all the springs had been taken by Griqua and trekboer settlers anyway.[31]

The San of greater Philippolis, who raided cattle as their last resort for subsistence, became a nuisance to the Griqua. In response, almost immediately after Kok II's acquisition of the site, Philippolis became a base from which a number of deadly commandos against the San were organised. John Melvill, who replaced Clark to oversee the transformation of Philippolis from a San haven into a Griqua den, describes the situation well in his diary. In Melvill's entry for 19 February 1827, he wrote of a Griqua commando that 'went out in pursuit of the Bushmen who stole the cattle on the 9th inst. and murdered the herdsman'. The bloody details of the commando were not fully relayed to Melvill, but he recalls them returning in the morning the following day, 'with eight Bushmen, including three boys': 'prisoners' allegedly captured 'without firing a shot'. The fate of these captives was a series of vicious lashings: probably not the Christian conduct Melvill expected to see displayed by the Griqua towards the former inhabitants of the greater Philippolis region.[32]

Just a few weeks later, Melvill reported a similar incident (though possibly it was the same one), in which a Griqua commando 'went out against some Bushmen who had stolen three head of cattle and murdered the herdsman'. Two days later, on 17 March, 'The

commando having returned home one of the party gave me the following account':

> Having followed the footmarks of the Bushmen, they came upon the kraal, and found part of the meat, but the inhabitants had fled to a covert of thick reeds. They were followed and surrounded [...] Some shots were then fired, and it appears one of the Bushmen was killed, upon which the only two that remained made a most determined resistance, talking and swearing in the Dutch language at the Griquas, until at last they were shot with two women and two children that were with them.[33]

Melvill was troubled by this violence, as his desperate rhetoric testifies:

> It is not to be wondered at that [the San] would not give themselves up, for the usual method pursued by such commandoes against them must leave them ignorant of such a thing as giving quarter. O, when will the time come to favour this wretched people?[34]

Not any time soon, it would seem; their situation worsened, and their numbers fell away quickly. 'These people do not settle themselves near springs, make permanent residences, or cultivate land,' lamented Stockenström, among the most sympathetic towards the plight of the hunter-gatherers, in 1826. '[T]hey live in remote corners and rocks, and remove as often as they expect to find a part of the country more full of game.'[35] In his capacity as *landdrost* between Colesberg and Graaff-Reinet, Stockenström attempted single-handedly to police slave-raiding and massacres on the northern frontier between the mid-1810s and early 1830s, an agenda that often put him at odds with the Griqua. For Stockenström, the solution was to provide the remaining groups of San between the Karoo and the Orange River with colonial protection and cattle, in the hope that they might escape their woes (a policy first trialled by Governor George Macartney, in an early British Proclamation of 1798).[36] Instead, for all its fine intent, this solution failed; the Griqua and other pastoralists were jealous of the San's stockpile, sentiment which likely led to many raiding offensives against the San.

'In consequence of the Landdrost's plan of giving cattle to the Bushmen', Melvill wrote again from Philippolis in the winter of 1837, '66 men, women and children have arrived. It is remarkable that there is not one child to each family, there being only 17 to about 25 families.' Their numbers were falling away. Melvill attributed this not to the violence systematically inflicted upon them by Griqua and other stock farmers, but to other causes – 'probably owing to several being in the service of the [white] Farmers, though indeed the few children generally found among the Bushmen may also be accounted for form their hard life and insufficient subsistence, and from their sometimes practising infanticide'.[37] He did not take into consideration the devastating effect of Griqua commandos – some of which he reported in his diaries, others he may have had no idea about – but this should not be too surprising. It was important for LMS men to keep a clean diary with respect to their following, for their diaries were never completely personal and were often open to public scrutiny – and for this reason we should approach the missionary archive with scepticism when it comes to the topic of San genocide.

By the end of the 1820s, the story was the same in the Transorangia as it had been in Beaufort West, Colesberg, and Graaff-Reinet. Most of the stock given to the San were either lost to raiders or consumed out of necessity, and their pitiful communities were perishing on the frontier – as several repetitive complaints to this effect, emanating from the farms of settling trekboere in this period, testify. The Cape administration responded to these warning signals; and early in 1830 it was Stockenström, promoted to Commissioner General by this time, who was given the job of investigating these grievances.[38]

When he arrived in Philippolis, he heard from a few white settlers how the Griqua often chased down and massacred large kraals of San. The Griqua, for their part, did not deny such claims, but rather argued that white men often joined the Griqua in their exterminatory raids. This tug-of-war between both concerned parties is reflected in the evidence collected in the Philippolis annexure of Stockenström's 'Commission of Inquiry into Reports of Cruelty against Native Tribes Beyond the Orange River, 1830', a harrowing catalogue of calculated genocide.[39]

Perhaps nowhere is the question of genocide more potently posed than in the testimony of Johannes Coetze[e], in these years

only embarking upon his vocal campaign against the Griqua of Philippolis.[40] According to him, 'a quiet and peaceable' kraal was recently attacked by 'a party of Bastards under the [Griqua] Field Cornet Abel Pienaar [...] without the least provocation'. Recalling a conversation with Willem Barend, a Griqua, about the event,

> I [...] asked him why they act so cruelly towards the Bushmen, who had done no harm – he replied the Bushmen steal our Cattle, we are determined to exterminate them, so that our Cattle may graze unmolested day and night, and I asked him why they murdered the women and children, he said the children grow up to the mischief and the women breed them.

Just north of Philippolis near the Caledon River, Coetzee also related to the inquiry, lay 'the bones of many hundreds' of San, 'remnants of a wandering tribe', whose murderers, he hinted, must have been the Griqua.[41] Another Boer, Veldkornet Schalk Burger, had tales of his own. Deflecting the charge of atrocities laid against him by the Griqua, he referred to a chilling conversation he had with an unnamed Griqua man. When 'a Commando of Griquas' roved across the pasture past his 'location', he 'took [one of them] aside to my tent and asked him upon what principle he intended to act'. To this, the detained Griqua defiantly admitted: 'I will destroy all the Bushmen I meet with.'[42]

The further north Stockenström travelled into the pastoral domain of Griqua and trekboere, the more people he encountered who were willing to make their complaints about the Griqua. A number of 'Korana chiefs' came forward, stating that 'the Griquas have long made up their minds to exterminate the Bushmen; for the Bushmen are a great plague to them and to us'. Another Korana man of importance named Gatoo recalled encountering Hendrick Hendricks out in the *veld*, where he 'gave a full account of the Destruction of the Bushman kraal, he mentioned to me all the People who went on that Commando. He did not mention a Boor. [...] Nobody could tell why the kraal was destroyed.'[43] Further towards the new Bushman Station, Stockenström met Herculus Jacobus Visser, who recalled another episode of Griqua violence. 'On a Certain Sunday in January 1829', Visser claims to have encountered

> four Bushmen . . . [belonging] to a kraal situated near du Pré's wagon [. . .] [and] as we were thus engaged a party of Griquas came and departed. When we had finished, I heard that the said Griquas took the four Bushmen with them; next morning the Griquas attacked and destroyed the Bushmen.[44]

Two separate reports of Griqua inflicting massacres upon the San dominate the hearing. Stockenstrom's summary for the Cape in March 1830 is interesting, and deserves citing in full:

> I had discovered that a kraal of Bushmen living among the migratory Boers, daily fed by, and assisting with these people, being perfectly peaceable and, as the Boers say, without the slightest shadow of bad intention on their part, were attacked by a Commando of Griquas of Dam Kok's party, who killed fifteen, left two for dead badly wounded, and carried off the only survivors (three children), after offering them for sale to the farmers.
>
> The manner in which the women had been put to death is too awful to be here related. In another kraal fourteen were killed by a party of Griquas under the command of Kok's son-in-law, Hendrik Hendriks, and other outrages against the Bushmen were related, of which I have no proof.[45]

The Griqua side of the story differs slightly, and suggests – probably quite correctly – that white settlers played active roles in the elimination of the San too during this period. Abel Kok, a Griqua, even went as far as saying on record that the trekboere often sponsored their commandos against the San.[46] Hendrick Hendricks, for his part, confessed:

> It is true that I went with a Commando against a kraal of Bushmen – they had stolen horses; but the Boors Sybiam [or Sybrand?], Bronkhorst, Thomas Botha, and Johannes Strydom went with us and fired on the Bushman as briskly as ourselves. Klaas Visser offered to purchase from us the Children which were saved; I told him that they were no slaves.[47]

Both parties were accusing the other. 'Whatever foundation there may be for these mutual charges,' Stockenström concluded, 'it is clear

that the greatest and most inveterate jealousy exists between the Colonists and Griquas, about the possession or occupation of that part of the Bushman country, into which both parties have of late migrated.'[48] But, so long as both parties were settled in 'that part of the Bushman country', sheep and oxen, not the San, would roam the beautiful pasture.

In 1836–37, at the same Commission of Inquiry in England, Stockenström would stick firmly to his beliefs that the San would soon be exterminated unless something was done to protect them from the Griqua and the white settlers. On top of this he claimed, as many settlers north of the Orange did as well, that the lands in dispute were 'Bushman country' and should be treated as such. Philip stuck firmly to his own beliefs too, and continued to downplay such claims of Griqua atrocities against the San. Sadly, it did not matter much in the end. Before long, the San of Philippolis and surrounds were, simply, no more. South Africa's hunter-gatherers were victims of a massive genocide instigated by settler colonial circumstances. Right across the country they had been perishing at the hands of different frontier antagonists, but here in Philippolis Griqua commandos were responsible for their annihilation.[49] Perhaps no clearer words to this effect exist than those of the Griqua Jan Pienaar, who, before the Commission of Enquiry into the Diamond Fields dispute of 1871, provided this pithy summation of events: 'Bushmen inhabited the country about Philippolis. We exterminated them, and Dr Philip gave the country.'[50]

As I show in the following chapter, the Griqua, with this country that Philip notoriously 'gave' them, would create a system of property relations with clever tenure restrictions for those who sought to assume control of the lands by any means possible: the white Boers.

2
The Griqua Land Regime and Its Challenges

In the first 15 years of Griqua Philippolis, Adam Kok II, and the most important of his successors, Adam Kok III, constructed a system of private ownership in land. This was a rather novel land regime at the time for all polities in this part of sub-Saharan Africa, and for it to persevere in the face of increasing white interest in the region, the Griqua state – or 'captaincy' – needed to be extensive, bureaucratic, and respected: resilient in the face of serious challenge, coherent to both the Cape Colony administration and Boer communities.[1] The organisation of this captaincy was key to its success. The Captain sat at the head of his *volksraad*, a nominated council of varying size and influence. The *raad* would come to decisions collectively, but the Captain always retained a right of veto. Together, the Captain and *raad* codified laws and pencilled out their own land titles. The enforcement of these laws was mostly left up to other executive roles, including the *veldkornets*, who performed a similar magisterial and policing role as the Boer officials of the same title did, and the *kommandants*, who also acted as police but were mostly in charge of organising military campaigns and commandos.

'The social organization of the Griquas can be described as a democratic oligarchy,' as Ross puts it, and shows in his work, however, that its 'democratic' characteristics should not be overemphasised. This was a patriarchal system: no women held office of any kind, and it appears they did not vote either.[2] Elections were quite rare too, and when they did occur, they usually involved members of the ruling dynasty – as had happened in 1836, when Kok II's sons, Abraham and Adam, campaigned against one another. Although Abraham won this

particular election, the more level-headed Adam III would eventually take the captaincy from him in 1838, thanks more to help from his influential neighbour Waterboer than to democratic procedure.[3]

As I argue in this chapter, the most important creation of the Griqua captaincy of Philippolis was a system of property relations which sought to empower Griqua landholders and restrict white tenants. As Kok III would explain it to the Colonial Secretary in 1845:

> Individual right of property is recognized by our laws, but no lands can be hired or sold among my own people without my consent, and it is contrary to our laws to sell land to any person not being a Grikwa subject.
>
> I should not be able to alienate any portion of my territory without the consent of all my people, as such an act would require the change of one of our fundamental laws.
>
> [...] The more civilized part of my subjects reside with their families at separate farms; others who do not possess fountains live together in what are called 'werfs' or 'kraals'.[4]

An ingenious system organic to Griqualand, this land regime was developed by Griqua leaders with the specific conditions of the frontier in mind. But importantly, because it was based upon individual, private ownership, it was also cognisable to both imperialistic bodies of law that were important in South Africa in the nineteenth century – namely, the Roman-Dutch canon and the English common law. Because of this, the Griqua land regime proved far more difficult to dissolve than, for instance, the San land regime was before it, or that of other neighbours at the same time.

From the late 1830s onwards, however, white farmers desirous of settling in the region, instead of merely grazing in parts of it as they typically did beforehand, proved to be a significant problem for the captaincy. The onus was soon upon Adam Kok III to pass additional legislation and become increasingly autocratic in order to preserve the Griqua land regime, and enforce it over the pastures well beyond the boundaries of the former mission station. He even called upon the help of the Cape government, which intervened (and very strongly), before stepping away from the conflict from the 1850s onwards.

Below I show how the Griqua of Philippolis were overpowered, but my argument differs slightly from historians before me who have focused closely on Griqua-Free State negotiations of the 1850s to describe how this happened. Rather, I want to place strong emphasis on an earlier period, between 1829 and 1848: a time when the white settlers, for all their divisions, stole the favour of the Cape administration. This they did by developing two distinct arguments that separately discredited the Griqua land regime from different angles, as I show below. On the one hand, the Griqua's Boer competitors often made reference to their own status as British subjects in order to argue for equal *rights* – in particular, rights to land that never belonged to the Griqua in the first place. Complementary to this kind of critique was the Boer community's insistence that Kok III's jurisdiction over land matters was inadequate and exercised arbitrarily.

Deploying these kinds of arguments, white settlers wore down the Griqua land regime by attrition, and won the Transorangian political contest. After constantly pressing the Cape administration for self-government, they were granted the ability to replace the Griqua land regime with one of their own design. With this development they snatched sovereignty from the sickly Griqua state, and as soon as they could, they forced the stateless Griqua to relocate far away from the middle Orange River.

* * *

By the middle of 1826, Adam Kok II and his Griqua subjects had taken complete possession of the mission station at Philippolis. It was not the case that 'he and they were merely to have the use of the lands as belonging to a Missionary Institution', as Philip hoped for a time.[5] Rather, if anything, it was the other way around – as shown in the previous chapter, the Griqua assumed control of the territory, and the flimsy proprietary claims of the LMS (and, for that matter, of the San people) would never impede this development.

Taking note of their surroundings – millions of acres of quality grazing land, dotted with the occasional spring – the Griqua spread out, mostly to the north of the Philippolis settlement. They knew very well that sheep, however tasty, should not be used for nourishment, but should rather be sent to market.[6] The region was thus

to be exploited to the fullest in the interests of sustaining a thriving pastoral industry. Melvill's returns for Philippolis in 1831 give a good indication of the Griqua economy after five years:

> Population belonging to the station:
>
> At station, Griquas: 6 males, 10 females, 16 children; Bechuanas: 120
>
> Outposts, Griquas: 868; Bechuanas: 840
>
> Connected with station: total, 1860. The population of the station is rapidly increasing.
>
> Cattle and implements, belonging to the Griquas: 362 horses; 4550 oxen, cows and calves; 14 200 sheep and goats; 45 wagons; 15 ploughs.
>
> Belonging to the Bechuanas: 2100 oxen, cows and calves; 1200 sheep and goats.

Evidently, these 'outposts' were quite spread out. Melvill estimated 'the territory in possession of the Griqua in connection with this station' at a whopping '3000 square miles' – that is, 776,996 ha, or just short of 2,000,000 acres.[7]

The extent of this territorial dominance far exceeded anything achieved by the Old Inhabitants and the San. And the Griqua occupation was different to any kind of occupation trialled before it. The Captains of the Griqua state wished not only to make the land available for *use* as other communities had in the region, but also to assume sovereignty over it. On top of this, farmers were allowed to work their patches individually rather than communally. In this context, it became imperative for the captaincy to protect Griqua interests in property for those settled away from the town, and this required a strong statutory government. That stealing was a sin seemed, sadly for the LMS, insufficient deterrent to the Griqua, and the *raad* passed a number of laws concerning chattel in the 1830s. Robbery ('public stealing combined with violence') and theft ('a secret and fraudulent deed and the withholding of another person's property') were to be punished severely, sometimes with death. Inflicting damage upon another person's property, deliberately or

ignorantly, was also criminal, but there was space for claims of negligence – a Griqua's cattle were at all times to be maintained and contained properly, and if they were not, a civil proceeding would ensue.[8] Matters that were not easily resolved came before regular meetings of the Philippolis court, where *veldkornets*, Captain and *raad* would balance out the available evidence and adjudicate before adjourning at the end of the day.[9]

Equally important were the Griqua laws concerning real property in land. After the initial Griqua sprawl, the alienation of land was gradually restricted. With white settlement slowly expanding all around – several families had been in the region *before* even the Griqua moved there, growing as they were gradually met by others – it was important to keep Griqua land in Griqua hands.[10] As early as 1828, there reputedly existed 'a law against selling any of the lands' in Philippolis, whether to Boer or Griqua. This seems to have been more convention than 'law', however, and though it was close to the original wishes of Philip for the settlement, the situation soon turned out to be impracticable for Kok II. Logistically, the captaincy in these years found it difficult to monitor every *plaatzen* in the sparse settlement. Economically, it made little sense too, as the pastoral economy had become too dynamic to be restricted by a frozen land grid of use-rights. The ability to make improvements, to take on tenants, to downsize and alienate or to upsize and acquire more land became quite important for Griqua graziers in the interests of securing maximum profit in this period – just as it was for their neighbouring graziers, the white trekboere.

Quite naturally, then, private property in land became attractive to the Griqua, who were keen to buy and sell their acres, as well as their wool. With the market in land starting to thrive, however, the Griqua community faced the growing threat of becoming surrounded by moneyed non-Griqua, and the temptation to trade away landholdings grew. As Adam Kok III recalled in 1842, this development occurred beyond his control. 'I warned the people against [selling land]', he wrote to Philip, 'but it was done privately and denied.'[11] A solution had to be found: legislation.

Kok III had been Captain of Philippolis from late 1837 – by which time already there were perhaps over a dozen white settlers in the possession of dubious leases, and a number of others with illegal freehold rights issued by renegade Griqua – and he assessed the situation with

sagacity. A new land register was created, and regulations were tightened so as to place greater authority in the hands of the captaincy. From 1838 onwards, no land could be alienated or sold unless it came with the explicit permission of the Captain and *raad*, or otherwise the transaction would be considered invalid.[12] In effect, this new system allowed the captaincy to favour Griqua burghers over any other type of settler. Kok III now had authority to convey freehold tenure upon Griqua in measured form, while completely denying its availability to non-Griquas and non-British subjects, who instead were issued only with short-term leases.[13]

Most if not all of the white settlers in the region sought freehold tenure; those leasing around this time, while frustrated at the advantage their landlords had over them, considered tenancy a necessary first step before acquiring their properties. For the most part, they were the less republican type of Boer, who were disinterested – at the moment, at least – in raising flags in Griqua territory, taking the land by force, and intimidating landowners (which is what Jan Mocke and his radical troupe were contemplating at the time, as considered below).[14] On the contrary, these settlers, no more than 100 families under the leadership of M. A. Oberholster, wanted to settle in the land as the Griqua had done; they saw the advantages of treating with them and pledging loyalty at the same time to the Crown. And this they did, around the middle of June 1840. Although these settlers would eventually consider themselves better off for signing the documents, the content of the treaties seemed to strengthen the Griqua land regime decidedly. Those who had settled without proper leases from Griqua landlords were 'bound to state to the members of the community the number of years they have agreed on, and the sums paid for hire'. The 'possessors of the lands' – that is, the Griqua landlords of the domain – in turn had to 'inform the Chief & Council of their having hired the said lands'. In those instances where settlers had come without creating leases, 'three successive years in all respects' were allocated for a proper lease to be created with a Griqua.[15] Importantly, whether by chicanery or ignorance (and probably the former), the 1840 treaties said nothing about the Griqua law restricting complete alienation (Figure 2.1).

'Three Years was the common time' for early leases, so claimed Philip in 1842.[16] But the 89 receipts in the Griqua land register for the period between 1837 and 1842 reveal his misjudgement on the

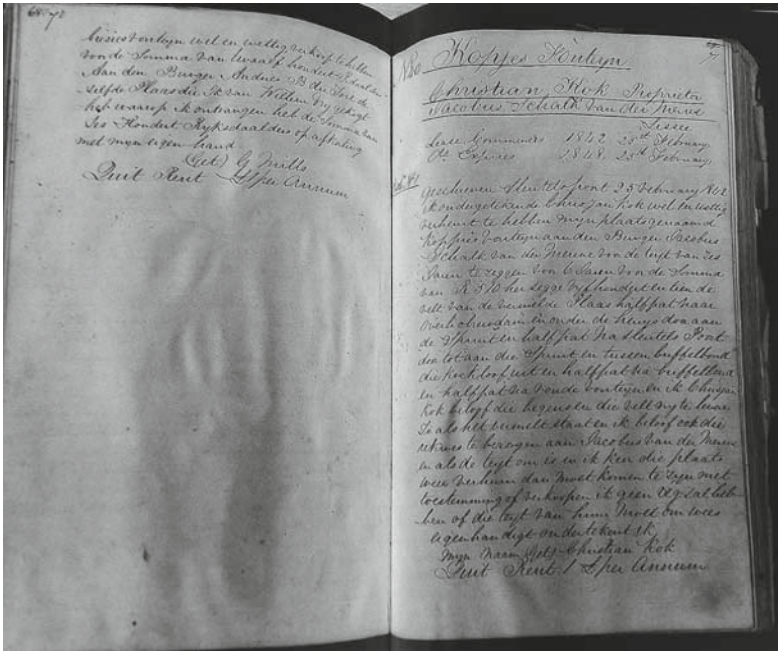


Figure 2.1 An example of a Griqua lease. No. 40. Kopjesfontein. Between Christian Kok (proprietor) and Jacobus Schalk van der Merwe (lessee)

Griqua land regime yet again. There was, in fact, considerable variation in the lease periods, which were commonly set for up to 20 years, and sometimes even more.[17] Freehold continued to be tightly restricted, however, and this concerned the white settlers. Though there was a handful or two who had secretly managed – at great cost, and against the wishes of the Captain – to secure freehold rights from individual Griqua, most had failed to do so by this time.

At one of two meetings between Adam Kok III and the settler community early in 1843, this was the key grievance among many aired.[18] As Johannes Coetzee plainly put it to a colonial enquiry, 'It is hard for us who are faithful to the Government to have no land.'[19] Another white settler, Abel Pienaar, made his point:

> Our wish or object is not to dispossess the bastards of their country, but to be placed on an equal footing with them; – one

> of the bastards has five or six places for which they ask such extravagant prices, that we cannot afford to pay them.[20]

To this, Lieutenant-Governor John Hare affirmed:

> I cannot interfere with the Griquas in their hire of their lands; – but if you make a contract with a Griqua, I will oblige that Griqua to comply with that contract; at least, if any Chief does not attend to any lawful complaint, I will withdraw my confidence from him but I will neither take from the Griqua their lands by force myself, neither will I furnish others to do it.[21]

This suited Kok III well, as he and the *raad* had been committed to issuing paper leases and keeping a land register since he took office. This passage remains rather telling though, for whatever the Cape's sympathies towards their allies the Griqua, they would always stand by the might of contract (and this posture would prove decisive later with the introduction of a magistrate-like 'British Resident' to Transorangia). These meetings, jam-packed with strong sentiments and settler arguments, are considered further below.

In the next few years, Kok III and the *raad*, in consultation with the Cape Governor, considered it necessary to restrict not only the kind of occupation enjoyed by white settlers, but also the amount of land available to them. Eventually, and controversially, it would be ratified by treaty exactly which lands belonged to Griqua burghers, and which could be leasable to non-Griqua. According to Articles 2 and 5 of the Maitland Treaty of 1846,

> Captain Adam Kok engages to make hereby a division of this territory into two portions: one division to consist of land in regard to any part of which it shall not hereafter be competent for Captain Adam Kok or any of his people to grant leases, or make sales, or give any right of occupation [. . .] and the other division to consist of land which may be let on lease to British subjects and all others indifferently.

Philippolis was now sequestered into a leasable region and an unleasable region. Importantly, the convention of leasing continued to be favoured entirely over full ownership. In Article 38 of the treaty,

those settlers who had 'purchased or shall purport to have purchased the absolute dominion of any landed property in any part of the Griqua territory' – that is, those as the treaty put it, 'in direct opposition to the well known laws and customs of the Griqua people' – were to have their titles ignored, and instead be furnished with 40-year leases.[22] On the surface, this seemed a pleasing result for the Griqua; however, as I show below, the treaty marked the beginning of the end of their autonomy.

For over a decade before this, white settlers had been lobbying the Cape administration for land rights of their own in the Transorangia – a campaign worthy of our attention, now that we have established how the controversial Griqua land regime worked in Philippolis. The settlers pushed for the creation of their own polity, at the same time disputing the legitimacy of the Griqua state's foundations in Bushmanland.

In the section that follows, I show how the settlers and the Griqua were constantly engaged in stubborn dispute, as each vied for the support of the Cape Colony's official representatives. At the heart of this dispute lay a question about jurisdiction over land – a question that niggled away at the officials in the Cape government, who sought to extend British control over the region as efficiently as possible, yet at the same time protect their allies, the Griqua. After 1845, the settlers had lost their patience. No longer as polite with the Griqua in their transactions as they were formerly, they were at each other's throats more than ever – and each group was calling on the Crown to step in and resolve the matter once and for all.

* * *

It took until the late 1820s for the colonial government (or, to be more accurate, its variously stationed administrators) to take proper notice of the conflicts between different parties in the lands to the immediate north of the Orange River around Philippolis. During Stockenström's investigations of 1829–30, it was a claim commonly impressed upon him by white settlers 'that they considered themselves entitled to that part of the Bushman Country, into which the Boers migrated as they had no other Country to go to'.[23] Stockenström had been occasionally sympathetic to the idea that the region was the original domain of the San, and following these

enquiries, as we saw in the previous chapter, he would come to view the Griqua's claim to the territory with increasing suspicion.[24]

The Griqua were never ignorant of this Bushmanland argument. 'They say it is Bosjesmanland, and that therefore they have a right to occupy that country,' conceded 'an Oppressed Griqua' in an open letter to the Cape Governor dated 14 August 1830, sourced by Karel Schoeman from an unidentifiable colonial newspaper. The Griqua continued:

> I say also that it is Bosjesman land. But, Sir, where is not Bosjesmen land? From here all along the Great River to the great sea ocean is Bosjesmen land, and Graaff Reinet and everywhere where the Boer resides is also Bosjesmen land.[25]

This open letter is eye-opening, for it evidences perhaps the earliest Griqua engagement with the Bushmanland argument. It was probably penned by the Griqua Hendrick Hendricks, but we cannot be sure. Regardless, it had no effect on the steady trickle of white settlers entering the Philippolis region; ironically, 'the Boer' in question most likely would have probably agreed with the statement, as they saw themselves as a more permanent feature on the landscape than the hunter-gatherer San.

G. A. Kolbe replaced Melvill as Philippolis preacher in 1831, and he would oversee an eventful period up to 1836, which featured significant inter-group fighting, a drawn-out leadership battle, and even a sex scandal featuring himself and the wife of a Griqua.[26] Probably the most pressing issue, however, was the problem of the white settlers, who still clung to their Bushmanland argument, most if not all of them loyal to the Crown. When Andrew Smith passed through the town in 1834, he recalled a charged meeting between Kolbe, Captain, and *raad*, in which the attendant Griqua

> complained bitterly of the farmers from the Colony being permitted to establish themselves upon their grounds, and dwelt strongly upon statements which had been made to them by the farmers touching their want of just claim upon the country of the Bushmen, on which account they wished it to be understood that they, the farmers, were as much entitled to use it as the Griquas. They complained that the farmers appeared to consider them as

> in no way deserving of such a possession, and that they were in the habit of asserting that they were the children of the Government, and that therefore the Government was bound to consider their claim to the Bushman country in preference to that of the Griquas.[27]

The issue of whose rights to San lands were stronger was never resolved before the Great Trek, and luckily for the Griqua, it would temporarily subside after 1837, when large numbers of voortrekkers poured into the region.[28] The Bushmanland argument would re-emerge later. In the meantime, the Boers were split into two main factions, each with their own strategies for securing individual property rights in land: on the one hand, there were those respectful of the Crown as the reigning sovereign order, and on the other were those aligning with a radical settler movement that sought to emancipate itself from the Crown.

Oberholster and his loyalist community – many of them residing around Philippolis for several years before the Trek – were happy to live alongside (though, it must be said, never together with) the Griqua of Philippolis. They sought to settle north of the town, particularly around the Riet River valley, and so engaged individual Griqua peaceably for leases and title deeds to that end. As it would later emerge after their 'treaties' of 1840, however, many of these settlers took up land in defiance of laws they neither understood nor respected – and this explains why they turned en masse to the Crown for support. Although they received confirmation in 1837, via Stockenström in fact, 'that any Colonist entering the territory which the Griquas occupy must Submit to the laws and authorities which may be there established', they nevertheless argued for the same property rights enjoyed by loyal Crown subjects of the Cape Colony south of the Orange River, using the safe and somewhat straightforward tactics of petitioning and treating.[29]

In contrast stood the more aggressive strategies of the republican settlers to pry full dominium from the Griqua. These individuals, who were unconvinced of the legitimacy of British authority in the region, attempted to establish new trekker republics in the interior and distribute exclusive property rights irrespective of Crown or indigenous sovereignty. The key character in the Philippolis dispute was Jan Mocke, who moved back and forth between Natal and the Modder

River, raising republican fervour among his trekker comrades on each leg of the trip. In October 1842, he hosted an elaborate ceremony of possession on the Orange River at Alleman's Drift, where he and a few hundred armed followers planted a beacon and proclaimed the area as the south-westerly border of the Republic of Natalia, before plundering Griqua farms for firearms and destroying their fields of corn. The hardworking magistrate on circuit at Colesberg, William Menzies, afraid of being outmanoeuvred by the trekkers, abruptly stepped in to annex the region for the Crown.[30] At odds with Cape policy, however, his actions were immediately voided – the old days of marking a map and sending a note of explanation to Cape Town were over.[31] Kok III, a little rattled, wrote immediately to Mocke to condemn his 'discordant and unjust behaviour', reminding him of the Griqua–Cape alliance, and the two parties would get together for a brief and tense meeting where they would not agree to any real arrangement.[32]

Administrators in Cape Town took notice of these developments. With a view to gaining complete control of the region, the Governor despatched Lieutenant-Governor Hare along with a number of troops to the northern Karoo town of Colesberg, just on the other side of the River from Philippolis for the summer of 1842–43.

Extinguishing the threat of a republican coup was a top priority, which Hare was to do with a strong hand. Warnings were issued in a stern 'Proclamation to the rebel Boers in Griqua Territory', dated 2 January 1843. Should that 'body of Emigrant Farmers, chiefly, if not wholly, composed of those [...] at Alleman's Drift' ever again be 'so reckless or so ill-advised as to persist in opposing themselves to their lawful Government', the notice read, 'it will be [the Lieutenant-Governor's] painful duty to act with the utmost severity of the law'.[33] Hare issued this document flanked by a significant military presence, and effectively silenced the Mocke contingent, but only for a year or two.

As for those settlers eager to secure land rights and remain loyal to the Crown, different strategies were required. Two meetings were arranged in Colesberg, reputedly 'at the Request of Field Cornet Oberholster'. Hare would be there, as would Colesberg's Civil Commissioner, Fleetwood Rawstorne; from Philippolis, Kok III was present, along with select members of his *raad*, and Peter Wright of the LMS; and there would also be a large number of white

settlers eager for answers, many probably with voided title deeds and ambiguous leases scrunched up in their fists. It would be at these meetings, with several pairs of British ears unused to it, that the Bushmanland argument would be reintroduced into the battle for land rights around Philippolis.

The first person on record at these two meetings to scrutinise the Griqua right to the soil was not a bona fide settler but rather a German missionary from Bethanie,[34] whose sentiments were enough to raise Hendrick Hendricks, Kok III's vociferous and eloquent secretary, from his seat:

> The Farmers say, 'The Griquas now occupy the Bushman's land'. Who was it that drove us there in the first place? Let the names of 'Kaapstadt', 'Stellenbosch', 'Tulbagh' give the answer. It was the Dutch people who sent us forward – it was not until later years, until the English name of 'Coles Bergh', was heard on the land, that the Griqua had rest. It was the English who made the Hottentot free. It was not until England put her hand on the land [that] was there any resting place for the Griquas – and never, never will there be security for the Griquas, and the black nations of Africa, until England continues to hold her hand over the whole country.[35]

The argument made by the settler Johannes Coetzee, however, could not be deflected so easily. He claimed that Stockenström advised him to 'hire, or purchase lands from Bushmen beyond the Orange River, as a resource in reason of drought'. This he did in the year 1830, for himself and 'the Burghers of his Field Cornetcy'.[36] Coetzee claimed to have found a 'Bushman Captain' called 'Danster', who had authority over the lands around the Modder River (on the northern reaches of greater Philippolis).[37] 'Adam Kok was not at Philippolis and the Bushmen were sole possessors of the land,' Coetzee argued. Of course, Adam Kok II *was* at Philippolis at this time, as Coetzee was probably aware; his point rather seems to have been that the captaincy lacked full control over lands this far north in 1830.

Coetzee's argument was strong – though we have to look beyond the official minutes of the meetings for more details about it. The coverage provided in the leading settler newspaper provides a different picture to that which emerges from the selective transcriptions. As the report in *Grahamstown Journal* ran:

> The deputation maintained that the principal part of the country which the boers occupy, by right appertains to the boers, they having purchased it from the lawful proprietors, under the sanction of Government authority. A large tract of country was purchased by the field-cornet Coetze, and Piet van der Walt, from Danster and Mandor, two Bushmen chiefs, for about 8,000 sheep and 500 head of cattle.[38]

The Cape representatives appear not to have been persuaded by this argument.[39] Unimpressed, Coetzee and his partner van der Walt immediately set out to locate 'Piet Krankuil, a Bushman chief', to confirm the legitimacy of their purchase.[40] For the moment, however, they would have a difficult time convincing anyone not a settler of the sale, and tentatively they remained on their properties awaiting more support.

Just why Hare and Rawstorne were so immune to the Bushmanland argument is not clear. They were, reports confirmed, enamoured of Hendricks' 'Rule Britannia'-style of rebuttal, but there appears more to it than this.[41] Surely not of ignorance, but rather we must suspect by choice in the interests of strategy, they saw the history of the region differently. As Hare stated at the first of the meetings, 'The ancestors of Adam Kok and his people were the original possessors of the soil and as such they have an undoubted right to govern themselves in their own lands.' The Griqua were indigenous, and they were sovereign, Hare told the Boers. 'Adam Kok is now an independent Chief and the proprietor of the territory he now occupies, and he being an ally of Great Britain, the Farmers are bound to respect him as such – and they must do so.' For the moment, Kok III's claim to Philippolis would be upheld, and the San question was not taken seriously by anyone in officialdom, save for Stockenström, who was sympathetic to a handful of new settlers. The land belonged to the Griqua, and England would support their rights, it emerged from this meeting. At its adjournment, Hare turned to the Captain, with land on his mind:

> I applaud your prudence. You are right to defend your property against all lawless men, and as long as you are not the aggressors, I will help you; I have an army here, that shall protect you; I shall go to your land and see that you possess your rights, and when I go away I will leave a force there, sufficient to protect the innocent and punish the guilty.[42]

These sentiments – the affirmation of vintage rights talk, to be sure – capture how the once fully independent Griqua captaincy was becoming increasingly reliant upon British 'help' to hold on to its land regime. Kok III must have known this himself; indeed, earlier on in the very same meeting the Captain admitted the difficulties exercising his jurisdiction over property matters – that 'he had found it extremely difficult to keep them quiet and has only succeeded in doing so by promising to lay their case before the Government'.[43] This is no trifling point. As we will see, this difficulty regarding jurisdiction would lead to a major turning point in Griqua-settler relations.

Over the next two years, with the 'rebel' contingent re-emerging with vengeance, stirring up the community, the job of policing in Philippolis became near impossible.[44] By March 1844, Kok III's inability to apprehend and try white settlers for breaching his liquor regulations led him to plead directly to the Governor for help. '[I]f such proceedings are not instantly checked,' Kok warned, '*Law* will become powerless in the District of Philippolis; the Chief will be unable as bound by treaty to maintain order in his District, and neither life nor property will be safe, but become the prey of lawless men.'[45]

The following month, Hare reassured the Captain that 'all Inhabitants, Dutch and English' that came into Kok III's territory, even 'British Subjects', 'were nevertheless amenable to [his] Laws'.[46] The de facto situation in Philippolis was very different to how Hare imagined it, however. Most white settlers ignored Kok III's jurisdiction with contempt. For instance, in February 1844, Kok's *veldkornets* attempted to apprehend a Boer called Van Staaden, 'on a charge of assault of murder of an Englishman named Mills', only to face a horde of armed settlers assembled at the Modder River with violent intent.[47]

Another episode, with greater consequences, came with the attempted apprehension of the Boer Jan Krynauw in March 1845 over a labour dispute. When, after a hundred or so Griqua in pursuit of Krynauw grew impatient after riding all day, they took to harassing 'Mrs. Kryno' at her home instead.[48] This event – probably the most irresponsible conduct hitherto shown the settlers by representatives of the Griqua captaincy – provided the spark to a series of affrays which took place over the next two weeks. Even with Rawstorne's intervention, initial diplomacy between the warring parties was

fruitless, and they violently persisted until British troops in late April intervened on behalf of the Griqua to defeat the Boer forces.[49]

In June, Governor Peregrine Maitland arrived to assess the situation and mediate between the parties. There were a number of negotiations about expulsions and cattle, which ultimately proved insignificant; far more important, for our purposes at least, were the negotiations between Kok III and Maitland in the immediate aftermath of the conflict.[50] At the heart of the Philippolis problem, as Maitland aptly diagnosed it, lay the pressing issue of jurisdiction that had bedevilled the captaincy for years – in his opinion, a problem which needed solving just as much as the unresolved land question. The treaty eventually entered into between Kok III and Her Majesty's representative Maitland, sought to address these issues above all else. It offered some very satisfying securities to the Griqua – the most agreeable being the strict apportioning of territory into leasable and unleasable regions, and the prima facie support given to the anti-freehold convention, as we saw earlier – but, of course, all of this came with a catch. That catch was Cape suzerainty. With complete consistency, British laws were now to be upheld alongside Griqua ones; and, critically, land disputes were to be taken off Kok III's hands. '[A]ll questions relating to the title to land or to its occupation, whether raised by Griqua Subjects against British Subjects, or by British Subjects against Griqua Subjects', were no longer to be decided by Kok III and his *raad*, but by a permanently installed 'British Resident', who possessed a kind of floating jurisdiction over the Transorangia with almost full magistracy powers.[51]

Though the treaty was not officially ratified until February 1846, its important conditions were effective immediately. In the months following August of 1845, Rawstorne established the office of Resident (or 'special magistrate' as the job was sometimes also called), and was soon met by Captain William Sutton, who arrived to assume the position of Resident at Philippolis. A few test cases were run, before Sutton issued a public notice on 12 December making clear to Boer and Griqua his availability to hear cases regarding property that might be settled quickly.[52] In the space of five weeks, several dozen cases were heard in the court. Disputes regarding improvements, stock numbers, the length of leases, and multiple owners – disputes sometimes as old as 15 years – were quite commonly presented before the Resident. Though Griqua burghers tended more commonly to be

the opportunistic plaintiffs, most of the time Boer defendants provided appropriate documentation to escape and receive security of tenure for another few years.[53] The advice given to the settlers back in 1842–43, to defer to the irrepressible power of contract, seemed to have been heeded by the Boers.

The Resident's court packed up in February, and removed to Bloemfontein by the end of March, where it would be stationed permanently, busy mostly with Moshweshwe's concerns. On the surface, it does not appear to have been very successful in Philippolis. White settlers often showed contempt of it.[54] Sutton seldom ruled as often as he might have, and from the correspondence he kept with Cape Town, he seemed to have no idea about the boundaries of Philippolis, and so struggled to uphold the distinctions between leasable and unleasable, and between who was allowed to own outright and who was not.[55] The court's importance should not be underestimated, however, for it had made the Griqua Captain's job redundant. Kok III was often witness to the hearings, but he was distanced from decision-making. Thus, however much he struggled to exercise it beforehand, from late 1845 he had completely lost his authority over land matters.

This was a win for the white settlers: the tables had started to turn in their favour in Griqualand. What followed this development, as I show in the final section below, was the destruction of the Griqua land regime. The Griqua captaincy steadily lost much of its influence in the region, becoming weak at the bargaining table by the end of the 1840s. At the same time, the Boers seemed to win the favour of the Cape government's new representative, Sir Harry Smith, who offered the settlers an invitation to expand and improve in the Philippolis region, and crucially, gave them protection for those improvements.

* * *

In 1846 and 1847, the Captain was virtually powerless to do anything as tensions regarding land continued to froth over into strong words and threats of violence. These were trying years for the Cape administration as well. The Transorangian conflict featured Moshweshwe's baSotho, scatterings of angry Boers, and several Griqua polities (not just the one governed by Adam Kok III), and it had become a

very pressing issue. But there were other urgent matters. War with amaXhosa in the eastern Cape had flared up again in 1846, and this was keeping many British troops occupied; small pockets of Boer republicanism across the highveld and in Natal were threatening to do the same as well. Into this context stepped Sir Harry Smith.

Smith's appointment as Governor in 1847 marks a key turning point in Cape policy, as historians agree without exception.[56] Whatever else may be said of his bold strategy and rough diplomacy, he was, as Timothy Keegan describes him, 'a more settler-oriented governor' than those who preceded him.[57] North of the Orange, this was certainly the case; as Ross writes, Smith had the interests of 'the disaffected Boers' at heart, 'concerned above all to woo them'.[58] After brief enquiries into the troubles of the region, he later organised a meeting at Bloemfontein with Kok III and his *raad* in January 1848. More an ambush than a meeting, angry words and threats of death were reputedly hurled around the room.[59] Smith had plainly resolved to disregard previous Griqua policy, and decided to set a new course for Philippolis. If not by force, then out of considerable intimidation Kok III's hand signed a treaty with Smith. The terms of this treaty were far worse than any other to which he had previously consented. It ran:

> That as the leases under which British subjects now hold land in the inalienable territory expire, all such subjects shall be bound and obliged to quit that territory on receiving payment from the Griquas of the value of the buildings and improvements made by them on such lands [...]. In the event of the Griquas being unable to pay the amount of the valuation aforesaid, at the time of the expiry of the lease, the lessee shall be entitled to retain possession of the property at an annual rental [...] until the payment be made, or until the annual rental (which the lessee shall in that case be entitled to retain) shall amount to the valuation aforesaid.

This was unfair. Kok III could not afford to pay for the improvements made by those settlers situated in the reserved area; nor should he ever have expected to, as most settlers were there contrary to the Maitland Treaty and Griqua land regulations (neither of which said anything about improvements).[60] As for 'the farms leased now only

for forty years in the alienable territory', they were to remain let 'in perpetuity', in exchange for an annual payment of £300 from the High Commissioner to Kok III. With this, Smith had reversed the terms of the Maitland Treaty regarding settlers who claimed to have acquired freehold from the Griqua, remarkably, by making it the Cape exchequer's job to pay for the rental payments of settlers, who were now granted de facto freehold.[61]

There was another serious implication of this treaty. A close inspection of Smith's language of tenure reveals how, somewhere in the period between Sutton's time at Philippolis and early 1848, the Griqua's most important assurances in the Maitland Treaty had changed meaning, courtesy of a rather unfortunate mistranslation. The terms 'leasable' (*huurbaar*) and 'unleasable' (*onhuurbaar*), travelling back and forth between creole Dutch and administrative English as they necessarily had to, became wrongly construed in official discourse to mean 'alienable' and 'inalienable', as clearly evidenced by Smith's wording above. As a result, hereafter the Griqua land regime was commonly misunderstood by even those most sympathetic towards their plight.[62] The truth, that not just a portion but the whole of Griqua Philippolis was conditionally inalienable since 1838, seemed lost on non-Griqua newcomers, settlers, and officials. In many respects similar to the contemporaneous tragedy faced by the Maori of New Zealand's North Island – who would discover all too late that the English version of their *Tiriti o Waitangi* had curtailed property rights far more than they expected it would, extinguishing their sovereignty to boot – the Griqua seem here to have been outdone by an official mistranslation, one that crept perniciously into settler discourse.[63]

Smith, far more sympathetic to settler complaints than any of his predecessors, seems also to have been taken by the Bushmanland argument. Departing with the likes of Hare et al. – who considered the Griqua 'Natives' completely indigenous to the Orange River valley – Smith was the first official since Stockenström to be sceptical of their rights to the territory, but he was certainly more blunt and partial about it. 'I must here assure your Lordship', penned Smith in response to a complaint lodged to Earl Grey at the colonial office in May 1850, 'that Captain Adam Kok and his followers are mere squatters, and have no more hereditary right to the country in question

than the Boers themselves, who have been in the habit, for many years, for the sake of pasturage, of driving their herds and flocks over the Orange River.'[64] Finally, it would appear the claims of Johannes Coetzee and others were taken seriously; more than that, this argument had now been taken up in officialdom, no doubt affecting how many in Cape Town and the colonial office perceived the question of land rights to Philippolis thereafter. The Griqua were no longer officially indigenous.

Within a few days of the treaty, Smith annexed the Transorangia, and Philippolis was engulfed by a British-ruled sea called the Orange River Sovereignty.[65] White settlers, now liberated to ignore Griqua land regulations and the distinctions made in the Maitland Treaty, circulated about Philippolis in great numbers, and many acquired land privately, without the Captain's consent. British Resident after British Resident, however sympathetic to the Griqua they were, had become disinclined to intervene directly on land disputes, and besides they were stuck in Bloemfontein residing over the entire sovereignty.[66] They stood apart from the Griqualand question, issuing warnings in public and title deeds in private, until, after a few years, their jurisdiction became superfluous too.[67] In the meantime, 40-year leaseholds had become the norm rather than the exception in the 'alienable' territory, which is difficult to explain. Ross puts this down mainly to the Resident's misinterpretation of the Smith treaty, though one also suspects that the settlers themselves, pre-empting full freehold and relieved that the Griqua law against alienation was seemingly voided, opportunistically emerged in greater numbers than before to claim they had purchased from individual Griqua.[68]

For all the individual Griqua who *had* sold land to white settlers illegally before 1848 – and, much as Kok III was distressed to admit it, there were quite a few – it seems that far more did so in the 1850s. The tables had turned on the Griqua; now, their property rights were the ones imperilled, so many sold their land as security, if against the Captain's wishes. The distinction between 'alienable' and 'inalienable', erroneous in the first place, soon vanished into thin air, as land sales took place irrespective of it, increasing with the announcement that the British were making plans to abandon the Sovereignty to be left to the Boers seeking semi-independence.

Robert Ross, who has painstakingly analysed the details of the Free State land registers, provides in his book an excellent account of the 1850s land rush, which saw the vast majority of Griqua land fall into settler hands. He notes how sales peaked in 1854, reflecting both a greater propensity to sell during the transition into the 'Orange Free State' and the establishment of a new (settler) land registry in Bloemfontein.[69] The numbers that he gives, while only covering those on record, are startling. A small trickle of recorded sales occurred in the early 1850s, until a sharp peak of 70 for the year of 1854 alone. Over the next six years, 153 Griqua farms would be sold to Boers.[70]

Adam Kok III, still Captain of the Griquas, was dealt no favours during the Free State period. The Cape government, who had reneged on the Maitland Treaty so spectacularly within just two years of its framing, stepped away from the conflict in the mid-1850s and left it to the Boers to resolve (or rather, as they seemed more inclined to do, sweep under their all-white constitution). Kok III's subjects, under pressure from the settler regime, disrespected his land regulations in the interests of their own self-preservation. His jurisdiction was slashed by President Boshoff in 1857, restricting it 'only [to] Griquas and other coloured people' in 'the inalienable territory'. The boundaries of Philippolis, previously manipulated by the captaincy for its benefit, were finally worked against the Griqua, dispossessing a number of burghers from their properties in the process. Things only got worse for Kok III. In good faith he gave power of attorney to a settler called Henry Harvey, who evaluated the land irresponsibly, and jeopardising its value, whetted the appetite of settler capitalists at the same time. When eventually the captain was cornered into signing a treaty of cession in 1861, the Griqua had few options left.[71] He accepted compensation and looked to the British, but the only offer they made him was a strange one: 'a tract of unoccupied country lying on the south-east side of the Drakensberg', hundreds of kilometres away.[72] This was Mpondo land, in recent dispute with Nehemia's breakaway baSotho – never mind the classic colonial discourse of vacant land, this was not 'unoccupied country'.[73]

Removing to a strange place could hardly have been among Kok III's ambitions in 1838, but by the end of 1850s, his arm was twisted. Selling whatever they could, Kok III and around 2,000 followers left the Free State for a new start elsewhere.[74] Over the next two years they

made new enemies and had lost most of their stock; in 'Griqualand East' they finally arrived 'an impoverished and demoralised people', as Ross puts it.[75] Though out of sight in the populous Transkeian territories, the Griqua people remained resilient enough to see the rise and fall of apartheid – though not yet the restitution of their rights to Philippolis.[76]

3
The Erasure of Past Interests in Land at Orania

Orania is not far from Philippolis, on the Cape side of the Orange River. Today Afrikaners occupy the town of Orania and its surroundings, but it hasn't always been this way. Indeed, several claims to this area have developed over the course of South African history, from colonial annexation to the present-day period of Afrikaner ownership.

Afrikaners faced a number of unique political dilemmas in the 1980s. As a group, they had to overcome their heterogeneity and bind together to strategise their way through the end of their privilege. Many factions proposed the creation of a *volkstaat* – literally meaning a people's state, but essentially amounting to a place of self-determination for themselves and no one else. The land in and around Orania came up for grabs at just the right time, and seemed perfect for the idea. Acquiring title to this land was not a straightforward process, though; indeed, the history of the area from earliest times up to its purchase in 1991 is complex, replete with competing understandings of territory and many layers of human occupation. Exclusive property rights to the area were first imagined by outsiders, and then bits and pieces of it were alienated time and time again. This story provides the necessary background to the moment Afrikaners moved into the *volkstaat* and erased the interests of those in the area before them.

In this contest over rights, squatters inhabiting the area destined to become a *volkstaat* lost out to another, more powerful, group. As a narrative of dispossession, beginning in the late 1980s and culminating in the forced relocation of 1991, the removal of these

individuals from Orania shares many characteristics with the thousands of removals that affected at least 3.5 million South Africans in the three decades leading up to it. Likewise, the dispossession recounted here shares many characteristics with those that occurred in Griqualand, as explored in preceding chapters. Indeed, this is a story similar to many that can be recounted of a number of South African contexts – about dispossession and removal, about the means by which claims to property have been espoused over time, and about power and who has it.

* * *

'The Afrikaners' are no clear-cut bunch, as established most clearly by Hermann Giliomee in his 'biography of a people'.[1] Like the terms 'San' and 'Griqua', the label itself is not isolable from the discursive peculiarities of modern South Africa. So here a rudimentary attempt at definition is necessary. The Afrikaners are the white South Africans who share an affinity with the Afrikaans language; most identify with some aspect or another of Afrikaner *geskiedenis*, and many subscribe (or have, at one time, subscribed) to the ideals of a Protestant/Calvinistic worldview – but beyond these generalisations, much as writers often try, it is difficult to pigeonhole them. The descendents of Dutch, German, and Huguenot settlers from the early days of *Verenigde Oost-Indische Compagnie* (VOC) occupation, they are and always have been the predominant white settler community in South Africa, although they have never been a homogeneous group. Theirs is a history intriguingly replete with internal political divisions: starting with divisions between those who stayed at the Cape and those who *trekked* in the 1830s and 1840s, the *lojaliste* and *republikeine* in the later nineteenth century, between *Afrikanders* and *Hollanders*, and later *bittereinders*, *hensoppers,* and *joiners* in the post-Anglo-Boer War reconstruction period, and then the *verkramptes* and *verligtes* in the ranks of the National Party and the *Broederbond*, and so on up to the present.

Apartheid was close to the hearts of many Afrikaners. After several attempts by the National Party to preserve the regime failed miserably – bearing, as they did, the brunt of international condemnation at the time – an 'extra-parliamentary solution' was brainstormed by certain segments of the Afrikaner community.

The preservation of political autonomy, culture, and language were the main concerns of these Afrikaners; and several organisations – cultural movements, political parties, pressure groups, and others – began to throw around the idea of a separate *volkstaat*.[2]

Amid the many negotiations associated with the transition from apartheid segregationism into democratic integrationism, a number of different *volkstaat* designs were explored. Many right-wing Afrikaner nationalists optimistically hoped these would be installed in the Cape, the Free State, and the old Transvaal (across parts of what are today's Mpumalanga, Gauteng, Limpopo, and the North-west Province), comprising a number of Afrikaner-only pockets not too dissimilar in concept to the fragmentary Bantustans formerly stitched into the landscape. Some, like General Constand Viljoen and the *Afrikaner Volksfront* he co-launched in 1993, were regularly engaged in a number of discussions about the development of an ANC-permitted and constitutionally sanctioned *volkstaat* (even insisting upon the *volkstaat* as an 'indigenous' right); others were more radical, among them members of Eugene Terre'Blanche's *Afrikaner Weerstandsbeweging*, who avoided polite diplomacy and threatened to secede from the South African state through violent means.[3]

Among the least threatening *volkstaat* designs to emerge in the late 1980s and early 1990s was that developed by the Afrikaner theologian Professor Carel Boshoff III, who sought to develop a small settlement in the northern Cape. Conveniently for Boshoff, Orania, a small, dilapidated, and seemingly empty town (or '*dorp*') in this region – just over 100 km downstream (north-west) and on the other side of the Orange River from Philippolis – had come onto the market in 1989, and was perfect for his *volkstaat* project. Before long, a private company comprising of 50 stakeholders was put together (*Orania Bestuurdienste*), and the town was bought on its behalf by Boshoff in 1991. Ultimately, only this *volkstaat* would survive into the post-1994, ANC-ruled context.[4]

* * *

Orania was initially created by the Department of Water Affairs (DWA) in 1964. Well before this, however, the area had been part of that 'Bushman Country' shared by the San for thousands

of years, and later pastoralist Khoekhoe around the valley, along with southwardly sprouting Sotho-Tswana groups to the immediate north.[5]

The land sat on the periphery of the Dutch colonial domain during the days of VOC rule. Far away to the north-east, as it was, from the main entrepôt settlement of Kaapstad, the region was of little interest to the company-state. Within a few decades of the British period of rule at the Cape, however, things changed. Between 1822 and 1824, the Cape administration, persuaded by Andries Stockenström, extended the colonial border from where it previously was (just north of Graaff-Reinet) up to the middle Orange River and running along it, until curling away inland to the south-west after 'die Groot Draai' (skirting underneath, but not encompassing, present-day Orania), towards the Kareeberg.[6] With the Cape of Good Hope Punishment Act of 1836, an even larger area up to the Orange River came within the ambit of the Cape Colony's jurisdiction; and just over a decade later, on behalf of the Crown, Sir Harry Smith officially extended Stockenström's old borders up to the point where the Orange River met the Vaal River, and created the 'Orange River Sovereignty' to the north, effectively transforming the Transorangia into an appendix of the Cape Colony.[7] Though the period was a bloody one, there were no wars of conquest per se; there were a few treaties, but none of the official ones on record (even at a stretch) could be considered a legitimate diplomatic transaction of cession; there were some brief consultations with some of the region's chiefs and leaders, but many others were simply ignored. In many ways, by Smith's actions the middle Orange River valley (or, to be more accurate, patches of it) was treated something like a terra nullius – that is to say, the land had no independent proprietors, but rather had inhabitants, and they were treated as Crown subjects.

The tribes and communities in the vicinity of the middle Orange at the time of annexation, while still quite independent, were severely weakened by the violence of the frontier era and the depletion of game, which probably explains Smith's wanton ignorance of them. There were some exceptions in the mid-nineteenth century, however – the main ones being the Griqua states, Griquatown, and Philippolis, which Smith struggled to muscle into submission – but by the 1880s the tide had turned against even these formidable communities. Direct British colonial sponsorship – like that which

Moshweshwe secured for his baSotho north of the upper Orange River, and which Moorosi could not secure for his baSotho south of the upper Orange River – seemed to be the only way for indigenous communities to remain politically coherent in this period, and such opportunities became increasingly rare. Economic opportunities had vanished too: white communities on each side of the river had taken control of beautiful lands and rich deposits of mineral resources – they would ultimately mix these treasures with migrant labour to entrench their own wealth in the region – and an exclusivist economic system developed, for which South Africa would later earn notoriety.

This situation was seemingly apparent to a settler called Stephanus Vermeulen, who in 1882 purchased a giant riverside property called 'Vluytjeskraal', taking up a large chunk of what was then the Hopetown District of the Cape Colony.[8] This was done in freehold tenure, according to the regulations established by the Cape at the time: his individual right to the property – an exclusive right that restricted indigenous access or use – was now protected by colonial law. But securing this right was not cheap. The property reputedly cost Vermeulen a whopping £3,952, proving just how impenetrable the market in land had become for individuals unversed in the cash economy and private accumulation by this time, and also suggesting a degree of speculation-induced inflation amid the incipient diamond rush that was taking place just 150 km to the north, in Griqualand West.[9] 'Settler capitalism' had arrived in Transorangia, it seemed, for which non-settlers were ineligible.[10]

Much of the land remained in the Vermeulen family's hands for a number of generations, until 1950 when 'Vluytjeskraal was sold for £5 per morgen [≈0.857 ha] to Gideon Botha.'[11] Just over a decade later, a small portion of the property – '2769 ha, comprising portions 2 and 5 of Vluytjeskraal 149 and Portions of Annex Vluytjeskraal 151' – was scouted by the National Party government as a potential site for the Orange River canalisation and damming project in the mid-1960s.[12]

This was a calculated and well-publicised project, and it required the construction of two major dams and a few riverside stations.[13] The labour power and engineering expertise required for the construction and maintenance of each station turned out to be substantial. It was practical to offer suitable accommodation near the

worksites, and for this reason the DWA put together its self-fashioned 'Vluytjeskraal town'. By the end of the 1960s, this construction town had become 'Orania'; at the government's expense, it transformed into a fully equipped *dorp* of 483 ha exclusively for DWA employees, complete with schools, church, town hall, recreational facilities, and a rich surrounding of irrigable land.[14] A town was born.

Approximately 200 ha of this 483 ha was residential area, designated for the contracted labour force employed in the region during the 1970s and early 1980s, when the project was at its height. This area was segregated into three residential components. 'The people who stayed there lived according to the habit in that time,' suggested Orania's resident historian and former *voorsitter* Manie Opperman. 'The white people lived in one part; the workers lived away where they weren't seen.'[15] Furthest away from the *dorp*-proper was the *Kamponggeriewe*, a black location for the project's black migrant labour force, approximately 200 strong, some of whom were from as far away as the Transkei Bantustan. Then there was *Grootgewaag* ('Risked a Lot'), more of a poor suburb than a location, for Orania's 100 or so coloured workers, consisting of 64 small houses in an area no greater than 80 ha or so, and a small compound with 20 individual 'single's quarters'. White engineers and construction team managers lived nearby in their own portion of the *dorp*, with a roughly equivalent number of houses (albeit larger, and more beautified ones).[16]

No portion of the entire residential area, from the records available, appears to have been alienated and/or offered for sale in this period. People lived there as guests of the DWA rather than homeowners; some paid rent and others did not.[17] According to a few former employees of the DWA, those who did pay rent had approximately R8–10 per month deducted from their salaries, though this is about all we know, as no lease agreements or contracts survive today.[18]

By the early 1980s, the project had downsized, and most of Orania's engineers and labourers were offered other positions in the DWA's nearby projects on the Orange River. Many others were retrenched, but stayed in their old houses. Only a small maintenance team (a few 'white families' and their predominantly coloured labour force) were given salaries by the DWA to remain behind during these years. The black location was virtually abandoned, and *Grootgewaag*'s empty

houses had attracted squatters – a mixture of coloured and black families[19] – from the nearby region.[20]

Between 1984 and 1989 some people came and went, settled or moved on, occupying the place as we might expect any community not enjoying recognised title or ownership to do; after all, by the letter of the law not just the residential space but the entire 483 ha town (including all improvements) remained the possession of the DWA. Many other people, however, settled in permanently, raising children and burying loved ones in Orania. They had come to stay, and regarded themselves – not the DWA – the rightful owners not only of their dwellings, but also, crucially, the land on which these dwellings sat. Apparently, 'officials of the DWA verbally informed them that once the project had been completed, the residents would be allowed to keep their homes'.[21] In the words of one of the former residents, 'Do you really believe that all of us who lived in Orania were so stupid to not build our own houses?'[22] Unfortunately, these agreements were unwritten, and all we know about them come from the testimony of a handful of former employees. It does not seem to have been DWA policy with regards to any other of the Orange River canalisation settlements of the period, and it seems strange that rent would continue to be deducted from salaries in light of any promise of freehold.

By this period, only in the optimistic eyes of rural producers was the Orange River canalisation project anything more than just a pipe dream, and the DWA soon became anxious to abandon the entire scheme and cut their losses. Reporting on Orania in 1985, A. D. Brown, one of the DWA's principal engineers, made clear that the project was failing. He noted that 'the township is still in use', but little else was; he recommended that the whole 2,769 ha originally required for the Vluytjeskraal project, 'with the exception of the land occupied by the Township Orania, be allowed to revert back to private ownership'.[23]

Brown's use of 'township' instead of '*dorp*', and, moreover, his insistence that it be left undisturbed and only the surrounding land be sold, are key here. His assessment reveals how much the settlement had transformed within the space of just a decade, after white engineers had left and the bulk of the labour force was made redundant. Orania, in 1985, had become a kind of township itself, home to a poor community, and similar to any other underserviced,

over-populated township or location dotted across South Africa.[24] Unfortunately, Brown gave no reason why, on the one hand, he thought it best to leave 'Township Orania' for the current inhabitants with their tenure in a kind of limbo, while on the other recommending the rest become alienated into private lots. Perhaps he felt obliged to honour the unwritten agreement to which some of the residents would later refer.

In the end, however, it did not matter. Orania had become a financial burden, costing more to maintain than it was worth.[25] The DWA looked into making its final retrenchments of its remaining skilled and manual labourers, and desired to sell the *dorp* as well as the surrounding land. Land was land: this was a quality, irrigable plot on the Orange, and it belonged to a market economy in which only gradually were non-whites becoming eligible to participate, and so kept a steady value. But Orania itself was different: the town and its infrastructure were the only things of any real value constructed by the DWA that it could get some kind of return on from its Vluytjeskraal project, albeit a petty return (Orania had cost R12m to build, and in the late 1980s, run-down as it was, received a meagre market value of less than one-tenth of this price). Nevertheless, in 1989 it was passed on to the Department of Public Works and Land Affairs for disposal.[26]

An entrepreneur from Johannesburg named Jacques Pretorius bought the town in September 1989 for R1,050,000, but his intentions for it are unknown. Within a few months, however, the costs involved in the refurbishment and maintenance of Orania soon became too exorbitant for Pretorius, and he defaulted on his payments.[27] 'So, Professor Carel Boshoff came around,' recalls Opperman, 'and he assembled a company of interested people, with enough money, and they said to Mr. Pretorius, "you can't raise the funds, we will take over your interest, and we will buy the town".'[28] Accordingly, in August 1990, what was supposed to be an empty *dorp* was bought by the Afrikaner intellectual Carel Boshoff III on behalf of *Orania Bestuursdienste* (Orania Management Service, or OBD).

* * *

In early 1991, a number of settlers moved into Orania, and the former residents moved out into nearby towns (Hopetown, Lukhoff,

Petrusville, and Warrenton) – but exactly how this transfer took place is a matter of contention.

A number of newspapers sympathetic to the residents of Orania, including a few unlikely Afrikaans newspapers, launched investigations into the *dorp* as soon as Boshoff made public his purchase of it. 'Everyone in the town is panicking about this situation,' reported Mariechen Waldner for *Rapport*:

> In the houses, on the street corners and in the single quarters in which families are now staying, this situation is the only subject which everyone speaks about. 'Carel Boshoff is going to shoot us', says a woman who is breastfeeding her infant. 'We are not supposed to say anything about it', says a sixteen-year-old Gertruida Louw, 'we need to say to Carel Boshoff that we would like to live with him in peace in this beautiful birthplace of ours. The television said that this is the new South Africa and if the television says so then it is so'. 'Ha!', says Mieta Rittels, 'he speaks of Christianity and he says that he is a Christian. How can you be a Christian when you are so arrogant?'[29]

But Boshoff had made his position clear: '[I] did not buy a bus with passengers,' he is said to have told the community, giving them until 31 March 1991 to vacate their homes and leave Orania.[30]

Residents who have lived at the *volkstaat* long enough to tell the story recall it somewhat differently. For example, Opperman admits how 'there were a number of coloured people staying here' when the first Afrikaners moved in,

> but you must remember, those people were not the same people who came to Orania in the first instance. There was this break in the middle. There were only about ten, or less, coloured people [employed] here in a skeleton style. And also, the person in charge, managing the staff – he is still alive. I contacted him, he told me there were very few people here.[31]

So what actually happened? To find out we must turn to an unpublished (and highly elusive) report, comprising the accounts of several former residents collected by the Commission on Restitution of Land Rights in 2004–05. Full of contradictions, the narrative offered by the Commission does not always correlate with the evidence provided in

the report. But it does offer an important insight into some of the residents' side of the story, and in the absence of other records it is all that we have.

Although the report states that 'residents only became aware of the sale *after* it had taken place', this claim is difficult to prove (and stands quite contrary to the interviews in the newspaper coverage of the early 1990s); indeed, the report later contradicts itself by showing how 'there are two distinct experiences surrounding their removal', namely,

> One group was informally told of the sale and forthcoming eviction. Houses were secured for some of them in Luckhoff. Those who did not secure accommodation found accommodation for themselves in towns nearby. Several of these remain as DWA employees today.
>
> Another group were [sic] not informed of the sale and forthcoming evictions. They were removed forcefully by the Orania settlers. No arrangements were made for their transportation or accommodation by DWA. Many of these moved either to friends and [sic] relatives nearby. Others ended up in Warrenton. Many of these were retrenched by the DWA soon after the forced removals.[32]

Those of the first group appear to have been in the majority. The DWA had been making retrenchments and offers to relocate to other DWA sites consistently from the mid-1980s – and only a handful, it seems, remained employed by the start of the 1990s. At around this time, as the report itself relays, many residents admit to being told to prepare to vacate their houses in 1989, a few months before the first sale, and almost a year before the Orania settlers moved in. Those who went to work for the DWA elsewhere in 1984–89 left their houses behind them in Orania (though unfortunately, many found themselves redundant within a few years).[33] Those employees who remained in Orania were quickly taken off the salary, and so no longer had any way to pay the rent for their dwellings.

During the period of Pretorius's ownership (October 1989 to early 1990), this situation changed for some residents. Whatever else Pretorius had in mind for Orania, it seems he had no intention to make immediate evictions. According to the report, 'as a result

of Mr. Pretorius's assurances, [these residents] did not seek any reason to seek alternative accommodation'.[34] A number of dwellings at *Grootgewaag* were reputedly leased for R80 per month in this period – again, lease agreements and contracts have not surfaced – before Pretorius eventually passed the property on to Boshoff.[35]

It has been estimated that around 500 people were living in Orania, mostly in *Grootgewaag*, towards the end of 1990.[36] Without any written rights or deeds, all were squatters – and their days were numbered, with the property changing hands. By this time, the DWA had made all their retrenchments, and a number of 'informal' comments about the future of the township. Potential buyers and interested individuals had made inspections of the *dorp*, which probably triggered alarm bells to inhabitants who saw the visitors come and go. Advertisements in the *Government Gazette* and newspapers announcing the sale had appeared for some time, and Carel Boshoff himself appeared on television over the Christmas period announcing his purchase – but whether or not the majority of the Oranian community was serviced well enough to receive this media coverage is another matter. While some of this community of 500 probably knew about the pending transformation of Orania into an Afrikaner *volkstaat*, there remained a significant portion of this community in Orania at the time who claimed, and later told the Commission on Restitution of Land Rights in the mid-2000s, that they were caught unawares about the sale – the other of the 'distinct experiences surrounding their removal', as the report puts it.

From early 1991 – six months after the sale to Boshoff – those who remained behind faced a number of frightening encounters with the newcomers, according to a few testimonies. The first significant occurrence took place on a Friday of undisclosed date – probably 29 March[37] – when 'a group of white men appeared [...] armed with guns and accompanied by dogs'. These men 'told [the residents] that they would have to leave in three days', and then 'locked the entrance gate to the "coloured location" preventing them from going to other areas within Vluykieskraal [sic] farm including the grocery store'. When dusk fell, the violence escalated: 'shots were fired throughout the nights', and 'beatings, pistol whippings and harassment with dogs' were apparently common.[38] 'We were removed in a very painful manner,' testified a former resident of Orania, now situated in Hopetown:

> It was in the evening of one Friday when Carel Boschoff [sic] and his friends came on bakkies [i.e. utility trucks] to order everyone out of the area. They fired guns throughout the night [...] we were forcefully removed at gunpoint. We did not have transport to transport our goods [...] we also did not know where to go. We lost a lot of our properties because we were not given enough time to pack.[39]

According to another former resident, also living in Hopetown:

> Some of us tried to resist passively but we had to succumb to the might of their guns. From Friday night these crazy people were firing guns on the air throughout. On Saturday night they became more physical, assaulting people [...] I remember one guy [...] who severely assaulted people on that night. Our visitors were also assaulted. There is an old man whose leg was amputated after he was assaulted.[40]

These and all other of the remaining residents who stayed, willingly or unwillingly, well beyond their eviction notices, quickly packed only those of their goods that they could onto a few inadequate bakkies, and left Orania. Like the other unemployed squatters of Orania who left in 1989–90, these individuals had few options. According to the report:

> Many of those who were able to leave Vluykieskraal [sic] Farm at this time moved in with relatives in surrounding areas, in particular at Hopetown. Some found accommodation in shacks in nearby towns. Others, particularly the black residents who did not have houses, are reported to have returned to their homes away from the area.[41]

That appears to be the end of the transfer. Orania's former residents had been resettled, and the *dorp* was now a blank slate upon which a new – and peculiar – system of property relations would later be erected. This development, along with some of the problems and implications of the report, are the subjects of the following chapter.

4
The Oranian Land Regime and Its Challenges

Right from the *volkstaat*'s conception, the brains behind Orania faced a dilemma. On the one hand, they wanted to create a community of private spaces for individuals and their families – a town which functioned much like any other. And on the other hand, in the context of a reforming South Africa, they wanted to restrict ownership conditions and provide enough power to themselves so that the town would be kept white and Afrikaner at all costs. This dilemma, they hoped, would be overcome by offering land not as freehold or as leasehold but as *shares*.

For this innovative plan to work, an unconstrained system of government needed to be installed in Orania, which may be summarised as follows. The sale of shares in Orania is managed by an overseeing, regulatory entity: the *Vluytjeskraal Andeleblok Beperk* (Vlutjeskraal Shareblock Scheme Ltd, or VAB). Just about everything else is delegated to what I call 'the Orania executive', comprising the *dorpsraad*, led by a handpicked *dorpsbestuurder*, and a board of directors with *voorsitter* (chairman), which presides over a democratically elected representative council. Strictly speaking, while the VAB takes care of the 'share block' system, and the Orania executive takes care of the day-to-day management of the town and a number of strategic policy decisions, both components of the Orania machine work together in the interests of keeping the *volkstaat* running smoothly.

In 1995, this unique system was handed a degree of autonomy by the ANC, and was given a temporary right to operate under its own, local 'transitional representative council'.[1] With this decree, Orania was able to liaise with the provincial and municipal administrations

of the region independently; crucially, it also allowed them to escape a number of municipal tax obligations, which they replaced with a more expensive system of rates to feed into their own revenue.

Since the last years of apartheid in 1991, as I show in this chapter, both the VAB and the Orania executive have worked together to support (individual) interests in land by protecting a (communal) system of shareholding. Along the way, however, they faced many challenges. The strategies and regulations adopted by the VAB and the executive, in order to keep the town functioning as any other might, are identified below; so too are the steps taken to defend the system in the face of challenges from outside interests – municipal, provincial, and federal administrations, the South African Land Bank, and the Commission on Restitution of Land Rights, among others.

* * *

On 17 August 1990, Carel Boshoff III purchased Orania on behalf of the OBD. Full title was eventually transferred not to Boshoff personally, nor to the OBD, but to the VAB. From very early on, it was this entity which oversaw the apportioning of land into plots for settlement by Afrikaners, according to a framework known in South African property law as the 'share block'.[2]

Share block regulations first appeared in the *Share Blocks Control Act* of 1980 (and would be amended four times before 1989).[3] In many respects, the regulations are similar to *strata title* (also known as *condominium*), developed in the last 60 years or so in the UK, the USA, Canada, Australia, and elsewhere, for owners of apartments and plots on sub-developments. The two systems differ fundamentally with respect to the kind of title awarded to the purchaser, however. The sale of a flat, for instance, where strata title/condominium regulations are in place, entails something akin to a full freehold transfer to any private interest with enough capital to buy that portion of the block. Share block regulations in South Africa, on the other hand, allow the company's board of directors to oversee the sale of shares, and potentially discriminate between contending buyers. Furthermore, according to the act, the share 'confers a right to or an interest in the use of immovable property' – an ambiguous right that is allowed to fall short of freehold ownership, as it does in the case of Orania.[4]

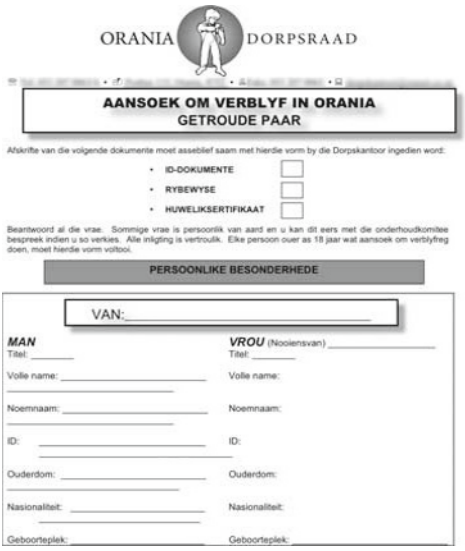
Before Orania could become the first, systematic share block scheme predicated upon exclusionary principles anathema to the 'new South Africa', however, the *dorp* required a makeover. Refurbishing dilapidated houses, repairing roads, and connecting Orania to clean water and electricity were expensive and stressful undertakings. Without outside funding, turnover in sales from the first wave of settlers, and considerable contributions from volunteers, the *volkstaat* may well have floundered in the first few months.[5] The first settlers and executive persevered through this teething stage, however, and began to take appropriate steps to give the *dorp* a distinctive Afrikaner culture, so that Orania would attract the right kind of interest.[6] Within a couple of years, Orania was respectable enough to receive a much larger, second wave of white, middle-class settlers.

The VAB apportioned the land into separate plots, which were variously evaluated according to their condition and location, and then offered for interested investors to select. Plots were offered to prospective settlers not in freehold or leasehold tenure, but as singular, described shares, according to the share block model. Not just anyone can purchase a share in Orania. Before prospectors can register with the VAB and receive their single share, they must pass a strict examination process administered by the Orania executive, to see whether the prospector agrees with the 'Orania ideal'.

The most important of these requirements includes a commitment to the preservation of Afrikaans language and Afrikaner culture, and an outright refusal to use cheap, non-Oranian labour.[7] As John Strydom, public relations officer, confirms:

> We have to okay the newcomer, which means that we have to have an interview with him, we have to explain to him what Orania is all about, and we have to make sure that he understands it firstly and that he agrees to that. If we are unhappy – if somebody comes here and he is a Scot, and he's not interested in the Afrikaner culture – we will try and convince him that, you know, this is not really your type of thing, why do you want to buy here?[8]

If all goes well in the interview, the settler must provide personal details (regarding experience with crime, mental health, education, religion and so on), before facing the VAB's rules, regulations and


ORANIA DORPSRAAD

AANSOEK OM VERBLYF IN ORANIA
GETROUDE PAAR

Afskrifte van die volgende dokumente moet asseblief saam met hierdie vorm by die Dorpskantoor ingedien word:

- ID-DOKUMENTE ☐
- RYBEWYSE ☐
- HUWELIKSERTIFIKAAT ☐

Beantwoord al die vrae. Sommige vrae is persoonlik van aard en u kan dit eers met die onderhoudkomitee bespreek indien u so verkies. Alle inligting is vertroulik. Elke persoon ouer as 18 jaar wat aansoek om verblyfreg doen, moet hierdie vorm voltooi.

PERSOONLIKE BESONDERHEDE

VAN:_____

MAN	***VROU*** (Nooiensvan) _____
Titel: _____	Titel: _____
Volle name: _____	Volle name:
Noemnaam: _____	Noemnaam:
ID: _____	ID:
Ouderdom: _____	Ouderdom:
Nasionaliteit: _____	Nasionaliteit:
Geboorteplek: _____	Geboorteplek: _____

Figure 4.1 Front page of the application form

procedures, deeds of association, and *grondwet* (constitution). These are contained in the *Aansoek om Verblyf in Orania* (Application for Residency in Orania).[9] As this document is not readily accessible, and it provides great insight into how the town is governed, it is necessary to cite from it at length (Figure 4.1).

The *grondwet* has 9 clauses. The first 3 clauses convey Orania's cultural requirements.

> We hereby acknowledge the Holy Trinity, as shown to us in the Bible as the only true God who controls and regulates the fate of all people, nations and communities and we believe that we can fulfil our obligation to inhabit and to labour on the earth by creating a free 'Volkstaat' (State for the Nation) in the North-Western Cape for the Boer-Afrikaner nation.
>
> We hereby declare to praise the Holy Trinity in our actions, in our daily conduct and labours and to strive for the expansion of the Christian Religion.

> We hereby declare to protect, live and promote at all times the Afrikaner's language, culture, traditions and to educate our children and to uphold our world views and lifestyle in true and faithful acknowledgement to God.

Clauses 4 and 5 refer to the economic policy of the *dorp*.

> We subscribe to the free market system as our economic model which must be seen as the ideal to strive for within the context of exceptional economic development within Orania.
>
> We declare only to use labour from our own nation and to promote cooperation within and outside of Orania.

Clauses 6 and 7 are more complicated, referring to local authority, internal laws, and social order. Most interesting here is the supremacy afforded to 'the jurisdiction of the Vlutjeskraal Share Block Limited and its accredited representatives'. The Hopetown Police is the option when all others are exhausted; misbehaviour and poor conduct, or any kind of dispute between two parties, usually results in an in-house process – and this is the way the executive likes law done. The first phase is mediation, with hearings overseen by a mediator accepted by both parties. The second phase is arbitration, for more serious escalations. 'No legal advisor may assist or represent' either party at any phase of the in-house process. The VAB's authority stems from the threat of having one's share torn up: should a dispute not be resolved according to the in-house process, or if the matter is a repeat offence, the residency of the signatory in Orania is terminated.

Clauses 8 and 9 list the process required to make amendments to the *grondwet*, and confirm its position in any issue as 'the dominating guideline'. That there is no mention of the Constitution of the Republic of South Africa is interesting but not unexpected; Orania is quite explicit about its ambition to play sovereign without actually being one.

The largest set of rules is set out not in the *grondwet*, however, but in a separate form called 'guidelines, regulations and procedures'. These cover the technical things that would concern a small municipality, such as water, electricity, public spaces, roads, and pathways. On top

of this, there are guidelines for corporate relations, construction projects, and farming, and a few laws quite unique to Orania. Clause 19, for instance, 'deems it an unacceptable practice for unmarried couples to stay together'. Lease agreements issued by shareholders 'make it as clear as possible for the prospective resident/tenant to take note of [this rule] and that they know that it is a case of mere principle'. If found guilty, 'his' share will be revoked, and 'he will have no choice than to move out of his house'.

Equally interesting are the 'guidelines, regulations and procedures' relating to property ownership. Settlers are entering into no ordinary property contract, it is affirmed in the first clause:

> The inhabitants need to be fully aware of the exceptional terms which are connected to the finalisation of any buying agreement which is attached to the shares in relation to the property in Orania. These terms are outlined in the standard buying agreement and are subject to the regulations in the constitution and the utilization agreement. Inhabitants are therefore requested to make sure that they fully understand these specific regulations before they agree to buy or sell any property.

Clause 13 goes on:

> Prospective shareholders and residents must appear in front of a committee who will decide if the candidates may or may not reside in Orania. This committee will be elected by the Board of Directors. The children of residents who wish to be shareholders must go through the same process of being allowed to have right to residence.
>
> New shareholders and new residents must participate in an orientation course about the right to reside in the town during a time and place which will be organised by the directing board.

Following these guidelines, the applicant comes to the 'deeds of association', which is the final section. These read very much like the *grondwet*'s clauses, though this part of the document goes quite a bit deeper into communal relations and how to 'practise good neighbourliness' – rules established in the interests of maintaining a 'well-ordered society'.

The *Aansoek om Verblyf in Orania* – an intriguing, 17-page document requiring the applicant's signature no less than four times – is a fairly basic contract which, once handed over to the VAB, is redeemable for a share. The application process completed, the applicant may then settle in Orania. There are a few ways of going about this. One way is to buy newly apportioned land. If the share is acquired in this way, 'and you buy the house for, say, R500,000', states Hanri Maritz, CEO of the local bank,

> [this] goes to the Vluytjeskraal Aandeleblok Scheme, and they use that to work on the infrastructure, to exploit more land, do the sewerage, electricity, water connections, whatever [...] the whole planning for housing and community and residential area.[10]

Buying directly from the VAB was the most common way of receiving a share in the early days of Orania. In recent times, however, it has become more common to buy from individual shareholders who, for whatever reason, want to part with their interest. As Maritz hypothesises again:

> If I have a share and I sell it, for example, to you, the money you pay goes straight to me, and only the transfer cost, which is 3.5%, will go to the Vluytjeskraal Aandeleblok Scheme. The rest – if I buy some house for R100,000, and afterwards I sell it for R200,000 – then I make R100,000.[11]

People seem to be buying and selling like this all the time in Orania – which raises a few questions about the liveliness of the property market there[12] – but one wonders about the kind of assurances the investor receives. What exactly does a buyer get, beyond voting rights in the *dorp*? 'What you buy is the share, and what you get is the usage of the land,' according to Maritz.[13] 'You buy a share, and you pay the price, of course, for the value of the land. It is similar to a title deed in effect,' Strydom contends, but most South African property lawyers would disagree with him.[14] The houses of Orania, and the hectares on which they sit, are not owned separately by individual freeholders, but belong in whole to the VAB, in whose name the title deed for the entire 483 ha is registered at the deeds office in Cape Town.

A safer way to go about settling in Orania is tenancy, an option popular among the poorer individuals of the *dorp* (many of them

recruited to Orania as labourers), and also those unsure about the *volkstaat* concept. In fact, according to Strydom:

> A lot of people own property [i.e. with a share] and they don't stay here themselves. So they let that place out. But once again, even the people who move in here without [buying] property still have to go through the whole procedure that I explained to you earlier.[15]

Becoming a tenant in Orania may be the only way to live in the *dorp* without investing in a share, but importantly, as Strydom makes clear above, the same application process applies. This ensures that the cultural ideal is uniformly enforced across all sections of the community. Only short-term guests, staying in the *dorp*'s designated accommodations venues, regardless of their shape, size, and colour, are exempt from the process (as I was during my research trips); such individuals visit Orania much as international tourists do on temporary visas elsewhere in the world, but are expected to leave strictly within three months.[16]

The strictness of the application process combined with the share tenure system places far greater power in the hands of the *dorpsraad* than that enjoyed by corporate bodies of regular apartment blocks under strata/condominium title regulations. Share blocks are quite different to those arrangements, in fact. A much better comparison may be drawn to a system unique to Israel/Palestine, where Israeli settlers have organised themselves into *Moshav* communes. As in Orania, prospective settlers to the *Moshavim* are screened and later governed intimately by a private company fashioned like a pseudo-state. The only significant difference between the *Moshav* system and the Orania *volkstaat* model is where ultimate ownership lies: in Israel, full title tends to be vested either in the 'state' of Israel or the giant, non-profit *Jewish National Fund*, and not as is the case with Orania, in a small private company – the VAB.[17]

Today, Orania has grown to accommodate around 1,000 settlers, with most settled in the town itself. There are teachers, merchants, artisans, and retirees among the wealthier part of this community, with trade labourers, construction workers, cleaners, farmhands, and the unemployed comprising the poorer part. Along with this, there is a sizeable population of young people in the local

education system, which grows as surrounding families in the northern Cape and the southern Free State learn about the conservative programme of all-white and all-Afrikaans education in Orania. The economy is modest, but strong: the farming community appended to Orania boasts a bountiful produce of pecan nuts, grain, and alfalfa sprouts thanks in large part to the irrigation of the mighty Orange River, while the local tourism industry provides a steady trickle of capital into the town as well.

In order to meet the growing *dorp*'s needs, revenue has to be raised by the government from a number of sources. There have always been outside investors and sympathetic donors since before Orania's purchase in 1991 (though no one in Orania wants to say much about this). In more recent years in Orania, however, these donations no longer seem to contribute to the *dorp*'s refurbishment and upkeep, but are more commonly sought for school fundraisers and support for the Orania welfare system (or *Helpsaamfondsprojek*, developed to cater for unemployed, under-skilled white residents recruited especially for Orania).[18] Two other main sources of revenue, both tapped into by the VAB, keep the *dorp* functioning as a normal town. One of these is their tight control over the real estate market, which provides the VAB with a steady source of revenue: as made clear by Maritz above, 100% of every first-time transaction, and 3.5% of every transaction after that, enter the coffers of the Orania executive. More substantial than this is the other source of revenue, which comes from a system of town rates, paid monthly by shareholding residents. This 'levy fund', as Maritz puts it,

> takes care of the running cost for the company, for the salaries for all the [administrative and executive] people: the board of directors, and the personnel [...] also the workers who clean the streets, the people who do the electricity, [and those who] see the water is there [and] pump it from the river. There are [also] some fees that have to be paid to the electricity supplier, Eskom. All of that is in a budget, and divided between all residents, [who] pay a levy between R1,500 and 2,000 per month.[19]

This seems like a lot of money to spend on upkeep, but the VAB has an eye on the future, and so regards these rates with pragmatism: it is in the company's best interest to see the base value of their land

increase, and a functioning town will always be more valuable than a dysfunctional one (as the DWA learned the hard way in 1989). On top of this, if shareholders are uncomfortable in the *dorp*, one suspects that they will be less inclined to make improvements to their plots. Equally pragmatic is the VAB's policy towards exactly the kinds of improvements – and, indeed, all construction projects – that may be undertaken in Orania. In late 2008, the *dorpsraad* passed some new regulations to ensure that all buildings, houses, and extensions are structurally sound, and built according to plans approved by special commissioners employed to monitor each project.[20] On top of this, a number of eco-friendly and cheap building techniques are encouraged, with materials imported from around the world to assist in this endeavour.[21] Again, this policy is in the best interests of the VAB, who want maximum value from their shares and can achieve this end by prohibiting the construction of poorly built and visually unappealing properties. Importantly though, this policy is also in the interests of the settlers, who are encouraged to build for themselves without outside help and often need guidance to do so.[22]

At first glance, Orania operates like any other small town does. But a closer look at the mechanics of the land regime reveals a complex and, frankly, ingenious system, overseen by the Orania executive and the VAB. This achievement was not easy. It required a lot of experimentation, investigation, and investment, as explained above. It also required quick investment from a partner company to repel other interests, along with significant diplomatic skills and canny legal strategies to protect its bestowal of partial autonomy and entitlement to land, as explored below.

* * *

The Oranian system of property relations received its first major threat towards the end of 2000, during the lead-up to the nation's local government elections, and in the fairly recent wake of the ANC government's extended project to rename and reconfigure the local municipalities.[23] To the horror of the Orania executive – who considered their transitional representative council an important step in the right direction towards assuring their own nationally recognised municipal status – it was decided at the northern Cape provincial level, somewhat out of the blue, that the 'Orania TRC established by

Provincial Proclamation No. 65 of 1995' would be 'disestablished' as of 11 November 2000.[24]

The municipalities were reconfigured in such a way that Orania would now have no choice but to be merged into a joint municipal district that included Hopetown and Strydenburg (later refashioned 'Thembililhe'). This was a terrifying prospect for the Orania executive. They claimed, perhaps rightly, that inevitably their *dorp* would be disbanded and neglected by the new administration, and that the wealth of their residents would be over-taxed to pay for services delivered not to Orania but to the poor, populous (non-white) communities nearby.

That the municipal elections were scheduled for 5 December left Orania with little room to manoeuvre out of this predicament. Legal advice was sought. In October, Orania's lawyer, Anna Maria Laas, delivered an ultimatum to the government, which showed how the move to disband the council was contrary to statutory law as well as constitutional law. This ultimatum was ignored, and the matter escalated to the Kimberley High Court in November. The judge saw Orania's case favourably: it was ruled that the *dorp* could retain the rights they formerly enjoyed, and 'continue to exist as an entity for purposes of negotiations and litigation [and] as [...] provided in Article 38 of the Constitution of the RSA' – and the matter was 'postponed' until the government could organise a 'later adjudication'.[25]

The Orania executive, taking full advantage of the national public holiday, held their own local elections on 5 December, the same day that the rest of the country participated in municipal elections. Orania's residents voted for their own administration, rather than that of Thembililhe's, and used the day to celebrate the preservation of their semi-autonomous, extra-municipal status.

Today, Orania's status is still frozen, because no such enquiry into the *dorp*'s status was ever launched. The government's avoidance of the issue is understandable. Orania is not all that important compared to the many other political issues that confront the ANC today. But there may also be some good reasons to avoid taking the municipal issue further. If an enquiry ever does yield a 'later adjudication', one suspects it fairly likely that Orania's legal status would be upheld, in effect giving official sanction to the Orania *volkstaat* template. Orania's lawyers produced a strong constitutional argument, which

included a rather novel interpretation of Section 235's protection for small, autonomous communities.[26] On top of this, they insisted all along that because of the VAB shareblock system, it was no town of landed citizens (who could be taxed) but was instead more like a farm with generous visitors (who could not).

The prospect of several other Oranias mushrooming across the country is something the ANC probably wants to avoid; and the ANC does not want to set a precedent that might potentially disturb important statutory law and municipal regulations established after 1994. Naturally, the intellectual elite of the Orania movement are pleased with this indecision, knowing all too well that with every year the matter is delayed the stronger their claim to autonomy will become. As Manie Opperman put it to me, reflecting on these events:

> The government looked at it, and they shelved it. And it is shelved. 20 years now [since Orania's purchase in 1991]. Now, we are of the opinion, that if you have a de facto situation, and you live for long enough according to certain conditions, then you have some right to keep on doing that. That is not against the interest of the government itself, or of the people, or of the settlements in the greater region.[27]

After the town's status was frozen in late 2000, establishing the 'de facto situation' that Opperman describes, the next serious threat to Orania came in the year 2004, when new private interests investigated the land surrounding Orania. Back in the late 1980s, when the *dorp* first came onto the market, some of the farmland formerly owned by the DWA came onto the market too – much of which eventually transferred to an independent farmer, on full freehold tenure. A dairy enterprise was established on this property, albeit a somewhat unsuccessful one; by the early 2000s, this particular property holder had begun to default on his/her loan with the South African Land Bank.[28]

By this time, the land was bordering the new VAB territory and, in effect, had become intimately surrounded by Oranian Afrikaners. The unique situation of the property in question did not, however, prevent the bank from reacquiring it from this failing farmer, which it did in early 2004, advertising the land for sale shortly

afterwards. This became quite concerning for the Orania executive, because, as was quite likely, the land would be passed on to a non-*volkstaater*, and could then be used for just about anything. Their worst fears were realised in 2004, when a private interest with the intention of installing a large-scale, labour-hungry dairy operation on the land, tendered a bid. As Lukas Taljaard, founder of Orania's local bank, director of the VAB between 1994 and 2004, and settler in Orania since 1993, recalls, 'They [i.e. the bank] just sold it to another guy, who want[ed] to do other things here with all the colours of people, and we [didn't] want that.'[29] But how would Orania get around the problem, and avoid seeing their *dorp* frequented by cheap non-Afrikaner labourers?

It was Taljaard himself who would save the day. Additional to his impressive Oranian CV, Taljaard was also the founder and director of the *Kambrolandskap Koöperatief* (KK), the main land company acquiring land on behalf of Orania. The KK was established in 2002, and has expanded Orania's sphere of influence by 5,000 ha since this time, and continues to grow.[30] Three large KK farms extend well beyond the Orania *dorp* into neighbouring municipalities, and a number of others more closely surrounding the 483 ha *dorp* have been subdivided and offered as shares, just as the VAB scheme did in the early days.

One of the subdivided KK farms is the one in question – the land upon which, in 2004, a multi-coloured dairy enterprise was soon to be built by a non-Oranian. Taljaard, after consultation with the VAB and the Orania executive, moved in to resolve the milk-farm matter by submitting a higher bid than that already offered (and, it is fair to assume, somewhat higher than its market value at the time). Upon receiving the title, Taljaard's KK then proceeded to subdivide it, and advertise it to new settlers – contingent upon their passing the Oranian application process, of course. 'If that didn't happen, then Orania might look quite different,' according to an investor in one of KK's new plots. 'Actually Kambro did some good things there.'[31]

There are now around 70 small plots owned by KK within expanding Orania, in sharehold title identical to that offered by the VAB. According to Strydom:

> We regard all of them falling under the Orania idea. And when they draw up contracts, they will stipulate in the contract they

> will [...] obey the letter and the spirit [of the Orania idea] – of which the most important is that you must promote the culture of the Afrikaner, and that one of the main pillars of that is [using one's] own labour.[32]

The Orania executive, like Taljaard, is keen to see KK continue to expand Orania's borders in this fashion. So long as the surrounding region's propertied constituents give their consent to becoming subsumed within the town's jurisdiction, there is little preventing this kind of expansion – yet there is sure to be a point at which the municipal governments concerned will protest against the resultant reduction of their local revenue.

Probably the most serious challenge faced by the Oranian land regime was, as introduced briefly in the previous chapter, that laid upon it by a community of claimants supported by the Commission on Restitution of Land Rights. When, at the end of winter 2005, a claim to the entire 483 ha region of 'Vluykieskraal [sic] Farm, today known as Oranje [sic]', was processed and gazetted, the community of Orania was caught completely off-guard.[33] By the time it came to the attention of the Orania executive, in fact, the 60-day period in which to enquire into the claim details had long passed, which meant that, according to the conventions of the commission, the claimants' identities, and all information pertaining thereto, were now protected.[34]

The identity of the claimants was shrouded in secrecy. 'A coloured community of about 60 families says it was forced to leave in 1991,' read a report in the *Mail and Guardian* – but the accuracy of the report cannot be guaranteed.[35] It is uncertain where this figure of 60 families comes from. As for the claimants' coloured identity, we cannot be too certain about that either; as the official Report into the claim states on more than one occasion, 'some "coloured labourers" were in fact black people who had assumed a coloured identity'.[36]

At a meeting between Regional Land Claims Commission representatives and a few members of Orania in October 2005, the Commissioner of the Free State and Northern Cape jurisdiction advised that he was 'not in the position to indicate to you the number of claimants involved', though it was confirmed that 'most of them were employees of the Department of Water Affairs'. Contract workers, he told Orania's representatives, could be protected

by the commission just as any other if a 'right in land' could be argued, as was the case with these claimants.[37] Later it was confirmed that the claimants were regarded as 'a community' in terms of the Restitution of Land Rights Act (1994), which meant that they were considered a 'group of persons whose rights in land [were] derived from shared rules determining access to land held in common by such group'; consequently, this community was empowered to show that 'dispossession [...] occurred as a result of a racially discriminatory law or practice'.[38] And, according to the commissioner, this kind of dispossession did take place. As he informed the Orania representatives,

> During or before the removals took place at Orania, people of different race groups had occupied the land. But they were removed in order to create an Afrikaner state. That in itself is a racial practice.[39]

But according to Willie Spies – the attorney of *Afri-Forum* and *Freedom Front* fame, quickly installed by the Orania executive to represent the *volkstaat* – it is unclear how this argument could have been constituted to show that the sale of Orania was itself a racist transaction. As he would later write to the commissioner:

> The dispossession (if any) happened as a direct result of changing needs of the former owner being the then Department of Water Affairs and the eventual open market sale in 1991 of the entire property with all improvements thereon to representatives of what later became known as the community of Orania.[40]

The former residents of Orania, interviewed by investigators on behalf of the commission, for their part, argued that 'the DWA verbally informed them that once the project had been completed, [they] would be allowed to keep their homes', and many attested to have been removed forcefully from their homes – as detailed more fully in the previous chapter.

Voorsitter of Orania at the time of the claim, Opperman, recalls his interactions with the commission vividly. He remembers being told, unofficially, that his chances in court were slim. Anthropologists, they warned him, would be deployed to discredit Orania's case,

and the tables would inevitably be turned against the *volkstaat*. '[I]t is not ordinary justice,' he believes:

> There is a different type of approach. There is a lot of culture involved – different things you have to use to prove your case. It is accepted that [the land] is theirs, and *you* must prove it isn't theirs![41]

Whose case would be stronger? The one Spies developed, on behalf of Orania, was good. Spies rejected the claim that the transfer of Orania to Boshoff was racist in and of itself; he disputed that the claimants were a 'community' in terms of the act; he argued that commission regulations with respect to the 60-day period had not been followed; and, if all else failed, he had at the ready a number of constitutional arguments to fall back upon. At the core of his argument, however, was an argument about liability. Because a government department alienated the land and put it onto the market, the liability for the treatment of the residents/squatters lay, if anywhere, with the sovereign state, not with the VAB.[42]

Quite remarkably, in the end, the commission, seemingly dedicated to resolving the dispute in favour of the claimants, concurred. The matter was not referred to any advocates in the Land Claims Court. Instead it was settled out of court the following year. The Republic of South Africa – not Orania – accordingly paid out R2.9 million (approx. $US475,000 or £275,000 at the time) to a community of 'about 20 families', according to one newspaper, and 'eighty residents', according to another – though again, we cannot be sure about these numbers; the official report does not make this clear.[43]

The Oranian land regime remains intact – for the time being.

Conclusion: Land Regimes and Property Rights on the Orange River

In the last several thousand years, humankind has endeavoured to make land a thing *possessed* – a development that has led to much conflict between peoples. This local history has analysed two different land regimes in a region of South Africa that has been contested for thousands of years.

For a long time in colonial discourse, a great swathe of land to the north and the south of the Orange River was known as 'Bushmanland' or 'the Bushman Country'. There were good reasons for this. The San were prominent there, and had been for longer than any other group. And they would become witness to an increasing number of upheavals, migrations, and contests in the seventeenth and eighteenth centuries – developments that would drastically influence their complex relationship with that land.

The formation of an inclusive Griqua community on the Orange River resulted from a series of upheavals emanating from the Cape. Securing the support of the London Missionary Society (LMS), this community transformed into a number of miniature states. One such state was that of Philippolis, created after a breakaway faction from Griquatown, under the leadership of Adam Kok II, was given dominium to the region. But this grant of land was not sanctioned by any of the original San bands that had used the region for thousands of years; nor was it sanctioned by any of the LMS's missionary subjects who had resided there from 1822. Rather, it was handed over in full by James Clark, on behalf of the LMS – a missionary organisation,

it was argued later, which had no right to appropriate the land in the first place.

The San were a threat to the Griqua economy, and the Griqua were quick to eradicate them from the Philippolis region. This they did by deploying a number of deadly commandos into the outskirts of Philippolis. It is quite possible that, as many of the Griqua would later admit, these commandos were organised in collaboration with white settlers. Given their shared interest in quelling San stock theft – and, taking into consideration that white commandos had for at least 50 years beforehand campaigned against the San in nearby regions – this is easy to believe.[1] But regardless of how and who sponsored these Griqua commandos, the devastating impact upon San society of such raids is inescapably clear. By the mid-nineteenth century, a once-thriving San population had vanished from sight around Philippolis.

Unsurprisingly, around the 1850s terms like 'Bushmanland' and 'the Bushman Country' disappeared from usage. New communities – white, Griqua, Bastaard, Briqua (baSotho, baTswana), hybrids – had moved in and appropriated the land. The LMS and other missionaries began to forget about the Kora and San of the middle Orange River, turning their concerns instead predominately towards other communities. The region was soon to be eclipsed by a wave of private interests, driven by a reckless tide of resource hunger. There was no place for any argument in favour of the rights of hunter-gatherers to land in this context.

Philippolis became Griqua country in 1826, and the rich grazing lands around it became pasture for their stock, though the kind of tenure enjoyed by these farmers beyond the boundaries of the old station was never clear. Early on, the Griqua captaincy under Adam Kok II put into place a few piecemeal measures in order to preserve the Griqua right to property in land and things, but it was not until the reign of Adam Kok III after 1837 that a comprehensive land regime, protecting individual Griqua interests in land and restricting non-Griqua ownership, would be installed and regulated in greater Philippolis.

This special land regime was put together out of necessity. White farmers, their numbers growing from the late 1820s onwards, also sought pastures and somewhere to settle north of the middle Orange River and disputed the Griqua's right to monopolise the land. The

Griqua's position in the Philippolis region was never secure, and sadly for them, it became more and more insecure as time went on. A tense battle between the two parties ebbed and flowed throughout the 1830s and 1840s until, during the period of the Orange River Sovereignty, Kok III's jurisdiction over land matters became weak to the point of non-existence – much to the celebration of the settler cohort steering the Sovereignty's successor state, the Orange Free State, from 1854 onwards.

I have argued here that the disregard shown to the Griqua land regime may largely be attributed to two powerful arguments circulating through settler discourse. The first of these arguments queried whether or not it was fair that the Griqua had become ultimate landlords of the region. It was the San and not the Griqua who were the original possessors of the land, argued some of these Boers – though, quite cleverly, they did not argue as much in order to advance San claims to greater Philippolis (which most believed to have been well and truly annulled by the 1830s). Rather, they did so in order to advance their own claims.[2] Other settlers pointed out that as both the Griqua and the Boers were loyal British subjects, by consequence both should receive the same rights in the region. With these claims, not only the Captain's capacity to discriminate between potential landholders, but also the very foundations of their tenure, were called into dispute.

The other main settler argument attacked the Griqua from another angle: it identified the maladministration of property matters and the ineffectiveness of Kok III's jurisdiction in the region. White settlers refused to become Griqua subjects; they showed contempt of their court and ignored their laws. But they held on to their lease agreements and dubious freehold receipts, making it clear to colonial administrators whenever they had the opportunity that the Griqua were never good enough at bookkeeping to act as the sole land registrars over such a great terrain.

Once the currents of settler debate had become triumphant in officialdom – first British Residents piled in and then Harry Smith overturned Kok III's land regulations – the Philippolis Griqua became powerless and marginalised. Griqua sovereignty had been unseated by settler sovereignty. Their options depleted, the Griqua were quick to leave the Orange Free State and start afresh somewhere else. Their experiences after this period were unpleasant, and never again did

their captaincy boast as much influence as it did during their time at Philippolis.

* * *

It is impossible to understand just why the *volkstaat* idea had so much purchase in the 1980s without acknowledging the sheer doom that was circulating around Afrikaner circles in this period. Apartheid ensured different people were kept apart, Afrikaners were kept in the middle class, and Afrikaans kept as the lingua franca. But the regime was on its way out, to be replaced by a 'multi-racial democracy' in which whites were to become a toothless minority. For all the different *volkstaats* conceived by Afrikaner organisations in the face of supposed apocalypse, Boshoff III's modest Orania would prove the most successful.

Orania, alienated by the Department of Water Affairs (DWA) and placed onto an open market in 1989, was perfect for Boshoff's *volkstaat* project, and his *Orania Bestuurdienste* moved in to acquire the property with this in mind. But the *dorp* had residents: coloured (i.e. non-Afrikaner) individuals considered unsuitable by Boshoff and his intellectual brethren for the *volkstaat* scheme. They had to be removed, just like other groups had been from the same piece of land for hundreds of years before this.

It is worth remembering that holding property in land had always been difficult for non-whites along this stretch of Orange River, particularly after it had become part of the British domain in 1848, and then shortly afterwards a reservoir for rich private interests. For these reasons should the transfer of Orania's disenfranchised, unpropertied squatters be seen in continuity with a past of unfair upheavals – a past in which the exclusivist economics of settler capitalism determined who could live where and how.

The removal of 1989–91 was the result of a private transaction in land, the terms of which said nothing of the prior inhabitants. The extent of contradiction in the available evidence precludes any neat or complete understanding of what actually took place, but it is fair to say that there were a number of different experiences associated with the removal – not just two, as the official Report on the removal would contend. Some claim to have been tenants, whose several landlords had failed to observe their rights as such. Some were

clearly squatters, who knowingly moved into dwellings they did not own, upon land they had no permission to enter. Some believed they were owed their dwellings by the DWA, and lived in ignorant bliss about the temporariness of their inhabitancy. Some knew that their days were numbered, when the DWA made clear its intentions from the mid-1980s, and so moved out of Orania with plenty of time to spare. Others either knew nothing of their eviction notices or simply just chose to ignore them, and waited to see what would come to them in early 1991.

The last remnant of Orania's residents felt cheated: they wanted to stay, and received harrowing treatment for remaining behind. Carel Boshoff III felt cheated: what he thought to be empty property turned out to be a 'bus with passengers', and his eviction notices went unheeded. Although the newspapers sided with the coloured community, Boshoff's case was far stronger – and supported by law. By mid-1991, total transfer had taken place: Afrikaners had moved into Orania, the former inhabitants had moved out.

And so the Orania *volkstaat* was established on land formerly owned by the DWA. The land has since been sequestered and offered to settlers as shares by the *Vluytjeskraal Aandeleblok Beperk* (VAB). Wholly reliant upon the shares of public investors, the VAB nevertheless conducts itself like a classic private enterprise, insofar as it retains the right to decide, as any business might, just which portion of the market it will seek contributions from. Herein lies the genius of Orania. By placing discriminative restrictions on the terms of the share, and individually screening each investor, the VAB has taken appropriate steps to ensure that Orania remains a *volkstaat*, and is kept for one ethno-racial group only; in effect, it is using corporate convention and those regulations set out in the Share Blocks Control Act to secure for the *dorp* what key legislation – including the Natives Land Acts of 1913 and 1936, the Group Areas Act of 1950, and the Prevention of Illegal Squatting Act of 1951 – did in the dark old days of apartheid.

This sale and allocation of shares, however, despite several claims to the contrary by actual homeowners in the *dorp*, does not confer full property rights onto the buyers. Shares, by their very nature, recognise an interest in a company, not one in land. Herein lies a significant weakness of Orania. A closed market – not in land per se but in shares redeemable for usufructuary rights – has been created

on the northern tip of the Karoo, one which is overseen by a business with minimal (if any) liability should something, in the future, go wrong.[3]

However, if the recent past is anything to go by, the fact that Orania has successfully fended off a number of challenges already suggests that, in the event of some unforeseen disaster, the Orania executive and the VAB stand prepared. When their transitional representative council was taken away, they prepared an argument for the Kimberley High Court to have it reinstated. When a private external interest intended to use neighbouring land for an enterprise that was contrary to the *volkstaat* ideal, a subsidiary company raised enough capital to move in and outbid that interest. When the Commission on the Restitution of Land Rights, with incredible secrecy, supported a community of claimants to the entire 483 ha of the *dorp*, the Orania executive with the help of their star attorney prepared a powerful defence that deflected liability towards the state, making the claim undesirable for the commission to have come before the courts.

* * *

Like other land regimes developed elsewhere in the settler colonial world, Griqua Philippolis and Afrikaner Orania were created over the top of other land regimes. Whose land regime was stronger – whose 'amalgams of custom and law' gave the soundest foundations to these communities – depended a lot on rights talk and sovereignty.

As I have argued, the ways in which claims to land and special treatment were conveyed, received, and ultimately prioritised turned out to be crucial for both contests. From early on, the outcast Griqua were quite deft at communicating their grievances to the Cape government, which they commonly did with the help of their main organ, the LMS. Eventually, however, white settlers situated along and to the north of the Orange River deployed effective rights talk too. Despite their rift into rebellious and loyal factions, both kinds of Boer around Philippolis commonly argued for rights to land and self-government of their own, while at the same time bringing into disrepute the Griqua's exclusive rights to those very same entitlements. These arguments were consistently impressed upon representatives of the Cape government. They were written into petitions, printed into settler

newspapers, and rehearsed in meetings across the Transorangia. And, importantly, these were arguments connected with a strong republican movement that had spread into the Transvaal and Natal, and had become a serious matter of concern for the colonial administration. Unsurprisingly, perhaps, in the period after the Great Trek, the talk of settler rights exceeded in volume anything proffered by the Griqua, and certainly overshadowed the San plight, which was commonly downplayed or otherwise overlooked as the Orange River Sovereignty, and eventually the Orange Free State, came into existence.

Despite the immense differences in discursive context between the two case studies, I believe a number of parallels can be drawn here with Orania. At a time when apartheid's end seemed inevitable, right-wing Afrikaners first hatched the *volkstaat* idea by arguing for the right of their people to self-determination. After almost a decade of existence as a modest *volkstaat* in the northern Cape, Orania faced its first threat when the provincial government planned to remove the town's transitional representative council in line with a nation-wide programme of municipal reform. Of all the communities affected by the programme – most of them African – it would be Orania that perhaps most fiercely resisted it. When the matter escalated to court, Afrikaner rights talk was supported by the constitution. The case was resolved in their favour due to the 'right of self-determination of any community sharing a common cultural and language heritage'.

A contrast can be drawn to the inhabitants of Orania living there before the Afrikaner settlers took over. During the removal period, they failed to have their claims acknowledged by anyone except journalists, who showed only a temporary concern for their plight and then promptly forgot about them once the deed was written up and fell into Boshoff's hands. Before their removal, a number of former employees of the DWA insisted that staff in charge of the riverside project told them that they could own their homes outright at the resolution of their construction. Others claimed their rights as tenants had been ignored. Whether these claims had any foundation or not is irrelevant, because in the end they had no influence on the decision to place Orania on the market as an empty *dorp*. Much later, in 2005, during the processing of the land claim to the region, the commission successfully showed a communal 'right in

land' for the former inhabitants, but Orania deflected responsibility by insisting that the *Vluytjeskraal Aandeleblok Beperk*'s property rights were legitimately acquired. Again as before, Orania's ability to argue strongly for their rights worked in their favour.

The main factor determining the rise and fall of land regimes I have tried to stress throughout this book is the influence of the sovereign order. Again, let us start with the Griqua example. If, as several legal-historical scholars have noted of late, layers of sovereignty fell across contested colonial landscapes before ultimately solidifying into the more singularly totalising modern formats we are more acquainted with today, it is perhaps valid to point out how this translates to the matter of land rights in Philippolis.[4]

For complex reasons to which perhaps Aboriginal Australians can best relate, the hunter-gatherer San were no sovereigns in anyone's appraisal, and their rights to land were ignored by settler colonisers. The Griqua, on the other hand, gauged colonial discourse brilliantly, observant to the social change that was taking place around them, and thanks in large part to the influence of LMS preachers. Just like the Métis of the Canadian west in exactly the same moment, this mixed community, fresh from recent ethnogenesis, straddled a fence between settler and native: their economic basis was a hybrid fusion of traditional modes of subsistence and new methods of farming, and their institutions of government were dynamic and ad hoc, Europeanly inflected but indigenously inspired.[5] As a hybrid polity, the Griqua became sovereign over Philippolis by creating their captaincy and emulating a model of private property recently introduced into the colony, and were successful: Kok III was identified by the British administration at the Cape as 'independent Chief and the proprietor of the territory', a leader who possessed the power to exercise his own jurisdiction; his claim to manage land rights in the region was, therefore, to those powers that were, a pretty good one.

This changed dramatically when a spatter of white trekboere began to solidify into a bona fide settler polity. Gradually after this period, to put it bluntly, the colonial administration favoured settler opinion over native opinion. The short-lived but aptly named Orange River Sovereignty, unsupportive of the Griqua claim after Harry Smith's reckless advance into the interior, soon transformed into a powerful settler state, with all the bureaucratic trappings that allowed it

to decide independently of the Cape government which indigenous rights to land were to be honoured. Sadly, as is often the case with settler states, the decision reached was that no indigenous rights to land were to exist identically alongside settler rights to land in Transorangia.

What, then, does all this tell us about settler colonialism, and South Africa more specifically? It shows us that a polity which can lay claim to ultimate sovereignty, after unravelling the layers and extinguishing all competing claims, can decide whose rights to land are valid and whose are invalid. By no means was this situation unique to Griqua Philippolis at this moment in history, as other historians of settler colonialism will likely agree; but might it also ring true for the Afrikaner *volkstaat*? How important was sovereignty for Orania?

Of course, by the time the National Party was preparing to make room for democratic election in the 1990s, those 'layers of sovereignty' definitive of the mid-nineteenth century period and earlier had been well and truly unpicked from the middle Orange River, and it is probably a stretch to mobilise an argument developed for imperial history in this modern context. That said, it remains noteworthy how the role of the overseeing sovereign entity in Orania after 1994 – the new Republic – was just as crucial as it was for Philippolis after 1854. It was, after all, the post-apartheid government and its legal regime which determined, for the most part, how the matter of land rights were to be approached in Orania.

National legislation gave Orania its transitional representative council during the period of transformation in the first place; and the judiciary, later disallowing provincial plans to disband it, found itself in 2005 constitutionally bound to lock this semi-autonomous form of government into place indefinitely. This allowed the Orania executive to distance itself from neighbouring municipalities and maintain its own land regime. While true that the 1991 eviction was acknowledged by the state's Commission on Restitution of Land Rights, interestingly the land rights of those removed were never on the bargaining table. The *volkstaat* was never under any threat as the claim was being processed, and in the end, financial compensation came not from the Orania executive but the national tax revenue: the *state* took responsibility for this dispossession with

a view to preserving, rather than nullifying, the Oranian land regime.

What is perhaps most astonishing to note – particularly when we take into account the very different ways in which restorative land rights convention has developed at the common-law level elsewhere in the settler world, something I explore in the Afterword – is that this 1991 removal was the only dispossession recognised by the commission. According to the Restitution of Land Rights Act (1994), all claimants who insist that their dispossession (or that of their ancestors) took place before 1913 were considered ineligible for compensation (and those who failed to submit their claim within a certain time frame now have no chance to do so).[6] Thus, in the interests of pragmatism, the South African state has, or more correctly had, a very particular kind of claimant community in mind when it came to the question of land rights in the transformation period – a decision not without its consequences. For Orania specifically, this has meant that only one claim out of potentially a handful or more was made to the giant riverside farm called 'Vluytjeskraal' (and about this reality the Orania settlers are undoubtedly delighted). Today, considering South African law's general disregard for common-law aboriginal title – and, obviously, pending no new statutory provision for pre-1913 claimants – Afrikaner rights to property in land at Orania seem unlikely to be disputed by outsiders for the time being, and for this, ironically, it has the current government to thank.

In Afrikaner Orania as it was for Griqua Philippolis, then, it is the sovereign that says which land rights are good and bad. Of course, it is necessary to add that the sovereign's decision is influenced in great part by the varieties of rights talk spoken by all interested parties; and the situation I describe is one that only emerges once all the transferring has been done, and the dust is settled on the foundational schism (namely, the removal of prior inhabitants). That these two episodes, each defined by destruction and replacement, yet so distant from each other in time – one occurring in the mid-nineteenth century and one in just the last two decades – can bring us to this conclusion is telling, for it points to the resilience of the structures of settler colonialism, and it opens our eyes to the continuities of South African history.

My reasoning for fast-forwarding through apartheid should have now become clearer. Yet for those still committed to regarding that 46-year period disproportionately to its importance in a much longer history of South African dispossession – probably those for whom the word 'apartheid' remains the global signifier of racism, reflecting a regime more caricatured than understood – further elaboration of this reasoning follows in the Afterword.[7]

Afterword: On Restitution and Dispossession

There has been a specifically settler colonial nature to the contests that have shaped the South African past. Consider the struggle against apartheid. What made it so arduous was the reality that sovereignty belonged not to a metropolitan government eager to cut its losses and retreat, but was rather vested in a settler state eager to protect the place of whites at the top of the social pecking order. Settlers cemented themselves at the top of this pecking order according to their own political programme, and the settler state for most of the twentieth century determined whose interests could be prioritised over those of others.

When the African National Congress took the baton off the National Party in 1994, in principle this well-entrenched pattern of civic favouritism was denounced and rejected. Necessarily this was replaced by a transformative programme of redress with a design, in some respects, not all that dissimilar to the old regime, insofar as certain groups (albeit different groups) continued to be singled out for special treatment. Those formerly disaffected subjects of apartheid could now emerge and have their rights talk heard and honoured by the state in the new era. As this socio-political see-saw tipped, the land question became perhaps the most sensitive issue in the country, and even today it continues to evade satisfactory resolution.

Since the entirety of this study has essentially been about land rights, it will be necessary to part with a few of the observations regarding the process of restorative justice with respect to land rights. In South Africa, this is known as 'restitution'. Elsewhere, I have analysed restitution from a comparative legal perspective,

critiquing its effectiveness and inclusiveness, its rationality, and even its constitutionality.[1] Here, I provide a similarly brief overview of restitution, but overall I am more interested in reconnecting with the two case studies presented earlier in this book, and highlighting how the politics of history have figured in academic discussions about land rights and restitution in South Africa.

Restitution is unique in many respects. In other places, such as Canada and Australia, where aboriginal title became a thriving common law doctrine, or New Zealand, where this occurred to a lesser extent but a unique system of treaty-based reparations was developed for the wider judiciary to acknowledge, the question of land rights is posed from many angles. Legal scholars, historians, anthropologists, and political scientists have communicated with each other – and still do – on several levels as to what indigenous rights (usually but not always to land) entail, and how such rights transcend (or do not transcend) time and space. Often these electric conversations are transnational and comparative in character, and occasionally (but not nearly as often as they should) translate into benefits for the least privileged citizens of settler societies, by strengthening both the intra- and extra-juridical components of the indigenous rights campaign. In South Africa these kinds of conversations are less commonly heard. Sociology and agrarian studies care about land restitution and reform as developed in the post-1994 context; law usually stands aloof from this scholarship, and historians are not asked to comment.

The central aim of the restitution process in South Africa was to transform the relationship of people to land whose initial property rights were awarded to them, courtesy of an unfair advantage, over other particular people whose interests in land were considered erasable – people who, after 1994, would be considered eligible to reclaim.[2] Claimant groups are predominately those Africans for whom the racist system was designed to keep within confined geographies. Somewhat ironically, since most of the submitted claims have not been to actual pastures, patches, or parks, but rather to densely settled urban residential areas that were variously parcelled out along racial lines during the twentieth century and inherited by the post-apartheid state, the main entity confronted by these claims tends to be the state. For those larger claims made to the countryside, however – which have proved far more difficult to settle – the stakeholders at risk more typically, but never straightforwardly,

tend to comprise the white, land-holding beneficiaries of the old regime, though representatives of the state are never too far away.[3] Note here how the classic triangular confrontation of interests that typified the contests of the twentieth-century past – the state at apex, with specified kinds of whites and specified kinds of natives underneath – has rotated with restitution, but it remains intact. No attempt has been made to disaggregate communities at law into ways that pre-date the twentieth-century classificatory regime, and the codification of identity seeps into the juridical system as it ever did during apartheid.

The South African concept of restitution is similar to the argument heard elsewhere for indigenous land rights – with the doctrine of aboriginal title lying at the core of its common-law manifestations across the world – but there are many differences between the two beasts. The main difference, for all of them, is this: whereas both jurisprudence and popular understandings of indigenous land rights elsewhere are informed (sometimes controversially) by a historical imagination that considers the interaction between indigenous and settler communities from the very *origins* of settler colonialism, with regards to restitution, on the other hand, the criterion of indigeneity (i.e. original ownership of land) is barely important at all, and is almost always superseded by those criteria set out by the Restitution of Land Rights Act (1994) and the commission established to enforce it.[4] The foundational dispossessions matter with aboriginal title; with restitution, they are relevant only when they take place after a certain (modern) date.

Two criteria in the Restitution Act set South African land rights law far apart from that developed in Australia, New Zealand, Canada, and the USA.[5] These are the cut-off dates. The first of these rejects the grounds of any claims by descendants of people dispossessed before 19 June 1913 – all history before this date is considered irrelevant.[6] This was the date of the infamous Natives Land Act, which set aside a measly 22 million acres (approximately 7.5% of the country) for 'Native Reserves', leaving the remaining area of land exclusively for white ownership.[7] The second cut-off date is 31 December 1998, before which point all claims must have been submitted – in fact, we may now speak of restitution in the past tense.[8]

That such importance has been placed on what are essentially arbitrary dates suggests how history has intervened very differently in

the legal discourse of land rights in South Africa than as it has done elsewhere.

* * *

After a few years of restitution, the *White Paper on South African Land Policy* (1997) was published. It acknowledged that one of the most popular complaints with the restitution process had to do with the 19 June 1913 cut-off date. At meetings across the country, so it seems from the report, communities argued for the removal of the cut-off dates from the Restitution Act. This is not what happened; what one finds instead in the White Paper is the best official justification for entrenching the early cut-off date for good:

> This is the date when the Native Land Act was promulgated. It heralded the formal adoption of territorial segregation as the leading principle of post-Union land policy. The 1913 cut-off date recognises that systematic dispossession predated the post-1948 grand apartheid era of legally sanctioned forced removals. However, although dispossession took place during the colonial era prior to 1913 through wars, conquest, treaty and treachery, the government believes these injustices cannot reasonably be dealt with by the Land Claims Court.

Restitution was not aboriginal title, the White Paper went on to confirm. They predicted doom if 'ancestral claims' were to be allowed in South Africa, 'such as [they are in] Canada and Australia', and prophesied 'a number of problems and legal-political complexities [...] impossible to unravel', that would emerge in the case that they were allowed. First, they suggested that 'deep historical claims [...] would serve to awaken and/or prolong destructive ethnic and racial politics'. This, by their silence on the matter, the authors believed that the 85-year window restitution programme was not doing. Second, they insisted that such a programme would be too difficult to attempt, since 'ethnically defined communities have increased more than eight times in this century alone'. This statement is left for the reader unpacked: it is unclear what is meant by 'ethnically defined communities', and whether all ethnicities, including mixed/coloured ones, fall within its ambit or not. Finally, in a way, the authors

subscribe to the layered sovereignty argument, and for this reason, they justified, pre-1913 land restitution cannot be undertaken: 'Large parts of South Africa could be subject to overlapping and competing claims where pieces of land have been occupied in succession by, for example, the San, Khoi, Xhosa, Mfengu, Trekkers and British.'[9]

For all their adherence to using the date of the 1913 Natives Land Act – which, besides, was not the first law of its kind, for there was similar parcelling out of land performed, and many discriminatory laws passed by white legislatures in Cape Town, Bloemfontein, and Pretoria before this[10] – in none of the prophesies provided is there any reason why this particular date could be used instead of any other like it. Instead, what justifies the White Paper's favour towards this arbitrary date is the number of 'problems and legal-political complexities', supposedly unique to the place and 'impossible' to overcome. Some date had to be chosen it seemed, and 1913 was convenient.

In the scholarship on restitution that emerged following the release of this White Paper, some scholars insisted that history was imposed too strongly into the ideals of land reform in South Africa, such that it distorted the potential value of restitution. The most sophisticated espousal of this argument appears in the writings of Cherryl Walker. What she calls a comprehensive master narrative of dispossession has created a kind of claimant ideology among the masses that is too often ignorant of the economic, urban, and gendered realities of land reform in South Africa. The 'narrative of dispossession', she writes, is a 'compelling but ultimately insufficient account of the past for present policy purposes'. It

> calls upon a history of conquest and exploitation that black people have experienced as an undifferentiated group. It thus supports a general claim for redress on behalf of all black South Africans, an objective in which they all have a stake.
>
> [...]
>
> The master narrative enshrines a collective memory of dispossession that stretches back uninterrupted for 350 years, over an imaginary, unitary (in essence, a contemporary) South Africa, an apartheid-anticipating country that sprang into existence when the Dutch East India Company first established its refreshment station at the Cape in 1652.[11]

This history has nothing to do with restitution, Walker argues, elsewhere confessing her adherence to the 1913 cut-off date as a 'pragmatic, but not unprincipled' choice. She continues:

> Only if one regards history as something akin to a convenience store, stocked with a limited selection of items for contemporary consumption, can one contemplate applying the provisions of the restitution programme to land claims that hark back to the 19th century and before. The shifting socio-political dynamics, the layers of different land maps that lie in uneven strata beneath our contemporary land dispensation, the many changes to the nature and boundaries of 'historical' communities during and since the colonial era all confound such ambitions. In South Africa the history of settlement, conquest, collusion, alliance, dispossession, migration and tenure change before 1913 is simply too dense to be compatible with the promise of community-level redress proposed by the land restitution programme after 1994.[12]

Walker makes a strong argument, and however else we might describe her position, 'pragmatic' surely works. She is perhaps the most prolific scholar on the topic; her position as an insider – collaborator on the Surplus People Project, and Land Claims Commissioner at KwaZulu-Natal for a time – gives her a valuable perspective.[13] But I think she over-commits to the pragmatic strand of restitution discourse, and fails properly to justify her selective use of history to discredit indigenous land claims. She is not alone in doing so. Another scholar to see South African history in this fashion is the anthropologist Deborah James, in *Gaining Ground: 'Rights' and 'Property' in South African Land Reform* (2006). James offers the reader her understanding of why 'indigenous land rights' have not featured in South African transformation:

> Part of the explanation lies in the fact that most land occupancy has been fleeting and transitory. It is unusual to find any group which has occupied a swathe of land in perpetuity [...] Lands were contested, defended and lost; and such mobility has not lent itself to strongly-felt discourses of autochthony, indigenous origin or long-term ancestral possession.

Mobility disqualifies indigeneity, in other words – a premise that ignores the arbitrariness with which territory has been annexed and given up through history, and the fact that mobility (like indigeneity) is always a relative matter, making it particularly difficult to assess without bias the relationship of communities to place in the global history of settler colonialism.[14] Nevertheless, she moves on; in line with Walker and the White Paper, she writes how 'the contested nature of land occupancy could lead to a proliferation of claims and counter claims. If no limits were set, the scope of land restitution might be almost infinite and its social and economic ramifications too far-reaching to be contemplated.'[15]

The trends emerging in the scholarship are clear, and they tie into the main themes presented in the White Paper: some parameters had to be applied to restitution, because it would be too difficult to reconcile the far-away past with the land question of the present. An observation startling to me as a historian – that is perhaps lost on sociologists and anthropologists concerned with restitution – is the similarity detectable between restitution discourse and the colonial discourse on the land question. Archives show that people in this part of the world, and people talking about this part of the world, have distanced themselves from indigenous land rights for centuries. Take, for instance, the sentiments reproduced earlier in this study in the letter of an 'Oppressed Griqua': 'where is not Bosjesmen land?', so asked s/he, rhetorically. 'From here all along the Great River to the great sea ocean is Bosjesmen land, and Graaff Reinet and everywhere where the Boer resides is also Bosjesmen land,' and for this reason – because the history of dispossession that came before the Griqua was too complex – it was argued by this Griqua that it was unfair to disturb their land rights in Philippolis.

I have found a similar kind of pragmatism in the writings of Stockenström as well; the most memorable perhaps when, between trips to the Griqua, he recalled discussing among settlers the land rights to a great swathe of the Eastern Cape:

> It was suggested that everything West of the Key [i.e. Kei River] and Somo [i.e. Tsomo River] was known to be originally to have been Hottentot or Bushman country, and could not be claimed by Kaffirs [i.e. amaXhosa], so that the territory between that line and the then existing colonial boundary would be a very proper

> neutral territory; but it was soon admitted that that argument would tell more strongly against ourselves than against the Kaffirs, and that *whatever might have been the extent of Hottentotia, we found the Kaffirs* – excluding those in the Zuurveld – in possession of the country as far West as the Tjunie as early as 1809, when Colonel Collins visited Gaika there.[16]

In 1919, for my last example (among many others that exist in the archive), take the famous remarks of Lord Sumner in the case that could have paved the way for greater recognition of indigenous rights at the common law level in southern Africa, *Re Southern Rhodesia*:

> The estimation of the rights of aboriginal tribes is always inherently difficult. Some tribes are so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the legal ideas of civilized society. Such a gulf cannot be bridged.[17]

The blatant racialist overtones proffered by Sumner do not appear in the other examples I have provided, but they do share something fundamental in common with him – namely, a restrictive brand of pragmatism. I want to contend that when South African commentators on restitution and state bureaucrats in charge of land reform emerge to provide their justifications for the cut-off dates, they are saying much the same thing as him, Stockenström and the Oppressed Griqua: they are all saying it is too difficult to 'bridge the gulf' between past and present. Following this observation, it is perhaps the case, contra Walker, that history has always been 'something akin to a convenience store' for the sovereign order: today as before, however, history is sometimes mobilised not to liberate but to keep quiet a number of minority groups in South Africa (among such peoples those subalterns who cannot speak in a Land Claims Court, formerly those too 'low in the scale of social organization' to be considered autochthonous property holders).[18]

As for the 'narrative of dispossession', I think it more correct to assert that the opposite has taken place. The all-powerful 'master narrative' was never one with too great a temporal breadth, but rather one with parameters strangely restricted to a classic, twentieth-century confrontation generally between *white* and *black* (coloureds,

'Indians', and others of Asian descent, Khoe-San, former slaves and other mixed-descent South Africans are often marginalised from it by default, unless involved in urban claims). This is nothing like a 350-year contest – the date of 1652 has no relevance whatsoever. This is a small 85-year window; a mostly modern, largely urban, and sadly racist version of history.

Oppression and dispossession, history tells us, however, occur before the date of 1913, as they occur after 1998. While scholars of land reform occasionally tip their hat towards such a history, state policy and jurisprudence remain ignorant of it.

* * *

During the apartheid period, a white minority, comprising around 15% of South Africa's population, found itself in possession of about 90% of the country's land – a situation that was only possible following the dislodgement, removal, and replacement of many non-white communities. To reproduce this oft-remarked statistic without qualification or background is somewhat misleading, however. Apartheid, after all, came at the end of a series of upheavals, a history that stretches back as far as our imagination permits. In the two centuries leading up to the magical date of 1948, in fact, much if not all of the land was in a constant state of flux, endlessly fought over by different whites, different blacks, and different others in-between. Before this, in the first century of company-sponsored settler colonialism, it would be in the western Cape – the traditional grounds of the herding Khoekhoe and hunter-gatherer San, with amaXhosa to the far east – that land would first come into conflict between Europeans and native Africans.[19] But, we must remember, not just here in this part of the continent but right across it, conflict over land has not always been simply between 'European' and 'native'. Observing southern Africa in particular, we note how, all in the space of a thousand years or so, indigenous Khoekhoe pastoralists were competing with San foragers who were there for tens of thousands of years before them, and new agriculturalist, Bantu-speaking peoples – those who were known in Khoe as the *Briqua* – emerged to interact with both groups. Stone Age became Iron Age all in the blink of an eye; soon after, if not contemporaneous with this development, European traders were setting up ports on both easterly and westerly coasts to introduce

new markets. Tensions existed between all groups, and these did not disappear when van Riebeeck's flag was hoisted; indeed afterwards, they often exacerbated. As this book has itself shown, even hybrid groups took their prejudices with them to the frontier, to compete first with the San, baSotho, baTswana, and other hybrid natives like themselves, and then white settlers.

1913 is as historically irrational a starting point as 1998 is a full-stop, but at least with 1913 it came with some explanation: this, we have been reminded incessantly, was the year of the first Natives Land Act. 1998 was different, however. This date was adopted out of convenience for reasons that remain to me unclear. Indeed, no strongly ideological commitment to a 'sunset clause' can be found anywhere, even in the most blatant official attempts to explain it.[20] In this respect, however, there are other factors to consider. Because, from the outset, restitution was touted as something temporary, there seemed barely a need to justify this particular date over any others like them. As a government presentation from 2007 put it (albeit in idiosyncratic shorthand), restitution only offered a 'Symbolic apology by democratic State for the wrongs of the apartheid & colonial Govts of the past. It was never meant to be a permanent feature of land reform.'[21] The reason why the 1998 cut-off date was used (i.e. why restitution was never meant to be permanent), extends not from a particular historical understanding of dispossession then (as, by contrast, we see with the adherence to the 1913 cut-off date), but rather evidences plain governmental realism. It is worth remembering that only a finite commitment could be made available for dispossession-related redress during the transformation moment, alongside the state's many other, large-scale ameliorative social policies and development schemes – and restitution was expensive.

There is another problem with the 1998 cut-off date that emerges with retrospect. Claiming, after all, takes time. It takes years to collaborate, to investigate genealogy, to find sympathetic outsiders willing to help, all the while socio-economically disadvantaged and confronted with a slowly churning bureaucracy. Then of course there is also the trauma and healing that needs to be overcome before facing it again in a courtroom or bargaining table full of unfamiliar faces speaking unfamiliar jargon that we need to take into account. Those communities not quick enough to lodge – regardless of the

circumstances of their removal – have now missed out; a cruel fate, it would seem, for victims of successive centuries of settler colonialism.

Of course there is a bigger problem here, and that relates to the realities of dispossession in South African society today. No one can credibly argue that dispossession disappeared on New Year's Day 1999. The property rights of some continue, as ever, to be trumped by the land regimes of others. Though the many midnight evictions from the Johannesburg city streetscape, from the slums in Durban's outskirts, from farms, and from a number of 'informal settlements' across the country are not called 'forced removals' by the ANC as they were by the National Party, they might as well be.[22] Indeed, seeing land rights from another angle, we might as well consider some of those more radical arguments often heard in favour of land restitution – those endorsing the wholesale nationalisation and reappropriation of land, in the interests of marginalising the white agrarian producer, à la post-2000 Zimbabwe – only subtly modified from National Party discourse about the resettlement and marginalisation of blacks into Bantustans for what was then considered their own good, objects in the national interest.

I do not necessarily want to suggest that these and other hardships should preoccupy a Commission on Restitution of Land Rights – this is perhaps more appropriately the domain of a comprehensive and non-discriminatory national housing policy for all, with resettlement options for others – but I consider it important to acknowledge this clear discursive continuity, and the indisputable evidence of a history of dispossession that runs from right under our noses far back into the past. In spite of this history – or, rather, out of spite for such a history – the decision made by the ANC in 1994 to slate only part of it for reconciliation is upheld time and again.

It is tempting to historicise dislodgement, removal, and replacement as episodes that belong only in the apartheid past, rendering as it does the delivery of justice and reparations in this new era of reconciliation far easier for the judiciary and the government. But there is a problem. Listening only to claims of injustice within a few generations of us today necessitates forgetting about those of a period further away than this. Settler colonialism does not disappear so easily.

Memory and redress are complicated issues, over which theorists and historians have spilt much ink. The work of Berber Bevernage,

I think, is particularly relevant in this context. His scholarship suggests we need to be critical of what it is about the far-away South African past that has made it ontologically inferior to the more recent apartheid past. The question one walks away from Bevernage with is: why, in the discourse of reparations, has a true and unbiased critique of injustice irrespective of time not emerged, in spite of the noble design of transformation?[23] For Bevernage, one of the ways around this dilemma is to rethink history's absence, to question the very disjuncture between past and present, and remodel the interpretative programmes that underpin both 'the time of history and the time of jurisdiction'.[24] Convincing the state to undertake this academic objective is another issue. The first step would be to reimagine *dispossession*. Returned to its Latin root, 'possess' means to occupy or hold: literally, to have property. To be dispossessed – or to be 'removed', as is more commonly heard in South African discourse – is to have your property in land assumed by another. There is nothing black, white, or coloured in that definition; nor is there anything to do with specific dates. As this book has shown, the Griqua of Philippolis in the mid-nineteenth century and the Afrikaners of Orania in the late twentieth century dispossessed others along the way to establishing their own land regimes, afterwards facing the real threat of removal themselves. These are not exceptional case studies. South African history – a history of overlapping interests, of dispossession and repossession, *of dispossession and repossession again* – is replete with similar ones, as is the global history of settler colonialism.

* * *

Before concluding, it will be worth taking a brief excursion down the Orange River to where it meets the Atlantic Ocean. Here lies the Richtersveld – a diamondiferous land owned for centuries by the Nama people, a Khoekhoe group with significant ancestral links to the San. A land claim lodged by the Nama stirred an incredible response in legal circles, as it escalated into a case that preoccupied litigators and courts of several tiers.

An 80,000 ha area of land in the north-west corner of the northern Cape was contested in *Richtersveld Community and Others v. Alexkor and Another*. The community claimed 'beneficial occupation' as the 'coloured' community at Orania did; but more than that, they

claimed for outright 'ownership' of a special type akin to Australian native title. The 'Richtersveld community' – itself a combination of several Nama groups – and its lawyers had solid proof of centuries of connection to land. They even critiqued Harry Smith's mid-nineteenth century annexation spree which brought them into the Cape's jurisdiction by evoking the ghost of terra nullius; and they could, if they wanted to, have pointed to many disruptive interactions with groups of trekboere and Bastaards, who also coveted the territory, and likewise the evidence of constant organisation and reorganisation done by meddling missionaries who moved in and acquired their stations as dubiously as they had done in Philippolis.[25]

But this was all redundant information to the courts, whose judges, while interested seemed nevertheless handcuffed to the terms of the Restitution Act. For all the talk of 'time immemorial', the case only made it to the Land Claims Court, and later made its way to the Supreme Court of Appeal and Constitutional Court, because of those tests set out in the Restitution Act. What the Richtersveld community relied most strongly upon, in the end, was evidence of the disturbance of their dwellings after mining companies moved into the region in the 1920s. It was of little consequence, in all of this, that *Alexkor*, the recently formed company defending its rights to the minerals and lands of the Richtersveld region, inherited its title, as per the *lex loci*, from a state-owned conglomerate of stakeholders as recent as 1993 (and becoming thereafter a public company with the state as sole shareholder); what mattered was that the smoking gun was in their hands, thanks to the Restitution Act.[26] Unlike in Orania, where Boshoff III's acquisition from the Department of Water Affairs quietly became the responsibility of the state during the dispute over land rights there, in the diamondiferous Richtersveld, this became a matter for both parties to resolve in the established courts, where it ebbed and flowed until it was finally resolved back in the Land Claims Court in 2007.[27]

Those involved in the litigation gathered case law from settler jurisdictions around the world, court judges talked frankly about aboriginal title, and the public grew worried.[28] Many thought – and, strangely, some continue to think – the doctrine had finally arrived. But the terms of the Restitution Act had become the default framework with regards to restorative land rights in South Africa by the

time *Richtersveld* first erupted in 2001, and aboriginal title could never have any purchase in such a context.

It is interesting to observe how many in the legal profession emerged to provide their opinions when aboriginal title first reared its head in *Richtersveld*. A familiar formula – of justifying land rights pragmatism with reference to the complexities of the South African past – was common in this period. Özlem Ülgen, for instance, told us that 'the actual process of colonization in South Africa complicates the source and content of aboriginal title so that wholesale extrapolation or reception from other common law jurisdictions is patently inappropriate'.[29] Karin Lehmann adopted a similar line of reasoning in her argument that the aboriginal title doctrine does not "'fit" into the South African legal and social order'. Unconvinced of the merits of the doctrine in Australia and Canada, she argued that the hierarchy of indigeneity in South Africa is too complex for it anyway:

> For who are the 'aboriginal peoples' of South Africa, under comparative and international practice? If only those groups or communities descended from San and Khoekhoe [...] peoples are, strictly speaking, aboriginal, the doctrine's value as a means of obtaining access to (or rights in) land would be negligible. The social cost that could follow from limiting the potential beneficiaries to Khoesan peoples is significant, since a narrow approach would entail the exclusion of black African communities [...] and would be detrimental to the spirit of national unity and reconciliation that underpins the Constitution.[30]

That *Richtersveld* received these kinds of appraisals from legal scholars opens our eyes to nothing if not, again, the same pragmatism espoused by all those past and present who are convinced that South Africa is too complex for aboriginal title. We might also note here the resonances of a fear (if not a misunderstanding) of aboriginality itself, something particularly evident in the question above: *who are the aboriginal peoples*?

Of course, the South African aversion to top-down definitions of identity are understandable, given the recent past of state-endorsed racial classification (something which has carried over into the present and lingers around in popular discourse); but apartheid-era

attempts to categorise human experience have not yet been overhauled, and perhaps an opportunity now exists (and certainly existed in 1994) to do so. Perhaps the government should now acknowledge the needs of some communities – often among the most socio-economically disadvantaged – to be identified (as well as *to identify themselves*) as aboriginal. Previously, in the days of apartheid, it was up to the man on the street to distinguish between coloured and Bantu by noting physical features. Magistrates were rarely sought for clarification, but occasionally they were, as happened, for instance, in *R v Vinger*. This now returns us to the middle Orange River valley, to the Griqualand West magistracy in 1951, when Hall J in fact denied the Griqua their indigeneity.

> The Griquas, who were formerly the principal inhabitants of Griqualand West and who spread from there to Griqualand East, were descended from the Hottentot tribes who occupied the land in the vicinity of the Orange River from the early times. These tribes ultimately became masters of Griqualand until they were dispossessed in turn by the Europeans from the South. The Griquas are not an aboriginal race or tribe and they do not fall within the definition of 'native' set out [in statute].[31]

Definitions like this have no weight as precedent at law anymore – and, thankfully, the statutory codification of race so central to apartheid has been stripped away – but none of this is yet completely erased from memory, history books, and old case law. This reality must be hard for the Griqua to stomach. Before 1994, their history and heritage were enough to make them 'not an aboriginal race or tribe', and they were given no Griquastans or special territorial reserves in the 1960s and 1970s. After 1994, their history and heritage were overlooked by the framers of the Restitution of Land Rights Act, and Griqua attempts to self-identify as indigenous still tend to be received with scepticism. The irony here is stark, and when legal scholars question the validity of aboriginality in South Africa – in the process ignoring the history of the Griqua and other communities like the non-Richtersveldian Nama who have a rich history of dispossession but a poor record of reparations – this irony becomes a sad one.

* * *

The logic underpinning restitution was never necessarily about justice at all costs, but above all was one of selective reversal – the whole process was racialised ideally to pit a specific kind of victim-claimant against a specific kind of enemy-landholder, and this has created a mirror-image reflection of a distorted past.[32] This logic is tellingly evident in the wider discourse of South African land reform, in which it is still not unusual to hear gestures to the 'anti-colonial struggle' waged by 'Africans' against oppressors.[33] It is unclear for how long exactly this logic will continue to be mobilised in political discourse in South Africa; but restitution itself certainly has an end on the horizon. The programme is now winding down – no new land claims have been submitted for over a decade, and those claims which remain outstanding are currently being processed by the commission.

Scholars and interested observers have only just recently admitted in the last few years that restitution performed a largely symbolic role during the transformation period: it added a romantic element to those more pragmatic components of the land reform programme addressing issues concerning settlement patterns, farm productivity, and the regional economy (issues that prove difficult to address comprehensively, as the proliferation of variously coloured official 'papers' on land reform bears out).[34] Symbolic it may have been, but it was only symbolic for a particular segment of South Africa. A common justification for restricting restitution in this way is to concede that the matter is too complex – a line of reasoning as old as that of Lord Sumner's in *Re Southern Rhodesia*, with a history pre-dating even that judgement. Other justifications relate in some way or combination to the dynamics of minority politics and the ham-fist of majority rule, the financial incapacity of the state, and the constraints of the judiciary in post-1994 South Africa. None of these explanations is satisfactory without historical contextualisation, and even then the logic of restitution is difficult to revere. Sadly, the issue has lost much of its relevance now. The transformation ship has sailed, and those who did not fit the description laid out in the Restitution Act have missed the boat. Restitution could have been symbolic for a larger group of people with equal or even greater historical experience of dispossession and invasion, but it was not.

Restitution could have been symbolic for the San of greater 'Bushmanland', but only if they were not commonly assumed to have

evaporated into thin air and legislation was passed that allowed for them to emerge and claim. Instead, San descendents, whether conscious of their indigenous heritage or not, and regardless of their relative socio-economic disadvantage, may not claim land or special rights unless they can show first that their 'tradition' lived up to and beyond 1913, and second that they were dispossessed in the window from that year up to the end of 1998.[35] The ≠Khomani San have leaped these hurdles (though not without acquiring a few knocks along the way); yet others, among them !Xun and Khwe communities, still struggle, while those unaffiliated with tribal groups and assimilated into the broader coloured community have become invisible with no chance of acquiring special recognition.

For the most part, restitution was not symbolic for the Griqua people either. This is because their original states were worn away and dismantled before 1913; Philippolis, we recall, was overrun in the 1840s and disbanded in the following two decades. The many complexities and tragedies of twentieth-century Griqua history – theirs is a story of struggle, of fragmented communities spread out across the country, of a number of failed Griqua-led settlement schemes, and of a consistent lack of government recognition – have made it difficult for the Griqua to pursue redress. They may not claim land as a singular group, and their attempts to connect with their pre-1913 heritage have proven fruitless. Only two land claims (to my knowledge) have been successful for the Griqua. The first of these, in the Free State to Bethany, was awarded to a community comprising 'the Griqua, the Koranna, the Se-Sotho and the Barolong people in the Province'; the second to nearby Schmidtsdrift, awarded and shared by a small Griqua community and a much larger community of baTlhaping (of the baTswana family).[36] In both claims, the post-1913 criterion prevented the Griqua (or any other self-identifying indigenous individuals within the claimant community, for that matter) from claiming exclusively. This has led to considerable inter-community tension after-settlement in both locales (just as it has in the Namaqualand after *Richtersveld*).

As for the Griqua formerly of Philippolis and for the countless others conquered and transferred away in the contested Transorangia during the nineteenth century, despite the ready availability of genealogical data and indisputability of the historical record, restitution is not a course for them.

And what about the Afrikaners of Orania? There is little point speculating at any real depth about the future of Orania too much, for others who have done so have failed pretty miserably.[37] Yet it cannot be denied that something very interesting remains to be seen. What if they, too, like the many indigenous peoples before them, are eventually eclipsed by a more powerful land regime? What if their property rights are annulled by discriminatory measures, and they, too, find themselves forcibly transferred away from their *dorp*? How then will the Afrikaners of Orania strategise the honouring of their rights, the acquisition of compensation, or some other retaliatory measure? Presumably, in such a context, restitution will be unavailable to them, too.

Notes

Endnote Abbreviations

CA	*Western Cape Archives and Records Services, Cape Town*
CRLR	*Commission on Restitution of Land Rights*
CWMA	*Council for World Mission Archive*
GM	*The Griqua Mission at Philippolis, 1822–1837* (Pretoria: Protea Book House, 2005), sources compiled by Karel Schoeman
GR	*Griqua Records: The Philippolis Captaincy, 1825–1861* (Cape Town: Van Riebeeck Society, 1996), sources compiled by Karel Schoeman
HCPP	*House of Commons Parliamentary Papers, Great Britain*
ODA	*Orania Dorpsraad Archives, Orania*

Introduction: Land, Sovereignty, and Indigeneity in South Africa

1. See, for instance, D. J. Jooste, *Afrikaner Claims to Self-Determination: Reasons, Validity, and Feasibility* (Pretoria: Technikon Pretoria/Freedom Front, 2002). My copy comes with a proud sticker on the cover testifying that it was 'Gekoop in Orania'; the author and his wife formerly lived in the *dorp*.
2. 'You can claim that something is yours until you are blue in the face', relates property expert Carol Rose, 'but unless others recognize your claims, it does you little good'. See Carol M. Rose, 'Economic Claims and the Challenges of New Property', in Katherine Verdery and Caroline Humphrey (eds), *Property in Question: Value Transformation in the Global Economy* (Oxford: Berg, 2004), p. 279.
3. See especially Carol M. Rose, *Property and Persuasion: Essays on History, Theory and Rhetoric of Ownership* (Boulder: Westview Press, 2004).
4. Robert C. Ellickson, 'Property in Land', *Yale Law Journal* 102 (1992–93), p. 1319.
5. See, for an introduction to some of these debates: Harold Demsetz, 'Toward a Theory of Property Rights', *American Economic Review* 57, 2 (1967), pp. 347–59; Richard A. Epstein (ed.), *Economics of Property Law* (Cheltenham and Massachusetts: Edward Elgar Publishers, 2007); Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2008); Garrett Hardin, 'The Tragedy of the Commons', *Science* 162 (1968), pp. 1243–8; Richard Schlatter, *Private Property: The History of an Idea* (New Brunswick, NJ: Rutgers University Press, 1951); J. Roland Pennock and John W. Chapman

(eds), *Ethics, Economics, and the Law*, NOMOS series 24 (New York: New York University Press, 1982). See also notes 2, 3 and 4 above.

6. See especially Morris Cohen's famous claim that modern property is a form of sovereignty, in 'Property and Sovereignty', *Cornell Law Quarterly* 13 (1927–28), pp. 8–30. Otherwise for a useful review see Jacob Metzer and Stanley L. Engerman, 'Some Considerations of Ethno-Nationality (and Other Distinctions), Property Rights in Land, and Territorial Sovereignty', in Stanley L. Engerman and Jacob Metzer (eds), *Land Rights, Ethno-Nationality and Sovereignty in History* (London and New York: Routledge, 2004), pp. 7–28.
7. Francis Jennings, *The Invasion of America: Indians, Colonialism and the Cant of Conquest* (Chapel Hill: University of North Carolina Press, 1975), p. 128. See also Francis Jennings, 'Virgin Land and Savage People', *American Quarterly* 23, 4 (1971), pp. 519–41.
8. Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Mass.: Harvard University Press, 2005), pp. 6–7.
9. Banner, *How the Indians Lost Their Land*, p. 9.
10. See also Henry Reynolds, *The Law of the Land* (Ringwood: Penguin Books, 1987); Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Cambridge, Mass.: Harvard University Press, 2007).
11. John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal and Kingston: McGill-Queens University Press, 2003), p. 139. Emphasis in original.
12. Weaver, *Great Land Rush*, p. 140.
13. Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), esp. pp. 30–2.
14. John L. and Jean Comaroff, *Of Revelation and Revolution: Volume Two, The Dialectics of Modernity on a South African Frontier* (Chicago: University of Chicago Press, 1997), pp. 365–404; John L. Comaroff, 'Images of Empire, Contests of Conscience: Models of Colonial Domination in South Africa', *American Ethnologist* 16, 4 (1989), pp. 661–85.
15. Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge, Mass.: Harvard University Press, 2010).
16. See especially Scott D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999). See also Janice E. Thomson, 'State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research', *International Studies Quarterly* 39, 2 (1995), pp. 213–33; Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1994).
17. Two recent attempts to problematise the singularity of sovereignty by analysing the politics of custom include Clifton Crais, 'Custom and the Politics of Sovereignty in South Africa', *Journal of Social History* 39, 3 (2006), pp. 721–40; Sean Redding, *Sorcery and Sovereignty: Taxation, Power,*

and Rebellion in South Africa, 1880–1963 (Athens, Ohio: Ohio University Press, 2006).

18. This is not to deny the possibility of acquiring sovereignty through property in modern, world geopolitics. For a description of the Zionist process of acquiring sovereignty by purchasing land from Arab nationals, consult Engerman and Metzer, 'Some Considerations' (see note 6 above), pp. 10–11.
19. The archaeological reality of staggered human occupation in South Africa is elaborated in Chapter 2 of this book. An interesting comparison may be made to Canada and the USA here. Despite recent archaeological and genetic evidence that the Americas were settled in three waves between 14,000 BPD and the voyage of Columbus, 'indigeneity' as a construct is far less fragile in North America than it is in South Africa, due to the different ratios between minority and majority in sub-Saharan Africa. This difference probably also extends from a greater prevalence of ethnic cleavages that can be seen today between African polities vis-à-vis those that can be seen in indigenous North America, and the differences between the two continents with respect to the popular acceptance of scientific theories of human origins. For the 'three waves' thesis, see: Dennis L. Jenkins et al., 'Clovis Age Western Stemmed Projectile Points and Human Coprolites at the Paisley Caves', *Science* 337 (2012), pp. 223–8; David Reich et al., 'Reconstructing Native American Population History', *Nature* 488 (2012), pp. 370–74. For an entertaining indigenist argument that this kind of science is just a great big 'white lie', see Vine Deloria Jr, *Red Earth, White Lies: Native Americans and the Myth of Scientific Fact* (New York: Scribner's, 1995).
20. Colin Bundy, *The Rise and Fall of the South African Peasantry* (Berkeley: University of California Press, 1979). See also the interesting but outdated W. M. Macmillan, *Complex South Africa: An Economic Footnote to History* (London: Faber & Faber, 1930).
21. For an introduction to these issues in a wider African context, see Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996), esp. pp. 138–79. For South Africa specifically, see Martin Chanock, *The Making of a South African Legal Culture, 1902–1936: Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001).
22. Though the nominal bestowments of settlers unto indigenous peoples have ever proven impermanent constructions, the term 'Bantu' seems to have disappeared especially quickly from South African discourse – a fate that we could only attribute to a distance from the apartheid classificatory regime if the term 'coloured' were no longer popular either. Whatever the reasons for this shift in the language, it is appropriate now to explore new terminology. The word 'Briqua', recorded a few times in the seventeenth century, according to Landau, 'apparently meant not only highveld chiefdoms but also the ornamented, elaborate chiefships associated with seventeenth-century Zimbabwean-related sites. Essentially, *briqua* were

"populous settled farmers", so far unseen'. See Paul S. Landau, *Popular Politics in the History of South Africa, 1400–1948* (Cambridge and New York: Cambridge University Press, 2010), p. 4. One of Landau's main arguments in this book – that there are difficulties associated with the transposition of modern identities onto the past – is relevant to this study, and deserves more discussion than I am prepared to deliver in a footnote; readers are directed to his book instead, and, no doubt, the interpretative upheavals it will leave in its wake.

23. The best starting point is Pieter Jolly, 'Interaction between South-Eastern San and Southern Nguni and Sotho Communities c.1400 to c.1880', *South African Historical Journal* 35, 1 (1996), pp. 30–61. See also David B. Coplan, 'People of the Early Caledon River Frontier and their Encounters', *African Historical Review* 44, 2 (2012), pp. 55–77.
24. Jolly, 'Interaction', pp. 46–7.
25. Elizabeth A. Eldredge, *Power in Colonial Africa: Conflict and Discourse in Lesotho, 1870–1960* (Madsion: University of Wisconsin Press, 2007), pp. 25–70.
26. Sandra B. Burman, *Chiefdom Politics and Alien Law: Basutoland under Cape Rule, 1871–1884* (New York: Africana, 1981), pp. 128–36.
27. That most recent 'age of Empire' – the one which spread out across most of the globe, hauling select portions of it into 'modernity' as it went – ends, according to the textbook reading, with the coming of 'decolonisation' after World War II. In this version of history, colonies of all shapes and sizes seem almost predestined to transform into nations (each of them commencing their own journey along the pathway of development, ever choosing between communism and capitalism along the way). See, for an introduction: R. F. Holland, *European Decolonization, 1918–1981* (London: Macmillan, 1985); James D. Le Sueur (ed.), *The Decolonization Reader* (New York: Routledge, 2003); Raymond F. Betts, *Decolonization* (New York: Routledge, 2004); Dietmar Rothermund, *The Routledge Companion to Decolonization* (London: Routledge, 2006).
28. As Lorenzo Veracini and myself have noted elsewhere, 'Settler colonialism is a global and transnational phenomenon, and as much a thing of the past as a thing of the present. There is no such thing as neo-settler colonialism or post-settler colonialism because settler colonialism is a resilient formation that rarely ends. [...] Sometimes settler colonial forms operate within colonial ones, sometimes they subvert them, sometimes they replace them. But even if colonialism and settler colonialism interpenetrate and overlap, they remain separate as they co-define each other.' For this definition, see the manifesto on the *Settler Colonial Studies Weblog*, http://www.settlercolonialstudies.org/, date accessed 20 October 2012.
29. Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Poetics and Politics of an Ethnographic Event* (London: Cassell, 1999), p. 2. For a historiographical explanation of the emergence of settler colonial studies, see Lorenzo Veracini, 'Settler Colonialism: Career of a Concept', *Journal of Imperialism and Commonwealth History* (forthcoming).

30. Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research* 8, 4 (2006), p. 388.
31. For an introduction to this debate, see Lorenzo Veracini, *Israel and Settler Society* (London: Ann Arbor, 2006); Gabriel Piterberg, *The Returns of Zionism: Myths, Politics and Scholarship in Israel* (London: Verso, 2008); Zeev Sternhell, 'In Defence of Liberal Zionism'; and Gabriel Piterberg, 'Settler and Their States: A Reply to Zeev Sternhell', *New Left Review* 62, March–April (2010). See also *Settler Colonial Studies* 1, 2 (2012), special issue on Palestine.
32. Wolfe, 'Settler Colonialism and the Elimination of the Native', p. 388.
33. Wolfe, 'Settler Colonialism and the Elimination of the Native', pp. 403–4. As Wolfe put it in an interview with indigenous Hawaiian scholar J. Kehaulani Kauanui, South Africa is 'just a colony that happens to have settlers in it. It is not a settler colony in my sense [of defining settler colonialism by its logic of native elimination]'. J. Kehaulani Kauanui and Patrick Wolfe, 'Settler Colonialism Then and Now: A Conversation between Interview between J. Kehaulani Kauanui and Patrick Wolfe', *Politica & Società* 2 (2012), p. 249. For the argument that widespread reliance upon black labourers in South Africa meant that the colonised population was preserved rather than murdered, in keeping with the interests of white capital, see Colin Tatz, *With Intent to Destroy: Reflecting on Genocide* (London: Verso, 2003), pp. 107–21.
34. The term also has its origins in Zionist discourse. For this, see: Israel Shahak, 'A History of the Concept of "Transfer" in Zionism', *Journal of Palestine Studies* 18, 3 (1989), pp. 22–37; Nur Masalha, *Expulsion of the Palestinians: The Concept of 'Transfer' in Zionist Political Thought, 1882–1948* (Washington, DC: Institute for Palestine Studies, 1992). Even Herzl, elsewhere in his *Returns* discussing the strategies required by settlers when competing with others for land, writes: 'In the distribution of land every precaution will be taken to effect a careful transfer with due consideration for acquired rights.' Theodor Herzl, *The Jewish State* (New York: Dover Publications, 1988), p. 127.
35. Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Houndmills: Palgrave Macmillan, 2011), pp. 33–52.
36. W. M. Macmillan, *The Cape Colour Question: A Historical Survey* (London: Faber and Gwyer, 1927), pp. 29–30.
37. Macmillan, *The Cape Colour Question*, p. 31.
38. J. A. I. Agar-Hamilton, *The Road to the North: South Africa, 1852–1886* (London and New York: Longmans, Green and Co., 1937), p. 86.
39. Agar-Hamilton, *The Road to the North*, p. 6.
40. Martin Legassick, *The Politics of a South African Frontier: The Griqua, the Sotho-Tswana and the Missionaries, 1780–1840* (Basel: Basler Afrika Bibliographien, 2010 [1969]), pp. 328–9.
41. J. S. Marais, *The Cape Coloured People, 1652–1937* (London: Longmans, Green and Co., 1939). For the argument that Marais's understanding was in line with a broader interpretative trend in historical studies to homogenise Griqua experiences within a broader, pan-South African

Coloureddom, see Edward Cavanagh, *The Griqua Past and the Limits of South African History, 1902–1994* (Oxford: Peter Lang Publishers, 2011), pp. 34–40.

42. Robert Ross, 'Griqua Power and Wealth: An Analysis of the Paradoxes of their Interrelationship'. Seminar Paper, Societies of Southern Africa in the nineteenth and twentieth centuries (London: Institute of Commonwealth Studies, 1972); Robert Ross, 'Griqua Government', *African Studies* 33, 4 (1974), pp. 25–42; Robert Ross, *Adam Kok's Griquas: A Study in the Development of Stratification in South Africa* (Cambridge: Cambridge University Press, 1976).
43. Karel Schoeman, *The Griqua Captaincy of Philippolis, 1826–1861* (Pretoria: Protea Book House, 2002).
44. Karel Schoeman (ed.), *Griqua Records: The Philippolis Captaincy, 1825–1861* (Cape Town: Van Riebeeck Society, 1996); Karel Schoeman (ed.), *The Griqua Mission at Philippolis, 1822–1837* (Pretoria: Protea Book House, 2005).
45. The term 'genocidal moments' originates in the work of A. Dirk Moses, and provides a way to disaggregate isolated incidents of human killing within colonial contexts. Even if historians can identify a common pattern in each of these killings, they do not necessarily comprise a singular 'genocide' (although this depends on one's definition of the term in the first place). See A. Dirk Moses, 'An Antipodean Genocide? The Origins of the Genocidal Moment in the Colonization of Australia', *Journal of Genocide Research* 2, 1 (2000), pp. 89–106. For the intersection of settler colonial studies and genocide studies more generally, see A. Dirk Moses (ed.), *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History* (New York/Oxford: Berghahn Books, 2004); A. Dirk Moses (ed.), *Empire, Colony, Genocide: Conquest, Occupation and Subaltern Resistance in World History* (New York and Oxford: Berghahn Books, 2008).
46. Lindi Renier Todd, 'What's in a Name? The Politics of the Past within Afrikaner Identifications in Post-Apartheid South Africa'. D. Phil Dissertation (University of London, 2007); Terisa Pienaar, 'Die Aanloop tot en stigting van Orania as groeipunt vir 'n Afrikaner-volkstaat'. M.A. Dissertation (Stellenbosch University, 2007); F. C. de Beer, 'Exercise in Futility or Dawn of Afrikaner Self-Determination: An Exploratory Ethno-Historical investigation of Orania', *Anthropology Southern Africa* 29, 3–4 (2006), pp. 105–14.
47. Lorenzo Veracini, 'Afterword: Orania as Settler Self-Transfer', *Settler Colonial Studies* 2, 1 (2011), pp. 190–6.
48. See, for example, Chris McGreal, 'A People Clutching at Straws', The *Guardian* (29 January 2000), http://www.guardian.co.uk/books/2000/jan/29/books.guardianreview3, date accessed 20 October 2012; Paul McNally, 'Come Gawk at the Racists', *Thought Leader* (1 February 2010), http://www.thoughtleader.co.za/paulmcnally/2010/02/01/orania-tourism-come-gawk-at-the-racists, date accessed 20 October 2012. This kind of journalism, for all its purchase among the self-righteous, offers little insight into the land and lives of Orania.

1 The Erasure of Past Interests in Land at Philippolis

1. Paul S. Landau has perhaps most convincingly argued this point to date, in *Popular Politics in the History of South Africa, 1400–1948* (Cambridge and New York: Cambridge University Press, 2010).
2. The apartheid era has overshadowed other aspects of the South African past. Analysts of genocide who have considered South Africa tend to hold – with some subtle differences between them – that twentieth-century attempts to preserve and exploit the colonised proletariat stand in contrast to attempts elsewhere to extinguish 'the natives' wholesale. See, for example, Colin Tatz, *With Intent to Destroy: Reflecting on Genocide* (London: Verso, 2003), pp. 107–21; A. Dirk Moses, 'Conceptual Blockages and Definitional Dilemmas in the "Racial Century": Genocides of Indigenous Peoples and the Holocaust', *Patterns of Prejudice* 36, 4 (2002), p. 27; see also the discussion on Patrick Wolfe, at pages 15–16 in this book. Although these observations are restricted to the period sandwiched between the two case studies presented in this book, it is important to acknowledge again some of the interpretative problems discussed at the outset of the book, which have pervaded into reductionist discussions of the violent treatment of 'native' populations in southern Africa. Conflating 'black labourer' and 'native' into meaning one and the same thing is potentially misleading. One need only imagine how the small remnants of the Northern Cape San might have felt during the Kimberley diamond rush of the late-nineteenth century, which saw swells of migrant labour sucked from the north into a region that was once called 'the Bushman country' for a very long time. It seems to me, on the contrary, that many labour-hungry regimes in recent centuries have been associated with – and beneficiaries of – genocidal processes. It might even be argued, in fact, that without the widespread destruction and upheaval that came before (and with) South Africa's racist labour-controlling policy repertoire, there would probably never have been an apartheid in the first place. A deeper consideration of southern Africa's genocidal past is therefore required.
3. Mohamed Adhikari, *The Anatomy of a South African Genocide: The Extermination of the Cape San Peoples* (Cape Town: UCT Press, 2010). See also Miklos Szalay, *The San and the Colonization of the Cape, 1770–1879: Conflict, Incorporation, Acculturation* (Köln: Rüdiger Köppe Verlag, 1995); Nigel Penn, *The Forgotten Frontier: Colonist & Khoisan on the Cape's Northern Frontier in the Eighteenth Century* (Athens: Ohio University Press, 2005).
4. In early 1845, the Cape government began a new series of investigations into the state of the northern frontier. As a result, both Griqua chiefs received questionnaires from the Colonial Secretary. Kok's response presents one of the earliest and clearest statements of their origins, and their place in the region alongside the Sotho kingdom and the remaining Khoe-San at that time: 'My subjects are not all of one tribe, and consist of Grikwas, Bechuanas and Bushmen. Of these the last-mentioned were the original possessors of the country, and the Bechuanas consist

chiefly of such persons as sought refuge amongst us from the wars of the interior. Some are, however, the subjects of Moshesh, and are subject to my laws only as long as they reside in my country. There are also some Korannas living in my territory under a subordinate Chief named Piet Witvoet. None of the other tribes are under a subordinate chief, but live immediately under my rule.' GR, p. 93. Adam Kok III to John Montagu (18 April 1845).

5. For the early Griquatown state, see Martin Legassick, *The Politics of a South African Frontier: The Griqua, the Sotho-Tswana and the Missionaries, 1780–1840* (Basel: Basler Afrika Bibliographien, 2010 [1969]), Chapters 4, 6, 8, 10–12. For Philippolis, see Robert Ross, *Adam Kok's Griquas: A Study in the Development of Stratification in South Africa* (Cambridge: Cambridge University Press, 1976), Chapters 3–6.
6. Legassick, *Politics of a South African Frontier*, pp. 147–61.
7. A solid understanding of the establishment of Philippolis may be gleaned from the documents in Karel Schoeman (ed.), *The Griqua Mission at Philippolis, 1822–1837* (Pretoria: Protea Book House, 2005), otherwise abbreviated throughout as *GM*.
8. Kent McNeil, *Common Law Aboriginal Title* (Oxford: Clarendon Press, 1989), pp. 202–4.
9. Alison S. Brooks, 'San Land-use Patterns, Past and Present: Implications for Southern African Prehistory', in Martin Hall et al. (eds), *Frontiers: Southern African Archaeology Today*, pp. 40–52; Edwin N. Wilmsen, 'Those Who Have Each Other: San Relations to Land', in Edwin N. Wilmsen (ed.), *We Are Here: Politics of Aboriginal Land Tenure* (Berkeley: University of California Press, 1990), pp. 43–67.
10. These dates are inexact, since archaeologists are still reluctant to offer precise dates for these interactions. It remains unclear, for instance, exactly when in the Stone Age early humans became 'San' cultural groups, whether the Khoekhoe and San were physically or otherwise distinct from each other apart from their economies, how the two groups interacted over the *longue durée*, and whether anthropological data can be projected onto the pre-historic and proto-historic record with any confidence. A useful introduction to the archaeological literature remains R. R. Inskeep, 'The Archaeological Background', in Monica Wilson and Leonard Thompson (eds), *The Oxford History of South Africa: Vol. I, South Africa to 1870* (Oxford: Clarendon Press, 1969), pp. 1–39. See also H. J. Deacon and J. Deacon, *Human Beginnings in South Africa: Uncovering the Secrets of the Stone Age* (David Philip: Cape Town, 1999). For the emergence of pastoralism specifically, see Diane Gifford-Gonzalez, 'Animal Disease Challenges to the Emergence of Pastoralism in Sub-Saharan Africa', *African Archaeological Review* 17, 3 (2000), pp. 96, 104–5; see also Karim Sadr, 'Invisible Herders? The Archaeology of Khoekhoe Pastoralists', *Southern African Humanities* 20 (2008), pp. 179–203.
11. The argument is somewhat more nuanced than this. Suffice here to say that scholars are persuaded by evidence of syncretism beyond the frontier; for them, the existing data affirm that the distinction between

pastoralism and hunter-gathering remained important, but little else. See, in particular, Richard Elphick, 'The Cape Khoi and the First Phase of South African Race Relations', PhD Thesis (Yale University, 1972); see also Monica Wilson, 'The Hunters and Herders', in Wilson and Thompson (eds), *Oxford History of South Africa,* pp. 40–74; Shula Marks, 'Khoisan Resistance to the Dutch in the Seventeenth and Eighteenth Centuries', *Journal of African History* 13, 1 (1972), pp. 55–80; Richard Elphick, *Kraal and Castle* (New Haven: Yale University Press, 1977). When I use 'Khoe-San' in this book, I do so not necessarily to endorse this argument, but to condense the group where convenience permits their similar experiences to be seen singularly.

12. Legassick, *Politics of a South African Frontier*; Penn, *Forgotten Frontier*.
13. Szalay, *The San and the Colonization of the Cape*; Adhikari, *Anatomy of a South African Genocide*.
14. Nosipho Majeke [a.k.a. Dora Taylor], *The Role of the Missionaries in Conquest* (Johannesburg: Society of Young Africa in Alexandra, 1952); John and Jean Comaroff, *Of Revelation and Revolution, Volume One: Christianity, Colonialism, and Consciousness in South Africa* (Chicago: University of Chicago Press, 1991); Jean and John Comaroff, *Of Revelation and Revolution, Volume Two: The Dialectics of Modernity on a South African Frontier* (Chicago: University of Chicago Press, 1997); Elizabeth Elbourne, *Blood Ground: Colonialism, Missions and the Contest for Christianity in the Cape Colony and Britain, 1799–1853* (Montreal and Kingston: McGill-Queen's University Press, 2002).
15. Karel Schoeman, 'Die Londense Sendinggenootskap en die San: Die Stasies Toornberg en Hepzibah, 1814–1818', *South African Historical Journal* 28, 1 (1993), 221–34; Karel Schoeman, 'Die Londense Sendinggenootskap en die San: Die Stasies Ramah, Konnah en Philippolis, 1816–1828', *South African Historical Journal* 29, 1 (1993), 132–52.
16. GM, pp. 12–6.
17. Ross, *Adam Kok's Griquas*, pp. 23–4.
18. CWMA, London Missionary Society Incoming Correspondence (South Africa), 18B/4/a, John Philip to George Napier (25 August 1842), Appendix B: 'The Tenure by which the Griqua hold the Lands of Philippolis'. My thanks to Jared McDonald for sourcing me a copy of this document in its entirety, and also for his assistance with my other LMS queries. For similar sentiments, see also CWMA Africa Odds 623, quoted in Karel Schoeman, *The Griqua Captaincy of Philippolis, 1826–1861* (Pretoria: Protea Book House, 2002), p. 43.
19. CA, Graaff-Reinet (GR) 10/6. James Clark to Andries Stockenström (10 September 1827).
20. I have so far been unable to locate this document.
21. GM, p. 31. Copy of a Letter from Mr Wright to Mr Clark (10 May 1826).
22. CA, GR 10/6. Clark to Stockenström (10 September 1827). Emphasis in original.
23. P. J. van der Merwe, *Die Noordwaartse Beweging van die Boere voor die Groot Trek, 1770–1842* (Den Haag: W.P. van Stockum & Zoon, 1937), p. 262.

Although quite dated, van der Merwe's book remains a key text for this and other aspects of pre-Trek history.

24. James Archbell to the Secretariat of the Wesleyan Missionary Society [nd], quoted in Legassick, *Politics of a South African Frontier*, p. 233.
25. Andries Stockenström, *The Autobiography of the Late Sir Andries Stockenström, Sometime Lieutenant-Governor of the Eastern Province of the Colony of the Cape of Good Hope* (Cape Town: C. Struik, 1964 [1887]), vol. 1, 213–4.
26. HCPP 538 of 1836. *Report from the Select Committee on Aborigines (British Settlements) with the Minutes of Evidence, Appendix and Index*, p. 216.
27. HCPP 538 of 1836. *Select Committee on Aborigines*, p. 217.
28. As it happened, Philip, in England for the whole thing, managed to deflect any reprimand by preparing a number of lengthy statements in defence of the LMS enterprise in South Africa. See especially HCPP 538 of 1836. *Select Committee on Aborigines*, p. 621.
29. This was especially the case after the 'Napier Treaty' between the Cape Governor and Kok III in 1843 explicitly established the mutual conditions of this alliance. For the original, see CA, GH 19/5.
30. As Ross writes, 'the old inhabitants merged quickly with the Griquas, for they had no cultural barrier before being assimilated. By 1834 they were cheerfully raiding alongside the Griquas and the !Kora. Naturally not everything went smoothly. There were clashes over their status, for they had been servants of the mission and were now subjects of an independent chief, but in general they were quickly incorporated, so that they do not form a recognisable party within the later affairs of the Captaincy.' Nevertheless, as Ross himself goes on to show, the two main factions within Philippolis would be the 'Bastards' and 'Griquas', right up to the 1850s, and probably beyond. The point to take from this, it seems, is this: internal division there may have been, but these tensions never boiled over into anything more than rhetoric, and this must partly be due to the talents of the Griqua Captains who were driven to keep the polity united through thick and thin. Ross, *Adam Kok's Griquas*, pp. 24, 33–4, 79.
31. Upon encountering a Griqua kraal near Philippolis in 1830, Stockenström wrote: 'These people are in a wretched condition, they complain that the Griquas as well as the Boors possess themselves of all the waters in the Country, this being true, the Game disappears, so that the Bushmen are deprived of their principal means of subsistence.' CA, Lieutenant-Governor (LG)/9.
32. GM, pp. 40–1 (a reproduction of CWMA 1592, John Melvill's Diary, hereafter *Melvill's Diary*).
33. GM, pp. 44–5. *Melvill's Diary.*
34. GM, pp. 45. *Melvill's Diary.*
35. Stockenström, *Autobiography*, vol. 1, p. 226.
36. Adhikari, *Anatomy of a South African Genocide*, p. 62.
37. GM, p. 55. *Melvill's Diary.*
38. For Stockenström's attempts to protect the San, and the tension between the *trekboere* and the Griqua in this period, see van der Merwe, *Noordwaartse Beweging*, esp. pp. 205–322.

39. CA, LG/9.
40. Johannes Coetzee's campaign continues in the following chapter. In this commissioned report, his surname is spelt 'Coetzee', which aligns more closely with modern South African spelling of the name; but in other government publications and press reports the same individual's last name is spelt 'Coetze'. 'Kotze' and 'Cotze' are other common variations in spelling before 1900.
41. CA, LG/9. Evidence of Johannes Coetzee (1 March 1830).
42. CA, LG/9. Evidence of Schalk Burger (1 March 1830).
43. CA, LG/9. Evidence of Korana Chiefs (March–April, 1830).
44. CA, LG/9. Evidence of Herculus Jacobus Visser (March–April, 1830).
45. Stockenström, *Autobiography*, vol. 1, p. 376.
46. CA, LG/9. Evidence of Abel Pienaar (March–April, 1830).
47. CA, LG/9. Evidence of Hendrick Hendricks (1 March 1830). On behalf of those accused, Burger denied the charge vehemently: 'I came across a Bushman kraal which had been destroyed by the Griquas who told me that said kraal had stolen their horses. I found fourteen dead bodies [...] I can take my oath that I never heard and do not believe that any Boor ever went against the Bushmen with the Griquas, or applied for their assistance or supplied them with ammunition.' See CA, LG/9, evidence of Schalk Burger.
48. Stockenström, *Autobiography*, vol. 1, p. 378.
49. For over a century, historians have presented the Griqua people as a bloodthirsty group of murderers, the most savage community on the South African frontier. Despite the findings presented in this chapter, this kind of appraisal is unfair and outdated. It must be remembered that the Griqua were not the only guilty participants in the genocide of the San. 'Bantu, Boer and Briton' all actively participated in violent campaigns against the San, or were otherwise indirectly responsible for the appropriation of their land and the destruction of their resource bases. George Stow first made this point in his groundbreaking ethnographic research of the late nineteenth century, but historians have subsequently downplayed the fact in historical scholarship until recent years. See George W. Stow, *The Native Races of South Africa: A History of the Intrusion of the Hottentots and Bantu into the Hunting Grounds of the Bushmen, the Aborigines of the Country* (London: Swan Sonnenschein & Co., 1905). For the Griqua people in South African historical tradition, see Edward Cavanagh, *The Griqua Past and the Limits of South African History, 1902–1994* (Oxford/Bern/New York: Peter Lang Publishers, 2011).
50. CA, HA89. Evidence of Jan Pienaar, in *Evidence Taken at Bloemhof before the Commission appointed to investigate the Claims of the South African Republic, Captain N. Waterboer, Chief of West Griqualand, and certain other Native Chiefs, to portions of the Territory on the Vaal River, now known as the Diamond-fields*, p. 20. Also reproduced in David Arnot and Francis H. S. Orpen, *The Land Question of Griqualand West: An Inquiry into the Various Claims to Land in that Territory; Together with a Brief History of the Griqua Nation* (Cape Town: Saul Solomon & Co., 1875), p. 191.

2 The Griqua Land Regime and Its Challenges

1. The term 'captaincy' appears to have been coined by Robert Ross, 'Griqua Government', *African Studies* 33, 4 (1974), pp. 25–42.
2. Ross, 'Griqua Government', p. 28.
3. Ross, 'Griqua Government', pp. 28, 32–3; Robert Ross, *Adam Kok's Griquas: A Study in the Development of Stratification in South Africa* (Cambridge: Cambridge University Press, 1976), pp. 34–9.
4. GR, p. 93. Answers to questions proposed to the chief, Adam Kok, in a letter from the Colonial Secretary (18 April 1845).
5. CWMA, London Missionary Society Incoming Correspondence (South Africa), 18B/4/a, John Philip to George Napier (25 August 1842), Appendix B: 'The Tenure by which the Griqua hold the Lands of Philippolis'.
6. Courtesy of the fat-tailed Cape sheep, Griqua farmers were already 'rising to opulence' in the 1810s, and by the 1820s they fostered a healthy knowledge of the workings of the colonial market. See John Philip, *Researches in South Africa: Illustrating the Civil, Moral, and Religious Condition of the Native Tribes* [. . .] (London: James Duncan, 1828), vol. 2, p. 67; F. S. Orpen, *Reminiscences of Life in South Africa from 1846 to the Present Day* (Cape Town: C. Struik, 1964 [1908]), p. 116. See also Martin Legassick, *The Politics of a South African Frontier: The Griqua, the Sotho-Tswana and the Missionaries, 1780–1840* (Basel: Basler Afrika Bibliographien, 2010 [1969]), p. 87.
7. GM, p. 63. *Melvill's Diary.*
8. CA, Griqualand East (GO)/3. Law Number 3, 'Dorp's wetten'; Law Number 6, 'Van roovery en misdaad tegen goed en dieftе'; Law Number 7, 'Over schade'. For Schoeman's English translations, see GR, pp. 242–4. These laws were reproduced into the Griqua 'Wetboek' at a later date, and it is from Schoeman that I get my dates for when this legislation was originally passed.
9. Andrew Smith was witness to this process at the end of 1835, and left a fascinating description in Percival R. Kirby (ed.), *The Diary of Dr. Andrew Smith, Director of the Expedition for Exploring Central Africa, 1834–1836* (Cape Town: Van Riebeeck Society, 1939–40), vol. 2, pp. 180–2.
10. CWMA, London Missionary Society Incoming Correspondence (South Africa), 18B/4/a, John Philip to George Napier (25 August 1842), Appendix B: 'The Tenure by which the Griqua hold the Lands of Philippolis'. See also Karel Schoeman, *The Griqua Captaincy of Philippolis, 1826–1861* (Pretoria: Protea Book House, 2002), pp. 64–71.
11. CWMA Incoming Letters (LMS 18/1/D), reproduced in GR, p. 45. Adam Kok III to John Philip (31 May 1842). Philip in these years confided in a personal note that 'If their property and land are not secured to the Griquas, and the protection of colonial laws, before ten years there will not be a single Griqua in the country.' Macmillan, the only historian to have accessed the Philip Papers before their destruction at the University of the Witwatersrand by fire, rightly considered this an important

prophecy of what would follow. W. M. Macmillan, *Bantu, Boer, and Briton: The Making of the South African Native Problem* (Oxford: Clarendon Press, 1963), p. 226.

12. CA, GO/2. Law Number 1, 'Betreffende het transport of verkooping der plaatzen'; Schoeman's English translation in GR, p. 241.
13. As Hendrick Hendricks recalled in 1842, 'When the Great Trek/emigration commenced in 1836, when men were angry, and said so much against the British Government, we made a law; that no Boer should sit with us, who was not a British Subject, if they did not continue true to the Colony, their bargains for our lands would be broken.' CA, Lieutenant-Governor (LG)/605. Minutes of a Conference at Colesberg, 31 December 1842 (no. 3).
14. See below, pp. 50–1.
15. CA GH 8/10. 'The agreement ratified between us Griquas and the emigrant farmers' (date unknown; it sits wedged between two other documents, one dated 1 April and the other 16 June, more likely to be in the vicinity of the latter).
16. CWMA 266 (LMS 18/4/A), John Philip to Sir George Napier (25 August 1842).
17. CA, VC137. Griqua Land Register and Letter Book, Philippolis.
18. Though this document is dated '2 January 1842', this appears to be an error. It seems either to have taken place on 2 December 1842 or 2 January 1843, and most likely the latter.
19. CA, LG/605 (no. 2). Testimony of Hans Coetze, Minutes of a Conference at Colesberg. Though the transcript gives his name as 'Hans', this was undoubtedly the settler Johannes Coetzee, who was vocal with respect to the Griqua extermination of the San and his own dealings with a captain called 'Danster'.
20. CA, LG/605 (no. 2). Testimony of Abel Pienaar.
21. CA, LG/605 (no. 2). Hare's Response.
22. CA, GH 19/5. Maitland Treaty, 19 February 1846.
23. CA, LG/9.
24. Andries Stockenström, *The Autobiography of the Late Sir Andries Stockenström, Sometime Lieutenant-Governor of the Eastern Province of the Colony of the Cape of Good Hope* (Cape Town: C. Struik, 1964 [1887]), vol. 1, pp. 213–4, 224–6. See also CA, Government House (GH) 8/14. Andries Stockenström to Colonel Hare (14 May 1845).
25. For this remarkable document, see Schoeman, *Griqua Captaincy*, pp. 66–70, and his note on p. 263. Schoeman guesses that the newspaper in question was the Cape-printed *South African Commercial Advertiser*.
26. GM, pp. 65–105.
27. Kirby, *Diaries*, pp. 73–4.
28. An outdated study of the Great Trek, which is still perhaps the best in English, is Eric A. Walker, *The Great Trek* (London: Black, 1934).
29. CA, LG 616/74. Andries Stockenström to Benjamin D'Urban (13 January 1837).

30. A great deal of the Cape Colony correspondence about Transorangian affairs available at the Cape Archives has Menzies either as recipient or author. Though his role is understudied by historians of the period, he seems to have had a shrewd eye for settler-indigenous politics.
31. For this event, see Ross, *Adam Kok's Griquas*, pp. 49–51. Compare Stockenström's relocation of the colonial borders in the early 1820s, below p. 65.
32. Adam Kok III to Jan Mocke, 25 October 1842. English translation appearing in the *South African Commercial Advertiser*, and reproduced in GR, p. 48 (see also pp. 49–51).
33. *Government Gazette*, no. 1934, 13 January 1843. Part of this appears in Southey's report for the Diamond Fields Dispute. See CA, HA90. Annexure 74 to 1872.
34. CA, LG/605 (no. 3). Statement of Mr Ortlepp: 'the Country they now occupy formerly belonged to the Bushmen and not to the Griquas'.
35. CA, LG/605 (no. 3). Statement of Hendrick Hendricks.
36. CA, LG/605 (no. 2). Statement of Hans (i.e. Johannes) Coetze.
37. I am in agreement with Schoeman that this Danster is not to be confused with Xhosa leader Danster, who was marauding about these haunts since the end of the eighteenth century. This is a matter that other researchers, it is hoped, will get to the bottom of. GR, p. 232, fn. 2; for Xhosa Danster's life on the middle Orange in impeccably detailed context, see Nigel Penn, *The Forgotten Frontier: Colonist & Khoisan on the Cape's Northern Frontier in the Eighteenth Century* (Athens: Ohio University Press, 2005), pp. 210–36.
38. *Grahamstown Journal*, 26 January 1843; See *Grahamstown Journal*, 16 February 1843. These clipping are reproduced in Augustus F. Lindley, *Adamantia: The Truth about the South African Diamond Fields* (London: W. H. & L. Collingridge, 1873), pp. 24–5. Lindley's collection, a manifesto of documents supporting the right of the Free State to diamond-rich Griqualand, is a valuable resource, though the author is not without his settler preconceptions, and he bounces around different regions to the effect of occasionally confusing the reader.
39. At the meeting, there was another throwaway claim made by a white settler that 'In 1826, the Boers paid 5000 sheep for lands beyond the Boundary,' though this appears to have had little foundation. For this see CA, LG/605 (no. 2).
40. The location of the original document is unknown. A transcription of the document appears in Lindley, *Adamantia*, p. 26, and reads: 'I, Piet Krankuil, Bushman captain, lately of the now-called Griqua country, hereby certify, and am ready to verify on oath, that the greater part of the country now occupied by the Bastards was, previous to the encroachments of these people, inhabited from time immemorial by our nation, and that part of the country was sold (not hired) by our senior captain, Kogleman, by our consent, to Johannes Coetze, field-cornet, and others not known to me, for a considerable number of sheep and cattle; this was long ago.' Krankuil then details the massacres inflicted by the Griqua upon the San.

41. As Wright confided to Philip, 'Hendricks made the best speech I ever heard from a native, it touched the feelings and called forth the praise of both His Honour [i.e. Hare] and Rawstorne.' Peter Wright to John Philip, 6 January 1843, cited in Ross, *Adam Kok's Griqua's*, p. 52.
42. CA, LG/605 (no. 3). Hare's Response.
43. CA, LG/605 (no. 2). Statement of Adam Kok III.
44. The new strategies of this contingent resembled those of Oberholster's – they petitioned the Crown, organised meetings and corresponded with the captain. Picking up on a bit of the Bushmanland argument perhaps, the fearsome *trekker* leader, Hendrik Potgeiter, would even write a polite letter to Kok III directly in 1844 insisting that 'We are emigrants together with you and are regarded as such and regard ourselves as emigrants who together with you dwell in the same strange land.' For this, see the correspondence in CA, GH 8/14, and Ross, *Adam Kok's Griquas*, pp. 55–6.
45. CA, GH 8/13. Minutes of a meeting and enclosure to despatch to Sir George Napier (28 March 1844). Emphasis in original.
46. CA, GH 8/13. Hare to Peregrine Maitland (11 April 1844).
47. CA, GH 8/13. Rawsthorne to Hare (12 February 1844); Colonel Hare to George Napier (16 February 1844).
48. The following account comes from CA, GH 8/14: '. . . an armed force of Bastards, about an hundred men, came down violently upon the house of Kryno; – as Kryno was not at home, but only a man named Jan Viljoen, they came up to Viljoen with the thumb on the cock, and demanded of him whether he would surrender himself or not. He announced, "I am willing". Proceeding with him to the house of Kryno, Viljoen met Mrs Kryno, who was already surrounded by Bastards; – they then asked "Where is Kryno?" and received for reply Kryno is not at home, if he was, he would certainly come out. They then roared out on all sides – "Why don't you beat her till she bursts". Others said "put her in the flock and take her to Philippolis", and "drive her out before the horse, then Kryno will come out". After saying this, they violently stormed the house with the thumb on the cock, threw all the things bout, and calling out repeatedly "Kryno come forward, this is the day that your blood must flow". They then took 3 guns, 2 bars of lead, and a bag of powder, 2 belts with powder and shot. After this the Bastards sent an armed man to fetch Mrs Kryno – this bastard repeatedly struck with a sjambok before the feet of Mrs Kryno while standing. When Mrs Kryno came into the house, the field Cornet Jan Dupre Griqua said to her, "you must stay here in the house, and I will remain also until Kryno comes." Just then some travelling wagons were approaching, and a few horsemen. Whereupon the Bastards called out, "there comes the Commando of Boers", and they departed with guns, powder, lead and belts.'
49. See, for instance, CA, LG/373. Rawstorne's Notice to the Emigrant Farmers (23 April 1845). See also the collection in CA, GH 8/14.
50. For the lead-up to this event and its aftermath, see Ross, *Adam Kok's Griqua's*, pp. 56–62.

51. CA, GH 19/5. Maitland Treaty, Articles 22–6. As set out in Article 20, the Resident lacked the ability to intervene in cases arising between Griqua; such *inter se* matters were to be adjudicated by the Captaincy as they had been before. All other matters, civil and criminal, were to be heard by the Resident; although, as per Section 10, he was permitted, if he deemed necessary, to transmit any offender to a court within the borders under the terms of the *Cape of Good Hope Punishment Act*.
52. CA, GH 10/1. Notice with a View to the investigation of Future Settlement of Claims (17 December 1845).
53. CA, GH 10/1. Records, Court of the Special Magistrate.
54. As, for instance, in the case regarding Matheus Jacobus Oosthuisen, who stormed out of the room, without settling the dispute over the farm Knoppies Fonteyn, 'taking with him at the same time the Documents referred to in the evidence which he was desired to leave with the Clerk of the Court'. Conscience got the better of Oosthuisen though; he returned on 8 January to settle with the plaintiff, Stoffel Visagie. CA, GH 10/1. Records, Court of the Special Magistrate (5 and 8 January 1846).
55. CA, GH 10/1, especially the Letters Outward for January and February 1846.
56. See, for starters, John Galbraith, *Reluctant Empire: British Policy on the South African Frontier, 1834–54* (Berkeley: University of California Press, 1963); Timothy Keegan, *Colonial South Africa and the Origins of the Racial Order* (Charlottesville: University Press of Virginia, 1996).
57. Keegan, *Colonial South Africa*, p. 205. Keegan, like other historians, sometimes distinguishes between *voortrekkers* and settlers of the English 1820 crew, but with respect to this observation, the distinction is unnecessary.
58. Ross, *Adam Kok's Griqua*, p. 63.
59. For this, see Ross, *Adam Kok's Griquas*, pp. 63–5.
60. It emerged later, in a document called 'Griqua Grievances', dated 8 November 1849, that the concept of evaluating improvements to land was foreign to the Griqua; they considered Smith's proposal more like a strange tax (*de taxering*), and probably assumed no alteration of their property relations. See GR, pp. 130–1, 268.
61. *Government Gazette*, no. 2204 (24 February 1848). Original date of treaty was 24 January 1848. Also reproduced in GR, pp. 106–7. As Rev. William Thompson, sympathetic observer, put it: 'in that division of their country, termed the alienable territory, comprising about 300 farms, were some which had been leased for 40 years, and others, not yet leased or which, if leased at all, were for much shorter periods, viz., for 20, 15, 10, and 5 years respectively. Sir H. Smith, by his mere fiat, and in open violation of the faith of treaties and of the rights of private property, converted all leases of 40 years' duration into freeholds, and then, still further to favour the Boers, he extended all leases to 40 years; and Captain Adam Kok was *intimidated* to sign a fresh treaty, which was to ratify this act of injustice'. William Thompson, *A Word on Behalf of the Down-trodden in South Africa* (Cape Town: Saul Solomon & Co., 1854), p. 6.

62. See, for instance, J. J. Freeman, *A Tour of South Africa, with Notices of Natal, Mauritius, Madagascar, Ceylon, Egypt, and Palestine* (London: John Snow, 1851), pp. 242–57; Thompson, *Word on Behalf of the Down-trodden*, pp. 3–4. See also William Thompson, *The Griquas, as 'Her Majesty's Special Commissioner for the Settlement of the Affairs of the Orange River Sovereignty' Found Them, and As He Left Them: A Chapter for the History of Our Dealings with Weak Tribes (with appendix)* (Cape Town: Saul Solomon & Co., 1854), p. 6.
63. Claudia Orange, *The Treaty of Waitangi* (Wellington: Bridget Williams Books, 2011). See also Paul G. McHugh, *The Maori Magna Carta: New Zealand Law and the Treaty of Waitangi* (New York: Oxford University Press, 1991).
64. Harry Smith to Earl Grey, 20 January 1851. A copy of this letter is to be found in Freeman, *A Tour of South Africa,* p. 254. It also appears in Thompson, *Word on Behalf of the Down-trodden*, pp. 4–5.
65. This was an administration ill-equipped to liaise between the Cape and the Griqua, let alone mediate between a formidable community of republican *Boere*, Moshweshwe's BaSotho state and various other unaffiliated bands in the region. For this, see John Franklin Midgley, 'The Orange River Sovereignty (1848–1854)', *Argiefjaarboek vir Suid-Afrikaanse Geskiedenis* 2 (1949).
66. The resident was largely preoccupied with pacifying the threats posed by the factious BaSotho community of the Orange River Sovereignty. Moshweshwe was the main – but not the only – character in this cast. For this, see Peter Sanders, *Moshoeshoe: Chief of the Sotho* (London: Heinemann, 1975), pp. 89–112, 147–202.
67. Ross, *Adam Kok's Griquas*, p. 81. See also David Arnot and Francis H. S. Orpen, *The Land Question of Griqualand West: An Inquiry into the Various Claims to Land in that Territory; Together with a Brief History of the Griqua Nation* (Cape Town: Saul Solomon & Co., 1875), pp. 330–3.
68. Ross writes how Adam Kok claimed that the ORS misinterpreted the policy. He cites a letter from Kok and Council to Smith, 22 February 1848, in GH 22/3, which I could not find at that location. See Ross, *Adam Kok's Griquas*, pp. 81–2.
69. Ross, *Adam Kok's Griquas*, pp. 81–93.
70. Figures come from the records of known sales from the Orange Free State archives, appearing as Appendix 2 in Ross, *Adam Kok's Griquas*, p. 140.
71. For this chain of events, see Ross, *Adam Kok's Griquas*, pp. 94–103; H. J. van Aswegen, 'Die Verhouding Tussen Blank en Nie-Blank in die Oranje-Vrystaat, 1845–1902', *Argiefjaarboek vir Suid-Afrikaanse Geskiedenis* 34, 1 (1977), pp. 189–222. See also Arnot and Orpen, *Land Question of Griqualand West*, pp. 190, 276, 280.
72. GR, p. 213. Sir George Grey's Memorandum Concerning the Occupation of Nomansland by the Griquas (9 November 1860).
73. For a study of this kind of discourse as applied to the Eastern Cape, see Clifton C. Crais, 'The Vacant Land: The Mythology of British Expansion

in the Eastern Cape, South Africa', *Journal of Social History* 25, 2 (1991), pp. 255–75.

74. GR, pp. 223–4. OFS Government's Proclamation of Philippolis as a District of the Free State (22 April 1862). See also Schoeman, *Griqua Captaincy*, pp. 236–9.
75. Ross, *Adam Kok's Griquas*, p. 103.
76. For this, consult this book's Afterword. See also Mike Besten, ' "We Are the Original Inhabitants of this Land": Khoe-San Identity in Post-Apartheid South Africa', in Mohamed Adhikari (ed.), *Burdened by Race: Coloured Identities in Southern Africa* (Cape Town: UCT Press, 2009), 134–55; Edward Cavanagh, *The Griqua Past and the Limits of South African History* (Oxford: Peter Lang Publishers, 2011).

3 The Erasure of Past Interests in Land at Orania

1. Hermann Giliomee, *The Afrikaners: Biography of a People* (London: C. Hurst, 2003).
2. F. C. De Beer, 'Exercise in Futility or Dawn of Afrikaner Self-Determination: An Exploratory Ethno-Historical Investigation of Orania', *Anthropology Southern Africa* 29, 3–4 (2006), pp. 108–9; Terisa Pienaar, 'Die Aanloop tot en Stigting van Orania as Groeipunt vir 'n Afrikaner-Volkstaat', MA Thesis (University of Stellenbosch, 2007), pp. 32–49. See also Brian M. du Toit, 'The Far-Right in Current South African Politics', *Journal of Modern African Studies* 29, 4 (1991), pp. 627–7.
3. Lindi Renier Todd, 'What's in a Name? The Politics of the Past within Afrikaner Identifications in Post-Apartheid South Africa', PhD Thesis (University of London, 2007), pp. 47–86; Maano Freddy Ramutsindela, 'Afrikaner Nationalism, Electioneering and the Politics of a Volkstaat', *Politics* 18, 3 (1998), pp. 179–88; Felix Mukwiza Ndahinda, *Indigenousness in Africa: A Contested Legal Framework for Empowerment of 'Marginalized' Communities* (The Hague: T. M. C. Asser Press, 2011). It is significant that British activist Arthur Kemp, proponent of the rights of Britain's white 'indigenous' people, provides an in-depth discussion of AWB's volkstaat in *Victory or Violence: The Story of the AWB* (Burlington, IA: Ostara Publications, 2008), pp. 75–80. See also the website 'Volkstaat', http://www.volkstaat.net/, date accessed 20 October 2012).
4. The Gauteng commune 'Kleinfontein' is considered, by some, to be a kind of '*volkstaat*', though no major research has emerged on this 'unique and unprecedented development in the history of the Afrikanervolk'. See its website, from where that quote comes, http://www.kleinfontein.net/, date accessed 5 November 2012.
5. Evidence of stone-age occupation can be traced back tens of thousands of years, but a few rock paintings in Orania, depicting game animals in a style concurrent with other Bushman engravings across southern Africa, provide the most solid evidence of a specifically 'San' occupation of this region. These are dated at approximately 4,000–6,000 years old.

Undoubtedly, there were San living in the area before then. For a survey of archaeological scholarship on the Orange River (if a little biased towards data from the lower river), see Andrew B. Smith (ed.), *Einiqualand: Studies of the Orange River Frontier* (Rondebosch: UCT Press, 1995).

6. P. J. van der Merwe, *Die Noordwaartse Beweging van die Boere voor die Groot Trek, 1770–1842* (Den Haag: W.P. van Stockum & Zoon, 1937), pp. 131–3.
7. GR, pp. 32, 107–10, for reproductions of the Punishment Act and Smith's Annexation. For the politics of annexation and colonial borders in South Africa, see John Galbraith, *Reluctant Empire: British Policy on the South African Frontier, 1834–1854* (Berkeley and Los Angeles: University of California Press, 1963), pp. 31–4, 176–241.
8. Pienaar, 'Die Aanloop tot en Stigting van Orania', p. 57.
9. Remarkably, a carefully inscribed 'calendar rock', which traces the Vermeulen family's ownership of this land, right from its purchase in 1882 to the mid-twentieth century, can still be found on the property.
10. For the role of white capital during the Kimberley diamond rush, Robert V. Turrell, *Capital and Labour on the Kimberley Diamond Fields, 1871–1890* (Cambridge: Cambridge University Press, 1987). For detailed discussions on the emergence of settler-dominated capitalism in South Africa and elsewhere, see Donald Denoon, *Settler Capitalism: The Dynamics of Dependent Development in the Southern Hemisphere* (Oxford: Clarendon Press, 1983); James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Angloworld, 1783–1939* (Oxford and New York: Oxford University Press, 2009).
11. Pienaar, 'Die Aanloop tot en Stigting van Orania', p. 57.
12. ODA. A. D. Brown (Principal Engineer), 'Proposal in Relation to the Enquiry into the Vanderkloof Canals [...] and the Department's Intentions regarding the State-Owned Land at Vluytjeskraal Canals' (3 April 1985), p. 1.
13. For a concise analysis of the Orange River canalisation scheme, see Nico Jooste, 'Die Eerste Fase van die Oranjerivierontwikkelingsprojek, 1962–1976: 'n Histories Analise', PhD Thesis (University of the Orange Free State, 1999). For an idea of the kinds of propaganda used by the DWA, see their pamphlet, *The Orange River Development Project and Progress* (Johannesburg: Voortrekkerpers, 1965).
14. Andreas Duplessis, *Orania in 'n Neutedop* (Orania: n.d.); Pienaar, 'Die Aanloop tot en Stigting van Orania', pp. 57–8.
15. Interview with Dr Manie Opperman, Orania (17 March 2011).
16. ODA. Dr Johan de Beer (Director General, Dept. Health and Welfare, Free State) to Mr J. F. Otto (Director General, Environment, Pretoria) (17 August 1982), esp. p. 5. See also CRLR, *Report of the Research into the Land Claim by the Orania Community* (February/March 2005), pp. 13–8 (Hereafter: *Report on Orania*); ODA. T. L. Langenhoven (former overseer of Orania project) to H. Opperman (Orania *dorpsraad*) (27 September 2005).
17. Nearby farming land must here be distinguished from the Orania *residential area*. The Department of Water Affairs often encouraged producers to settle on the irrigable land nearby – which would in the mid-2000s

give VAB a headache over rights to land at a milk farm, for which see Chapter 5.
18. CRLR, *Report on Orania*, pp. 20–1.
19. It is worth acknowledging that many 'black' individuals, formerly employed by the DWA during the 1980s, admit to passing themselves off as 'coloured' for extra benefits in Orania, and that many (perhaps even a majority) of the 'coloured' individuals from the greater northern Cape region could, if called upon, boast of significant genealogical and/or cultural links to Khoe-San history – even though few explicitly identify as such anymore.
20. Interview with Opperman (17 March 2011); Charles Leonard, 'In Search of a Homeland', *Sunday Star* (17 February 1991), p. 1. See also CRLR, *Report on Orania*, p. 18.
21. CRLR, *Report on Orania*, p. 38.
22. CRLR, *Report on Orania*, pp. 34–5.
23. ODA. Brown, 'Proposal in Relation to the Enquiry into the Vanderkloof Canals' (3 April 1985), p. 4.
24. 'Township' has a distinct legal meaning, as exemplified in its definition in the *Land Survey Act* (no. 8, 1997): ' "township" means a group of pieces of land, or of subdivisions of a piece of land, which are combined with public places and are used mainly for residential, industrial, business or similar purposes, or are intended to be so used' (1, viii). However, its meaning in popular discourse during the apartheid era was commonly racialised: townships, like the more informal *lokasies*, were typically those underdeveloped, high-density, manufactured places where the non-white proletariat were communalised.
25. Eugene Gunning, 'Wat Orania Regses Kan Kos', *Finansies en Tegniek* (22 February 1991), p. 4: 'By the end of 1989, the Department of Water Affairs were paying R33,500 per year to keep the town functioning.'
26. ODA. De Beer to Otto (17 August 1982); See also Director-General (Water Affairs and Forestry) to Administrative Secretary (Public Works) (21 October 1996); Brown, 'Proposal in Relation to the Enquiry into the Vanderkloof Canals' (3 April 1985).
27. Gunning, 'Wat Orania Regses Kan Kos', p. 4; Interview with Opperman (17 March 2011).
28. Interview with Opperman (17 March 2011).
29. Mariechen Waldner, 'Ons wil nie Weg nie! Waar moet ons Heen?', *Rapport* (17 February 1991), p. 10.
30. CRLR, *Report on Orania*, p. 28.
31. Interview with Opperman (17 March 2011).
32. CRLR, *Report on Orania*, pp. 25–6. It is unclear in the report as to whether the 'sale and forthcoming eviction' refers to the initial alienation or to the later Boshoff acquisition.
33. CRLR, *Report on Orania*, pp. 25–8, 32.
34. CRLR, *Report on Orania*, pp. 27–8.
35. 'Grootgewaag se Kleurlinge wil nie Padgee nie', *Die Transvaler* (20 February 1991), p. 9.

36. 'Grootgewaag se Kleurlinge', p. 9. See also Charles Leonard, 'In Search of a Homeland', *Sunday Star* (17 February 1991), p. 1, which suggests 'about 70 families live in *Grootgewaag*'.
37. For the March 31 ultimatum, see 'Grootgewaag se Kleurlinge', p. 9.
38. CRLR, *Report on Orania*, p. 29.
39. CRLR, *Report on Orania*, p. 29.
40. CRLR, *Report on Orania*, p. 30.
41. CRLR, *Report on Orania*, p. 31. That black and coloured residents had different responses to the eviction is very interesting. It raises a lot of important questions about the experience – and expectancy – of removal, and it suggests that the community of squatters at Orania were not as tight-knit as the report suggests.

4 The Oranian Land Regime and Its Challenges

1. During the transformation period in South Africa, several temporary 'transitional representative councils' were installed as miniature local governments, for different reasons, in a handful of regions across the country. In the absence of any real policy towards the *volkstaat*, it was decided at the provincial level in 1995 that Orania would receive a transitional government. See *Provincial Gazette* (Northern Cape), no. 94, notice 65 of 1995. See also Willie Spies, 'Orania vs die Regering van die RSA', from the SA Media collection of the University of the Orange Free State entitled 'Divers Publikasies' (28 February 2001).
2. Compare Terisa Pienaar, 'Die Aanloop tot en Stigting van Orania as Groeipunt vir 'n Afrikaner-Volkstaat'. MA Dissertation (University of Stellenbosch, 2007), p. 60: 'During the first few years the OBD acted as the company for development and looked after the official management requirements of the town. A provisional directing board was elected by the first group of buyers [...]. The costs connected with the delivery of these services were subsidised by the OBD by at least R200,000 per annum. The whole area was transferred to a share company and the *Vluytjeskraal Aandele Blok* (Vluytjeskraal Share Block) (VAB) was called into existence.'
3. Share Blocks Control Act (no. 59 of 1980).
4. Quote is from Share Blocks Control Act (no. 59 of 1980), §1. For the specificities of South African property arrangements, consult the work of C. F. van der Merwe; in particular, *Sectional Titles, Share Blocks, and Time-sharing* (Durban: Butterworths, 1985).
5. Eugene Gunning, 'Wat Orania Regses Kan Kos', *Finansies en Tegniek* (22 February 1991), p. 4; Pienaar, 'Die Aanloop tot en Stigting van Orania', pp. 59–61.
6. Orania has its own flag and its own emblem; it has its own local coupon-style currency and its own bank; it has its own *koeksister* (Afrikaner sweet) monument to celebrate Boer women; it has a museum dedicated to apartheid engineer Hendrick Verwoerd; it has installed a number of unwanted apartheid-era statues from Pretoria; it is littered with memorabilia from various anniversaries of the Great Trek.

7. In theory, non-white applicants could pass the examination process, but none have seriously attempted yet. This loophole, for some Oranians, is tantamount to thoughtful, non-racialism; others remain unconvinced.
8. Interview with John Strydom, Orania (17 March 2011).
9. *Aansoek om Verblyf in Orania*. I am grateful to John Strydom and the Orania *volksraad* for agreeing to provide me with a copy of this document.
10. Interview with Hanri Maritz, Orania (17 March 2011).
11. Interview with Maritz (17 March 2011). Presumably, in this hypothetical example, Maritz would have have paid R3,500 to the VAB on top of the R100,000 paid for the property, and his later purchaser would have paid a R7,000 transfer cost.
12. Indeed, the prices given by Maritz as an example are very modest. Nowadays, it is not uncommon for small, simple (and frankly unattractive) houses to fetch well over R1m each. At a minimum this represents something like a 20–30 times increase within the space of just 20 years. Given the bouncing rand of the 1990s, it is difficult to put this into perspective; more recent data are required. Many in Orania speak of a boom in property just in the last five years or so: working from a number of Maritz's estimates, and from what I saw and heard around town, it was possible to arrive at some tentative figures. The residential market appears to have increased by almost 5 times for the period 2005–11, the more recent period 2008–11 seeing an increase of over 3 times alone. The reasons for this boom are unclear: one is tempted to speculate that the VAB are using the strict entry requirements to hold back land and therefore place upward pressure on prices, in the interests of securing more money for themselves and the town – but that would be out of step with the *dorp*'s policy of cultural-based (rather than class-based) inclusivity, and *dorp*-wide attempts to hide wealth.
13. Interview with Maritz (17 March 2011).
14. Interview with Strydom (17 March 2011).
15. Interview with Strydom (17 March 2011).
16. *Aansoek om Verblyf in Orania* (Guidelines, Regulations and Procedures, Sections, 14.1, 14.2).
17. Smadar Ottolenghi, '*De Facto* Membership in a *Kibbutz* and *Moshav*', *Tel Aviv University Law Review* 4 (1978–79), pp. 115–41; Smadar Ottolenghi, 'Membership in a *Moshav Ovdim* – From Strict Admission Procedures to Automatic Membership', *Tel Aviv University Law Review* 7 (1985–86), pp. 77–112. See also Richard D. Schwartz, 'Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements', *Yale Law Journal* 63, 4 (1954), pp. 471–91.
18. The *Helpsaamfondsprojek* is an initiative of the *Orania Beweging* (Orania Movement), a body which scouts for donations for its goodwill projects; on top of this, it exists to welcome newcomers and present a positive picture of the town to outsiders.
19. Interview with Maritz (17 March 2011). The term 'levy fund' comes from the Share Blocks Control Act (no. 59 of 1980), § 13 (1).

20. As Maritz put it (17 March 2011), 'Before that there were some structures that were not good. There were a lot of problems between shareholders, in meetings; and they said it should be done right.' See also *Aansoek om Verblyf in Orania* (Guidelines, Regulations and Procedures, Sections, 2).
21. Interview with John Strydom (21 July 2011).
22. Today there remains just one abandoned and dilapidated project in Orania, sitting on the river side of the *dorp*, with rusty foundation struts pronging out in every direction and bricks all over the place. Its shareholder seems to have bitten off more than s/he could chew.
23. See, for a pivotal piece of legislation, the Municipal Structures Act (no. 117 of 1998).
24. *Provincial Gazette* (Northern Cape), no. 574, notice 37 of 2000, which added Orania to the list of similarly disestablished transitional governments outlined in *Provincial Gazette* (Northern Cape), no. 562, notice 30 of 2000.
25. *Orania Inwondersvereniging and Orania Verteenwoordigende Oorgangsraad v. Die President van die Regering van die RSA* (High Court, Northern Cape Division. 1148/00). See also Hannatjie van der Merwe, 'Orania se Private Status Dalk Gehandhaaf', *Volksblad* (11 February 2002), p. 4. Section 38(c) of the Constitution of the Republic of South Africa Act (no. 108 of 1996) allows 'anyone acting as a member of, or in the interest of, a group or class of persons' to allege 'that a right in the Bill of Rights has been infringed or threatened', and to approach a court to seek 'appropriate relief'.
26. Section 235 of the constitution recognises 'the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation'. See Constitution of the Republic of South Africa Act (no. 108 of 1996). Orania continues today to see how far they can stretch 235 to meet their needs. See, for instance, Hannatjie van der Merwe, 'Orania se Private Status Gehandhaaf', *Volksblad* (11 February 2002), p. 4; 'Orania's Laws to Focus on Community Growth', *Diamond Fields Advertiser* (25 October 2005), p. 6.
27. Interview with Opperman (17 March 2011). See also Spies, 'Orania vs Regering'.
28. The property was unique at the time, for it was the only one within Orania supported by an external bank. Since the town's acquisition by OBD, no bank in South Africa has been prepared to offer home loans for single shares with exclusivist conditions attached. There is little information available about this farmer; the evidence comes mostly from hearsay around the *dorp*.
29. Interview with Lukas Taljaard, Orania (20 May 2011).
30. These do not enjoy the sharehold/farm-status loophole, and as such, farmers here are required to pay more taxes to the South African state. The Orania executive taxes these properties much lower, accordingly.
31. Interview with Maritz (17 March 2011). Only at one other time, in May of 2007, when nearby land came onto the market, did it look like an equally spectacular scenario might play itself out – 'follow[ing] an announcement

by South Africa's nudist king, Beau Brummel, that he will open a whites-only nudist colony on a farm near Orana': Jana Engelbrecht, 'Orania's "Kaalgaat" Colony Sparks Outcry', *Diamond Fields Advertiser* (4 May 2007), p. 1. Brummel appears to have either conceived of a brilliant April Fool's Joke, or simply let the opportunity pass him by, as no such 'kaalgat kolonie' was ever established near Orania.

32. Interview with Strydom (17 March 2011).
33. *Government Gazette*, no. 27846. Notice 1333 of 2005.
34. ODA. Lezanne Rungasamy (Deputy Director, Regional Land Claims Commission, FS/NC) to H. Opperman (Orania *dorpsraad*) (12 October 2005). For the legislation, see the Promotion of Access to Information Act (no. 2 of 2000).
35. Yolandi Groenewald, 'Coloureds Claim the Volkstaat', *Mail and Guardian*, 18 November 2005, http://www.mg.co.za/article/2005-11-18-coloureds-claim-the-volkstaat, date accessed 20 October 2012.
36. CRLR, *Report on Orania*, p. 19.
37. ODA. Minutes of Meeting Regarding Orania Restitution Claim, Regional Land Claims Commission, Northern Cape (12 October 2005), p. 2.
38. ODA. S. T. R. Ramakarane (Regional Land Claims Commissioner, FS/NC) to H. Opperman (Orania *dorpsraad*) (22 November 2005); ODA. Minutes of a Meeting (12 October 2005).
39. ODA. Minutes of a Meeting (12 October 2005), p. 3.
40. ODA. Willie Spies (Attorney for the Community of Orania) to Sugar Ramakarane (Regional Land Claims Commissioner, FS/NC) (1 December 2005).
41. Interview with Opperman (17 March 2011); Interview with Opperman (18 May 2011).
42. ODA. Spies to Ramakarane (1 December 2005). See also J. F. van der Merwe (Dorpsbestuurder of Orania) to Mr. Sugar Ramakarane (Regional Land Claims Commissioner, FS/NC) (3 October 2005).
43. *Die Burger*, 6 December 2006, p. 17, cited in Pienaar, 'Die Aanloop tot en Stigting', p. 89; 'Orania pleased at land claim', *News 24*, 5 December 2006, http://www.news24.com/SouthAfrica/News/Orania-pleased-at-land-claim-20061205, date accessed 20 October 2012.

Conclusion: Land Regimes and Property Rights on the Orange River

1. See Mohamed Adhikari, *The Anatomy of a South African Genocide: The Extermination of the Cape San Peoples* (Cape Town: UCT Press, 2010), pp. 28–77.
2. There was never any serious drive to secure land for the San in the Free State period. Their raiding ways were not to be accommodated in the new government. Here the unintentionally ironic words of an English-speaking settler in *The Friend* on 28 October 1854 reveal this mindset well: 'We are sorry for that miserable race – the Bushmen. At the same

time, to suffer one's property to be taken away before one's eyes, and be threatened with an instant death, in an endeavour to apprehend the thief, does not seem to be amongst the things we are expected to submit to quietly.' Quoted in H. J. van Aswegen, 'Die Verhouding Tussen Blank en Nie-Blank in die Oranje-Vrystaat, 1845–1902', *Argiefjaarboek vir Suid-Afrikaanse Geskiedenis* 34, 1 (1977), pp. 173–4. For reports of Boer attacks on San in 1854, see the letter-to-the-editor campaign of William Thompson, *A Word on Behalf of the Down-trodden in South Africa* (Cape Town: Saul Solomon & Co., 1854), pp. 22–7

3. From the early days of settler capitalism in South Africa right up to the present post-apartheid era, the market in *land*, however volatile, has never been so unpredictable or insecure as that in *company shares*. One can potentially see gloomy times ahead in the event that, say, Orania's property bubble bursts – or ANC parliamentarians take active steps to dismantle the VAB by passing new legislation and/or amending the Share Blocks Control Act – or the VAB turns nasty, tears up the shares and moves abroad, keeping both the revenue from the town and assuming all improvements made since 1991.
4. For this, see in particular Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2009); see also Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge, Mass.: Harvard University Press, 2010).
5. D. N. Sprague, *Canada and the Métis, 1869–1885* (Waterloo, Ont.: Wilfrid Laurier University Press, 1988); Gerhard Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996). This comparison is to be applied with care. My own attempts in 2008 at a Métis Studies conference dominated by the question of 'ethnogenesis' to draw parallels between Métis and mixed-descent communities in Australia and South Africa provoked some telling and personalised rebuttals: 'in Australia, they just don't get it', a Métis scholar told an agreeing crowd, whereas another more terrifyingly in private suggested with some anger that 'we are *not* like Africans'. For the first attempt to make this comparison, see Alvin Kienetz, 'The Rise and Decline of Hybrid (Metis) Societies on the Frontier of Western Canada and Southern Africa', *Canadian Journal of Native Studies* 3, 1 (1981), pp. 3–21.
6. Restitution of Land Rights Act (no. 22 of 1994).
7. I am indebted to Deborah Posel for her refreshing analysis of apartheid, which I had the pleasure to encounter during the course of this research. See especially Deborah Posel, 'The Apartheid Project, 1948–1970', in Robert Ross, Anne Kelk Mager and Bill Nasson (eds), *The Cambridge History of South Africa, Volume 2: 1885–1994* (Cambridge: Cambridge University Press, 2011), pp. 319–68. For another standout chapter in that collection, which confronts its reader with a number of provocative suggestions regarding the period leading up to this, see Philip Bonner, 'South African Society and Culture, 1910–1948', pp. 254–318.

Afterword: On Restitution and Dispossession

1. Edward Cavanagh, 'Land Rights that Come With Cut-Off Dates: A Comparative Reflection on Restitution, Aboriginal Title, and Historical Injustice', *South African Journal on Human Rights* 28, 3 (2012), pp. 437–57.
2. The link between restitution and property was considered self-evident until 1997 when clarified by the Land Claims Court in *Dulabh & Another v. Department of Land Affairs* (4) SA 1108 (LCC). See also Alan Dodson, 'Unfinished Business: The Role of Government Institutions after Restitution of Land Rights', in Cherryl Walker, Anna Bohlin, Ruth Hall and Thembela Kepe (eds), *Land, Memory, Reconstruction, and Justice: Perspectives on Land Claims in South Africa* (Scotsville: UKZN Press, 2010), pp. 273–87.
3. As Walker puts it, 'The land under claim is not always ancestral, in the heroic sense of "time immemorial". Much rural land was acquired by the dispossessed relatively recently, through migration or local conflicts or employment or the market. Some ties are just tenuous.' Cherryl Walker, *Landmarked: Land Claims and Restitution in South Africa* (Athens, Ohio: Ohio University Press, 2008), pp. 44.
4. Scholars of South African restitution seldom point out this key distinction as often as they should. See, for an example, the otherwise insightful overview of restitution in comparative perspective, Derick Fay and Deborah James, 'Giving Land Back or Righting Wrongs? Comparative Issues in the Study of Land Restitution', in Walker et al. (eds), *Land, Memory, Reconstruction, and Justice*, pp. 41–59. See also Derick Fay and Deborah James (eds), *The Rights and Wrongs of Land Restitution: 'Restoring What Was Ours'* (London: Routledge-Cavendish, 2009).
5. See, for instance, Paul McHugh, *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford and New York: Oxford University Press, 2011).
6. In 1936 the act was amended to provide an additional 15 million acres; and in the 1960s and 1970s, a number of 'homelands'/'Bantustans' would be created. Natives Land Act (no. 27 of 1913); see also Martin Chanock, *Making of a South African Legal Culture* (Cambridge: Cambridge University Press, 2001), pp. 361–405.
7. In 1936 the act was amended to provide an additional 15 million acres; and in the 1960s and 1970s, a number of 'homelands'/'Bantustans' would be created.
8. December 1998 was adopted largely for convenience. Between early 1994 and this date, something along the lines of 80,000 claims were submitted, many of which remain outstanding.
9. Republic of South Africa, *White Paper on South African Land Policy* (Cape Town: CTP Book Printers, 1997), 4.14.2.
10. Before Union, when South Africa was separated into a number of settler governments, there were several different laws aimed at the forced replacement of communal title with inalienable individual title, as for instance provided for by the Glen Grey Act 25 of 1894 in the Cape, which

also set out specific locations and 'tribal areas' where only a restricted form of native tenure was available. In the Orange River Colony, on the other hand, things were even stricter. There, the Law Book held that no natives could purchase or lease land at all, excepting those situated on a small reserve area less than 200,000 acres in size. To the east in the Transvaal, there were demarcated reserve areas too; but on top of this, as laid out in the Pretoria Convention of 1881, all land alienated by non-whites transferred not into outright private ownership but rather into a special, settler-administrated native 'trust'. And everywhere during the late nineteenth century, the definition of 'squatter' (although never universal) was always skewed by various governments – unsurprisingly, usually to the disadvantage of non-whites. A good overview of these problems can be found in the official pre-Union *Report of the South African Native Affairs Commission* (Cape Town, 1905), pp. 14–15; see also Martin Chanock, *The Making of a South African Legal Culture, 1902–1926: Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001), pp. 361–405.

11. Walker, *Landmarked*, pp. 35, 38. See also Cherryl Walker, 'The Limits to Land Reform: Rethinking the "Land Question" ', *Journal of Southern African Studies* 31, 4 (2005), pp. 805–24.
12. Cherryl Walker, 'Redistributive Land Reform: For What and For Whom?', in Lungisile Ntsebeza and Ruth Hall (eds), *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (Cape Town: HSRC Press, 2007), p. 136.
13. Laurine Platzky and Cherryl Walker, *The Surplus People: Forced Removals in South Africa* (Johannesburg: Ravan Press, 1985).
14. The dismissal of 'fleeting and transitory' occupation in South African history should resonate strongly with formerly nomadic, hunter-gatherer peoples who have faced similar rejection of their land rights elsewhere (semi-arid Australia and the artic regions of northern Canada spring to mind). This discourse is not conducive to a fair deal for all land claimants.
15. Deborah James, *Gaining Ground: 'Rights' and 'Property' in South African Land Reform* (Abingdon: Routledge-Cavendish, 2006), p. 16. Interestingly, she also goes on to argue that indigenous rights discourse is incompatible with 'the liberal framework within which challenges to the apartheid state were mounted', but this argument is insufficiently developed to go into here.
16. Andries Stockenström, *The Autobiography of the Late Sir Andries Stockenström, Sometime Lieutenant-Governor of the Eastern Province of the Colony of the Cape of Good Hope* (Cape Town: C. Struik, 1964 [1887]), vol. 1, p. 127. My emphasis.
17. 1919 AC 211 at 233–4 (privy council). Before the century was over, jurisdictions in Canada and Australia had proven that such gulfs were indeed bridgeable. For a discussion of the implications of Sumner's ruling in a broad perspective, see Kent McNeil, *Common Law Aboriginal Title* (Oxford: Clarendon Press, 1989), pp. 193–215.

18. For the power of history in the marginalisation of certain South African groups, see Edward Cavanagh, *The Griqua Past and the Limits of South African History, 1902–1994* (Oxford and Bern: Peter Lang, 2011).
19. See, for instance, Shula Marks, 'Khoisan Resistance to the Dutch in the Seventeenth and Eighteenth Centuries', *Journal of African History* 13, 1 (1972), pp. 55–80; T. H. R. Davenport and K. S. Hunt (ed.), *The Right to the Land* (Cape Town: David Philip, 1974); Nigel Penn, *The Forgotten Frontier: Colonist & Khoisan on the Cape's Northern Frontier in the Eighteenth Century* (Athens: Ohio University Press, 2005).
20. See, eg, *White Paper* (note 5 above); Portfolio Committee on Agriculture and Land Affairs, *Restitution Amendment Bill Proposal: Cut-Off Dates. 19 June 1913 and 31 December 1998* (Public Hearing, 29 May 2007), http://www.pmg.org.za/docs/2007/070529gwanya.pdf, date accessed 10 October 2012.
21. Portfolio Committee on Agriculture and Land Affairs, *Restitution Amendment Bill Proposal*, p. 2.
22. Marc Wegerif, Bev Russell and Irma Grundling, *Still Searching for Security: The Reality of Farm Dweller Evictions in South Africa* (Johannesburg: Social Surveys and Nkuzi Development Association, 2005), http://nkuzi.org.za/images/stories/evictions_Survey.pdf, date accessed 8 September 2011); Stuart Wilson, 'Breaking the Tie: Evictions, Homelessness and the New Normality', *South African Law Journal* 2 (2009), 270–90; Stuart Wilson, 'Planning for Inclusion in South Africa: The State's Duty to Prevent Homelessness and the Potential of "Meaningful Engagement" ', *Urban Forum* 22, 3 (2011), pp. 265–82.
23. Berber Bevernage, 'Time, Presence, and Historical Injustice', *History and Theory* 47 (2008), pp. 149–67; see also Edward Cavanagh, 'History, Time and the Indigenist Critique', *Arena Journal* 37–8 (2012), pp. 16–39.
24. Bevernage, 'Time, Presence, and Historical Injustice', p. 163.
25. A fascinating, though dated book on the Nama people is Peter Carstens, *The Social Structure of a Cape Coloured Reserve: A Study of Racial Integration and Segregation in South Africa* (Cape Town: Oxford University Press, 1966).
26. Özlem Ülgen, 'Developing the Doctrine of Aboriginal Title in South Africa: Source and Content', *Journal of African Law* 46, 2 (2002), p. 132: 'Ownership of the subject land passed to the Alexander Bay Development Corporation pursuant to s. 2 (2) of the Alexander Bay Development Corporation Act 46 of 1989. The Alexkor Limited Act 116 of 1992 converted the Corporation into a company, Alexkor Limited. During 1993 and 1994, title deeds were registered confirming that the rights of the State to the entire subject land had been passed to Alexkor Limited. On 20 April 1995 all the title deeds were endorsed with a certificate granting all rights to surface and sub-surface minerals to Alexkor Limited.'
27. Diamonds appear to make all the difference. Nicolaas Waterboer, whose inherited Griquatown state was torn apart after diamonds were discovered there in the late 1860s, knew this well. The British colonial government and the Free State Boers launched their own claims to the region with urgency, and a legal battle ensued: the British bolstered up

Waterboer's claim in order to reinforce their own claim, while the Boers attempted to downsize Griqua sovereignty so as to more appropriately reflect their actual presence. In the end, it did not matter who won, as speculators and capitalists of all kinds were lining up to overwhelm Griqua society regardless of the result. The makeshift administration established after the annexation of 'Griqualand West' in 1871, preoccupied with other matters, did little to preserve the Waterboer dynasty. One suspects, with hindsight, that Adam Kok III's experience with the Free State would have been different had the lands of Philippolis been as diamondiferous as those around Kimberley.

28. See, for instance, Ülgen, 'Developing the Doctrine of Aboriginal Title', pp. 131–54; Jeannie Van Wyk, 'The Rocky Road to Restitution for the Richtersvelders', *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 67 (2004), pp. 479–89; Sharon Brink, 'Legal Pluralism in South Africa in View of the Richtersveld Case', *Stellenbosch Law Review* 16, 2 (2005), pp. 175–93; Amena Laboni Hoq, 'Notes and Comments: Land Restitution and the Doctrine of *Aboriginal Title: Richtersveld Community v Alexkor Ltd and Another*', *South African Journal on Human Rights* 18 (2002), pp. 421–43.
29. Ülgen, 'Developing the Doctrine of Aboriginal Title', p. 132.
30. Karin Lehmann, 'Aboriginal Title, Indigenous Rights and the Right to Culture', *South African Journal on Human Rights* 20 (2004), pp. 89–90.
31. *Rex v Vinger*, (1) SA 389 (Griqualand West).
32. See a similar point regarding reversal made by James, *Gaining Ground*, pp. 18, 57.
33. This discourse of land reform still alarms white commentators. In late 2011, for instance, after the emergence of the Green Paper on Land Reform, Dave Steward of the F. W. de Klerk Foundation argued that the language used in the report represents 'a disheartening illustration of the re-racialisation of SA'. See 'The Black & White Green Paper on Land Reform', *Politicsweb* (2 November 2011), http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71639?oid=264668&sn=Detail&pid=71639, date accessed 20 October 2012.
34. *White Paper on South African Land Policy*; see also the more recent Department of Rural Development and Land Reform's *Green Paper on Land Reform* (2011), http://www.ruraldevelopment.gov.za/DLA-Internet/content/document_library/home_page/GREEN_PAPER_LAND%20REFORM%20August%202011.pdf, date accessed 20 October 2012.
35. For the ≠Khomani San claim, see Roger Chennells, 'The Land Claim of the !Khomani San of South Africa', in Chandra K. Roy, Victoria Tauli-Corpuz and Amanda Romero-Medina (eds), *Beyond the Silencing of the Guns* (Philippines: Tebtebba Foundation, 2004), pp. 211–25; Roger Chennells, *Report on the Land Rights of the =Khomani San Community (Written for and at the Request of the Office of the Commission on Restitution of Land Rights)* (Unpublished: 8 December 2006).
36. See Radolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Addendum: Mission to South Africa* (United Nations Doc. E/CN.4/2006/78/Add.2,

2005), esp. p. 10; Rick de Satgé, David Mayson and Boyce Williams, *The Poverty of Restitution? The Case of Schmidtsdrift*. Phuhlisani Research Report (Cape Town, 2010), http://www.phuhlisani.com/oid%5Cdownloads%5C20100902de%20Satge%20et%20al%20PhuhlisaniSubmitted.pdf, (viewed 8 December 2011); 'Free State Griquas', http://www.simplesite.com/GRIQUAROYALHOUSE/51316357, (viewed 8 December 2011).

37. See, most spectacularly, Tom Barnard, *South Africa: A Popular History* (Johannesburg: Southern Book Publishers, 1992). 'Tom Barnard' is a pseudonym for a currently tenured University of Johannesburg Professor of Political Science.

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