Regimes and Rights on the Orange River

Possessing and Dispossessing Griqua Philippolis and Afrikaner Orania

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Acknowledgements

I have prepared this thesis for two main reasons. Firstly, I wanted to show that South Africa embodies the same, fundamental condition that many other nations do – namely, settler colonialism. Secondly, I wanted to use history to inspire new ways of thinking about the function and process of land restitution process in South Africa.

The research for this thesis 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. 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 Mohamed Adhikari, Phil Bonner, Roger Chennels, Benjamin Collins, Samuel Kariuki, Jennifer MacLeod, Jared McDonald, Bongane Mkhize, Manie Opperman, all involved in the University of the Witwatersrand History Workshop, and all involved 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 the place, 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 order to strengthen their 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 the 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 only 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 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 Note on Terminology

I have attempted, as far 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. *Khoekhoe* is becoming 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 this paper, and only do so 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 Khoe-San. *White* is a not so complicated but equally confused. While tempting to reflect 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 homogenous 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 we may be so audacious to see the matter from it, the distinction was unnecessary. Both were *Boers*; like their English brethren committed to staying in South Africa, they were a community of *white settlers.* Some South Africanists will disagree with my use of 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.

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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 original 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).

1.
Introduction:
Land, Sovereignty, and Indigeneity in the History of South African Settler Colonialism.

In 1991, a small town on the middle Orange River was suddenly transformed into a separatist and exclusivist Afrikaner polity. Its former inhabitants were re-settled 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 South Africa's tumultuous 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 state. Initially an odds-and-ends community of multiply affiliated individuals, the Griqua people transformed themselves into a number of key polities in the early nineteenth century, each exhibiting its own sovereign capacity. Of these polities, Philippolis – established at an old London

1 See, for instance, D. J. Jooste, *Afrikaner Claims to Self-Determination: Reasons, Validity, and Feasibility* (Pretoria: Technikon Pretoria/Freedom Front, 2002). (Author's copy proudly 'Gekoop in Orania'.)

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.

Afrikaner Orania and Griqua Philippolis, for all their differences, are the two case studies I will compare in this thesis. I examine them with a focus upon the intersection of history and law, though I do so somewhat differently to scholars with similar concerns before me. What I aim to do here is use *property* – specifically, property in land – as a means to understand sovereignty and the question of rights in the South African past and present, and, in doing so, I present my argument in the context of larger transnational debates about land rights and settler colonialism.

Property in this study refers not so much to any codified or universal practice, but rather to a socio-legal understanding of things possessed. Specifically, when I move on to describe the property relations operative within the 'land regimes' developed by the Griqua and the Afrikaners, I am referring to those laws or institutions, whether written or unwritten, pertaining to property in land. These 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 cognisable the tenure is to outsiders, and how social and political order is built upon these foundations.

My eyes were opened to the causes that we sometimes forget lie behind property by an extensive article by Robert C. Ellickson in the *Yale Law Journal*. Instead of accepting property as a *fait accompli*, he analyses the ways in which land institutions have evolved across the world to lead us into our present-day understandings of 'property in land'. Calling upon a number of case studies from recent human history, Ellickson makes the general claim that social groups with common interests have often 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.[2] It is from this angle that he suggests we see a plurality of meanings and interests that lie underneath 'property' today (a proposition that indeed supports but goes far further beyond the claim that property is a 'social construction').[3] Griqua Philippolis and Afrikaner Orania integrate into Ellickson's framework satisfactorily; that these two polities, for all their differences, 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 disentangle what makes up the wider, global *corpus* of 'property' we take for granted.

Moving beyond Ellickson's scope, what I am also interested to provide in this study is a discussion of what makes some land regimes last and others crumble, how some rights to land are honoured and yet others are disregarded. I argue that *sovereignty* decides this,

2 Robert C. Ellickson, 'Property in Land', *Yale Law Journal* 102 (1992-1993), p. 1319.

3 Ellickson, 'Property in Land', pp. 1397-8.

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. The meaning of 'sovereignty' is highly contested among scholars from many fields these days, so it will be important here to clarify what is meant by it. 'Property' and 'sovereignty' – however they may be considered co-dependent or even symbiotic constructions – are discrete categories, which ought not be confused.

A sound clarification of the distinction between them appears in John C. Weaver's comparative study *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 United States. As he puts it,

> 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. [4]

4 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.

The notions of ‘public law’ and ‘private law’, for all their help in placing property into a juridical context, 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, circumscribing severely the rights of those few remaining groups of indigenous peoples whose rights to land had not yet entirely been erased by that time.[5]

However, before this key development – namely, the rise of the settler states – sovereignty on frontiers tended to be a little less clear-cut than this. From the time newcomers made their way to the lands of other societies, in South Africa as elsewhere across the globe, sovereignty rather began as a series of contests between groups of colonisers and groups of indigenous peoples. This was a tussle often between multiple communities, over whose claims to authority – in particular, authority over land – were strongest and supported by might, and importantly, recognised by all kinds of outsiders.[6] There was no clear public/private divide in colonial sovereignty’s nascence.

As some scholars helpfully propose, sovereignty in these contested colonial contexts may be conceptualised as forming a number of layers, each representing a competing

5 Weaver, *Great Land Rush*, p. 140.

6 See especially Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640* (Cambridge: Cambridge University Press, 2006).

form of authority over people and places.[7] The political geography of the greater Philippolis region, from the start of the nineteenth century up to the end of it, I think presents a fine example of layered sovereignty – with San, Griqua, BaTswana, BaSotho, Boers and hybrids, each in their own communities vying for positions of power, all the while peered over by the administration in Cape Town connected by umbilical cord to England. Ultimately, in the Transorangia, it would be a settler polity formed out of Boers and Britons that would rise to a position of dominance after 1850, after which point these different layers began to disappear.

This was quite similar to that which happened over the same conjuncture in North America and Australasia, as Weaver and several other scholars describe. Settlers could use the law – at its backbone, the concept of property – solely to *their* favour, and disavow indigenous rights in the process. Thus 'perfect settler sovereignty' emerged: a brick fortress inside which colonised peoples would be stuck forever after.[8] This is a situation tying into a modern, global context of today, featuring a world not layered but

7 See, for instance, Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), esp. pp. 30–32.

8 See also Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge, MA: Harvard University Press, 2010). Miranda Lawson, in her review of Ford's majestic work, disputes the validity of her use of the term 'indigenous rights'; she and others are likely sceptical that such 'rights' were things transcending various historical contexts, and considerable as a whole. But since rights talk was *so* prominent across many frontiers – often if not always coming from the lips of indigenous peoples facing colonization – we should probably see this as a challenge worth overcoming, and reconsider the genealogy of indigenous rights discourse. For this, see Miranda Johnson, 'Review: Lisa Ford, Settler Sovereignty', *Comparative Studies in Society and History* 53, 1 (2011), pp. 219-20.

cluttered with nation-states and nation-states-to-be; a context in which the four-standard definition of sovereignty provided by Janice E. Thomson – as something constituted by cognisability, stateliness, authority and coercive capacity – is particularly apt and continues to be.[9] So how did this context arrive in South Africa?

Right across the country, after settlers had done their best to monopolise sovereignty for themselves, there remained the tattered threads of those former layers during the twentieth century, always at the ready to contradict and create problems. Nominally, state sovereignty belonged to the Union of South Africa (1910-1961), and later, the Republic of South Africa (1961-), but the situation was always complicated. There were two main kinds of white settlers, divided by language and tradition, but together in their position at the top of the social pecking order; content about it or not, they shared supremacy in the region. There were many kinds of Natives, and all sorts of Others; a community with a hierarchy of indigeneity that was erased by codified racial categories, resulting in a new pecking order more suitable for an industrialising national economy. Notwithstanding the unease with which the Union interacted with settler governments in Transvaal, the Orange Free State, Natal, and the Cape Province – federalism was never so conveniently installed into the country as it was elsewhere – the whole country was politically confused for Black peoples more so than it was for anyone else. Standing

9 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. See also her laudable attempt to put sovereignty into historical perspective in Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1994).

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 was an artificial geopolitical entity housing a variety of ethnic/national groupings, and most came with their own kinds of customary jurisdictions.[10]

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 Lesotho, like a large independent island in the country), this was a fate of 'independence' unrealistically hoped for the more fragmentary Bantustans too. One struggles to imagine how the Bantustan nation concept would have worked, with the Bantustans so erratically patchy and spread out right across the country; one need not waste one's time however, as the plan fell apart when the *apartheid* state's coercive capacity and cognisability as ultimate sovereign were increasingly called into dispute by the international community from the late 1980s onwards.

The era of full democracy beckoned in 1994. South Africa, the same sovereign entity as the earlier Republic, received a makeover. The state's bureaucracy reformed, and constitution rewritten from scratch, the government was reborn by the African National

10 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).

Congress (ANC): a party that has enjoyed comfortable majority support at the 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, were well and truly over. 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 is a study about land rights, and the different regimes that create and erase them, that 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. We ought to see 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 imagined land regime. With this in mind, my thesis 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 committed to presenting 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.

It is important to note that the meaning of *indigenous* is not so straightforward or clear in South Africa as it is elsewhere, and the appropriation of the term in this study is made further problematic by the very different historical contexts with which I am concerned. Before the coming 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. 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 onward. By the nineteenth century, for all the social and ethnic distinctions definitive of the non-

settler population, all became a kind of common colonial fodder as the settlers rose to their position of dominance and spread out across the land.

If we are to understand properly 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. Typically, the most indigenous people across South Africa 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 straight-forward 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 regards to the twentieth century however, indigeneity becomes a far more complex matter for historians to explain. Racial categories, codified from above, pervaded into all forms of settler discourse in this period – homogenising a diverse, multicultural population into universally coerced and conquered subjects of the settler state. Words like ‘Coloured’, ‘Indian’, ‘Native’/‘Bantu’ *et al.*, fundamental to the everyday functioning of *apartheid*, were applied to peoples 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 diverse. Comprising the non-settlers were descendants of those communities listed above, along with many 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' 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 such a context.

By the end of the twentieth century, during 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 and democratic polity – the opportunity to redefine 'indigenous' in a fashion both historically accurate and presently meaningful was not taken by those steering this transition. As it stands even today, indigeneity in South Africa is quarrelled over and contested by many, whilst 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 explicitly as such during the removals of 1989-91. Yet, when we consider their occupation of the region relative to those who would come after them – in the same way

indigeneity is understood relatively in the first study of the San, Griqua and *trekkers* of Philippolis – we attain a valuable perspective on the land question in Orania and the wider region it resides in, and I think we are provided with a number of clues as to how land restitution and indigenous rights are understood in post-1994 South Africa.

While paying homage to a broader field of settler colonial studies, this thesis is nonetheless an intimate study of *the local*: Orania and Philippolis are situated within 100km of each other on the same stretch of river, and I chose them, from the outset, mainly for that reason.

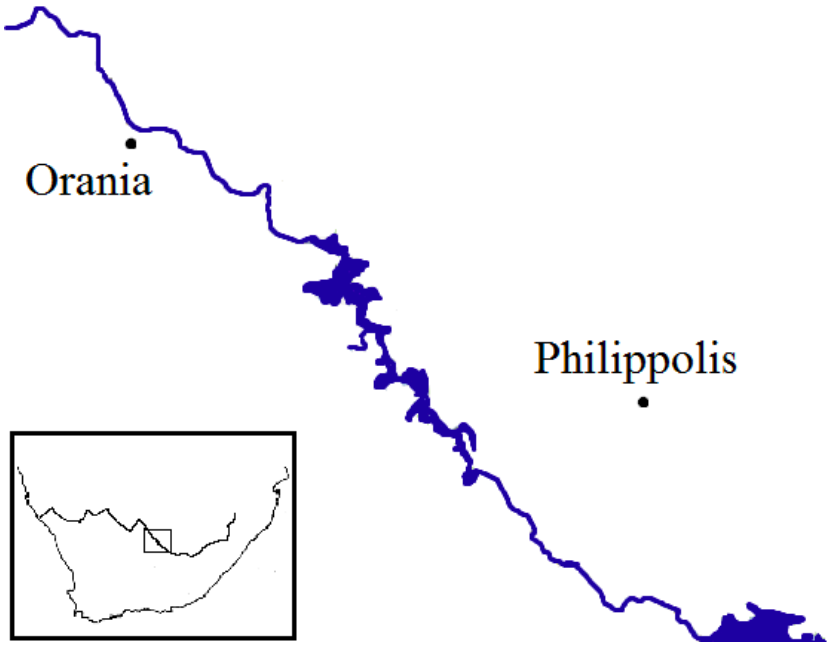

Figure 1. A stretch of the middle Orange River.

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 a good one, but one with respect I am unpersuaded by, for I think there are many similarities between the two locales, as I hope to prove throughout the course of this thesis. 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 an 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 in this thesis, 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 this window of history (not to mention countless others if we are to look further back into the San past). The South African landscape is marked by a number of levels of occupation and dispossession. Although in this thesis I am interested in identifying the historical

complexities pertaining to just two case studies, I do so in the hope that I might connect with other histories of contest and exclusion that currently preoccupy the attention not only of Southern Africanists but also of scholars of settler colonialism.

Perhaps here is a good place to provide a brief discussion on what is meant by *settler colonialism*. Settler colonialism is different from other forms of colonialism, insofar as the colonising community remains behind to capitalise on an unequal social relationship with the colonised population, governing itself and Others independently from the metropole. Typically, unlike other colonies which have transformed into self-determining nations with the era of decolonisation (with strikingly universal teleological predisposition, so it would seem from the literature[11]), 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

11 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).

something.[12] Nevertheless, it is worthwhile to regard the South African state as a place with a settler colonial past *and* a settler colonial present, firstly because it allows us to connect with a transnational framework of enquiry, and secondly because I think that South African history, for all of the upheavals and struggles that define it, holds within it more continuities than changes.

'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 body of transnational appraisal still quite new.[13] 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'.[14] When stressing this point, Wolfe often pairs it with a metaphor delivered off-the-cuff by Theodor Herzl in the

12 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 at <http://www.settlercolonialstudies.org/>, accessed 20 November 2011.

13 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 Edward Cavanagh, 'Making Amends for Settler Colonialism: History, Time and the Indigenist Critique', *Arena Journal* (forthcoming special issue on settler colonialism, March 2012).

14 Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research* 8, 4 (2006), p. 388.

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 that will not be on my agenda to engage with here.[15] 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'.[16] Resistance must be cleared away before settlers can move in and occupy the land exclusively. This is classical settler colonialism.

It is perhaps quite strange – and probably indicative both of the adolescence of settler colonial studies and of the historiographical barriers that continue to impede comparative analysis – that Wolfe refuses to incorporate South Africa into his framework. Seeing settler colonialism as a contest primarily over *land* rather than *labour* – a social formation embodying 'a logic of elimination' at its core – Wolfe identifies in South Africa more of a classically exploitative colonial formation. Its rancid

15 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', in *New Left Review* 62, March-April (2010). See also *settler colonial studies* 1, 2 (2012), special issue on Palestine.

16 Wolfe, 'Settler Colonialism and the Elimination of the Native', p. 388.

elements of slavery merely superseded by the mass-proletarianisation of the colonised population after industrialisation, in South Africa the colonisers asked very different things of the colonised; they were always a minority dependent on 'native labour'. The 'natives', for their part, were ultimately contained by segregation rather than destroyed, and today they have reached a kind of political independence that settler-colonised peoples elsewhere will unlikely attain.[17] With colonialism, unlike with settler colonialism, 'at least the legislators generally change colour', writes Wolfe.[18] Thus, despite the many different social groups in South Africa that fall under the umbrellas of Coloured, White, Asian (and others), that the ANC is predominately Black renders a post-1994 South Africa the same as a *post-colonial* South Africa, according to this simple litmus test: *ergo*, South Africa seems colonial and not settler colonial.

Rather than directly take issue with Wolfe's argument here – it is hoped that the empirical research presented in the following chapters does this instead – it is worth identifying another scholar who has thoughtfully considered South Africa within a framework of settler colonial studies. Lorenzo Veracini, in *Settler Colonialism: A Theoretical Overview* (2010), provides a description of the 'population economy' of

17 Wolfe, 'Settler Colonialism and the Elimination of the Native', pp 403-4. As he 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]'. Patrick Wolfe, Interview with J. Kehaulani Kauanui (*Indigenous Politics: From Native New England and Beyond*), esp. 31:00-33:00. Available online at: < http://indigenouspolitics.mypodcast.com/2010/07/Patrick_Wolfe_on_the_Logic_of_Settler_Colonialism-319321.html >, accessed 8 August 2011.

18 Wolfe, *Settler Colonialism*, p. 2.

settler colonialism, listing a number of 'transfer' strategies deployed by settlers to remain at the top of the social order of things.[19] 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.[20] 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.[21]

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 forty 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 regards to Afrikaner Orania, I

19 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, D.C: 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.

20 Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Houndmills: Palgrave, 2011), pp. 33-52.

21 Of course, this did not always occur in any orderly procession. As in the case of the early Republic of Transvaal (and indeed much like the entirety of Australia), settler title to land was issued *before* transfer of population, which came afterwards.

identify only one transfer: it took place when the town's new settlers realised there were residents living in their *volkstaat* who, due not to linguistic but rather to 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.[22] A claim like this relies, necessarily, upon a homogenous image of 'Europe' here 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' – something that led him to make into simplistic generalisations.

22 W. M. Macmillan, *The Cape Colour Question: A Historical Survey* (London: Faber and Gwyer, 1927), pp. 29-30.

‘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 Bushmen 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.[23]

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.[24] ‘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

23 Macmillan, *The Cape Colour Question*, p. 31.

24 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

> 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.[25]

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 SeTswana tribes 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

25 Agar-Hamilton, *The Road to the North*, p. 6.

> (and Khoi and San communities as well) all recognised some form of territorial dominion. Those *settled* within that territory owed obligations to its ruler.[26]

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 rigidified. 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 at 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.[27] He considered land and jurisdiction matters of

26 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.

27 J. S. Marais, *The Cape Coloured People, 1652-1937* (London: Longmans, Green and Co., 1939).

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 that mine takes its inspiration more so than it does from Marais's. 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).[28] 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).[29]

Since I am calling upon the same, very limited source base that both of these historians have done – and here I should warrant my indebtedness particularly to Schoeman for his reproduction and translation of many in his two collections, *Griqua Records* (1996) and *The Griqua Mission* (2005)[30] – 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 the history of

28 Robert Ross, 'Griqua Power and Wealth: An Analysis of the Paradoxes of their Interrelationship'. Seminar Paper, Societies of Southern Africa in the 19th and 20th 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).

29 Karel Schoeman, *The Griqua Captaincy of Philippolis, 1826-1861* (Pretoria: Protea Book House, 2002).

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 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, both Griqua and Boers considered their possession of this country as natural, I hope to present a new perspective to the land question, problematising any clear settler/native binary along the way. Peering into settler discourse, I consider the most important person neither Jan Mocke the famous republican nor M. A. Oberholster the loyalist diplomat, as other historians have inferred, but the humble pastoralist Johannes Coetze, whose vocal complaints about San genocide 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.[31]

30 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).

31 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),

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*).[32]

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 them 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 various departments of the Commission on the 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.[33]

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pp. 105-14.

32 Lorenzo Veracini, 'Afterword: Orania as Settler Self-Transfer', *settler colonial studies* 2, 1 (2011), pp. 190-6.

33 See, for example, Chris McGreal, 'A people clutching at straws', *The Guardian*, 29/1/2000. Available online at: <http://www.guardian.co.uk/books/2000/jan/29/books.guardianreview3>, viewed 10/1/2011;
Paul McNally, 'Come Gawk at the Racists', *Thought Leader*, 1/2/2010. Available online at: <http://www.thoughtleader.co.za/paulmcnally/2010/02/01/orania-tourism-come-gawk-
at-the-racists/>, viewed 10/1/2011. This kind of journalism, for all its purchase among the self-righteous, offers little insight into the land and life of Orania.

* * *

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'. 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 in order for a new, pastoralism-based economy, supported by individual land tenure, to emerge in Philippolis.

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 became wobbly. 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 into 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. 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 unique system of property relations developed there: a 'share block' system. 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 affrays is covered in detail.

What follows is a study of regimes and rights, in which it gradually emerges that sovereignty makes all the difference. These threads will be brought together and a set of comparative claims will be made in conclusion.

2.

The erasure of past interests in land and the creation of Griqua Philippolis.

INTRODUCTION:

In this chapter, I introduce the Griqua people of South Africa, and delve into the politics of their formation and expansion in the Transorangia region. Featuring in the following narrative are a number of missionaries, some important representatives of the Cape Colonial government, several annoyed white farmers, and members of the oldest cultural group in South Africa, the San people. It is a narrative about property – about the laws regulating land on a settler colonial frontier – and at the centre of it is a contest over rights: a contest marked by a series of violent dispossessions, in which the San lost out to another, more powerful group.

The land in and around Philippolis is the stage for this contest. As I show below, various communities have 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) and given to the Griqua in full. Following this, I show how the prior interests 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.

As the historian Mohamed Adhikari has recently shown in his pioneering 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.[34] 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.

POLITICS:

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. 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 just the early nineteenth century. They were formed out of a collection of rather diverse peoples: initially among them were to be found 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.[35] What separated the Griqua from

34 Mohamed Adhikari, *The Anatomy of a South African Genocide: The Extermination of the Cape San Peoples* (Cape Town: UCT Press, 2010).

35 Answers to questions proposed to the Chief Adam Kok, in a letter from the Colonial Secretary, 18 April 1845, reproduced in Karel Schoeman (ed.), *Griqua Records: The Philippolis Captaincy, 1825-1861* (Cape Town: Van Riebeeck Society, 1996), p. 93: 'My subjects are not all of one tribe, and consist of Grikwas, Bechuanas [i.e. BaTswana] and Bushmen. Of these the lastmentioned 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. [Everyone else at Philippolis] live[s] immediately under my rule'.

most others was their social and political organisation.[36] 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.[37] 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 superintendant Dr. John Philip, some of the dissenting Griquas were allowed to move east and settle at Philippolis, a missionary station 200km to the southeast of Griquatown, established in 1822 for the San.[38]

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36 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.

37 Legassick, *Politics of a South African Frontier*, pp. 147-61.

38 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).

LAND:

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 – or, historically, *was this* – relationship been considered to be orderly, governed by norms and laws, or even cognisable to courts.[39] 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.[40] Or so they were for tens of thousands of years, until established property relations were further complicated by increasing interaction with relative communities, the herding Khoekhoe,

39 Kent McNeil, *Common Law Aboriginal Title* (Oxford: Clarendon Press, 1989), pp. 202-4.

40 Alison S. Brooks, 'San Land-use Patterns, Past and Present: Implications for Southern African Prehistory', in 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.

just in the last two thousand years.[41] 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 agriculturalist *Briqua* – this was the Khoe term for Bantu-speaking Africans[42] – and, more devastatingly, by the commencement of company colonialism in 1652. As colonisation intensified at the

41 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 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.

42 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.

Cape, and settlers (and their slaves) came to stay, local communities of 'Hottentots' and 'Bosjemen' 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[43] – 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 ingeniously, and Khoekhoe (mostly Korana groups), who established seasonal herding routes through the area, were no longer alone. One could also find the southwardly spreading populations of BaSotho and BaTswana (those Briqua so far away in the 1600s were now everyone's neighbours). Entrepreneurial *trekboere*, in the first of many waves of white pastoralism, made 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

43 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 affirms 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 Dissertation (Yale: 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 paper, I do so not necessarily to endorse this argument, but to condense the group where convenience permits their similar experiences to be seen singularly.

European-Khoe-San individuals) *Bastaards*.[44] It was a meeting place that soon became incredibly volatile, and sadly, it would be the San, particularly those who held most strongly onto their traditional hunter-gatherer ways, that were most victimised.[45] Into this context stepped the missionaries.

The London Missionary Society – before their cataclysmic Christianising campaign across Southern Africa from the mid-nineteenth century onwards – were only tentatively treading out into the South African interior in the first two decades of the century.[46] After the rise and fall of the Sak River mission (1800-1806), and following a number of exploratory expeditions after this, it became quickly 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-1820.[47] Among them was Philippolis, just north of what would

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44 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]); Nigel Penn, *The Forgotten Frontier: Colonist & Khoisan on the Cape's Northern Frontier in the Eighteenth Century* (Athens: Ohio University Press, 2005).

45 Miklos Szalay, *The San and the Colonization of the Cape, 1770-1879: Conflict, Incorporation, Acculturation* (Köln: Rüdiger Köppe Verlag, 1995); Adhikari, *Anatomy of a South African Genocide.*

46 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).

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.

Within six months of establishment, according to an estimate, Philippolis had become a base for approximately eighty San, just twenty or so of which were actually living at the station. All were under the instruction of the 'Native Teacher', a *Bastaard* called Jan Goeyman.[48] 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.[49] 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 across the colonial border in search for 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 off some loose ends in the frontier before leaving for home. 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

47 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.

48 See Schoeman, *Griqua Mission at Philippolis*, 12-6.

49 Ross, *Adam Kok's Griquas*, 23-4.

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 in 1842 (though perhaps with the haze of time distorting the specifics), Philip described how he

> found that the Boers who had been recently settled in the new District so lately added to the Colony, had found their way across the river, and were beginning to annoy those who had the 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 to them, and promised them by their parents.
>
> The missionaries were set at defiance, the Statements of Bushmen were disregarded by the Boers; their [sic] was no authority in the country to decide such questions, and the Bushmen were unable to protect themselves.
>
> Proceeding Northward I came to the residence of Adam Kok, one of our Griqua Chiefs and the father of the present Chief of Philippolis, whose territory lay next to the lands of Philippolis and who proposed to protect the Bushmen against the aggressions of the Boers, provided I would permit him to reside at Philippolis. 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.[50]

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 passage 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 great feud between Clark and Wright – and a worry, of course, to Philip.

As Clark remembered the event, he was in Philippolis and caught off-guard when Wright arrived, 'and informed me that […] Dr Philip had requested that […] he was at liberty 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, perhaps a little unsure of his role, gave Philippolis up in July of 1826. '[N]ot doubting Mr Wright's

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50 Council for World Missions Archive (hereafter: CWMA) 266, (LMS 18/4/A), Appendix Two: 'The Tenure by which the Griqua hold the Lands of Philippolis' (1842). 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.

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'.[51]

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. Wright, for his part, claimed that it was not his idea at all, but Clark's, to bring the Griqua to Philippolis and 'remov[e] the Bushman Station'. What distressed Wright most of all were the terms of the agreement between Clark and Kok II. 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[52]], 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.[53]

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* this appraisal), the Griqua were 'merely to have the use of the lands as belonging to a

51 James Clark to Andries Stockenström, 10 September 1827. Cape Archives Depository (CAD), Graaff-Reinet (GR) 10/6. Emphasis in original.

52 I have so far been unable to locate this document.

53 Copy of a Letter from Mr. Wright to Mr. Clark, 10 May 1826. Reproduced in Schoeman (ed.), *Griqua Mission at Philippolis*, p. 31, emphasis in original.

Missionary Institution'. Clark, in defence, claimed firstly, that Wright had misinterpreted Philip's wishes for the prior inhabitants of Philippolis; and secondly, 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 '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 neather their interest nor in their power to be […][54]

54 Clark to Stockenström, 10 September 1827. CAD, GR 10/6. Emphasis in original.

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 700,000ha or so of land, most of which land 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, but instead 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.[55]

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 to the Griqua. To the missionary James Archbell, there were a number of unanswered questions about the lawfulness of title in Philippolis; as he framed them to the secretaries of the Wesleyan Society with which he was affiliated:

55 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.

> 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?[56]

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.[57] 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 [...]

56 James Archbell to the Secretariat of the Wesleyan Missionary Society [nd], quoted in Legassick, *Politics of a South African Frontier*, p. 233.

57 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]), Volume One, 213-4.

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.[58]

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.[59]

58 *Report from the Select Committee on Aborigines (British Settlements) with the Minutes of Evidence, Appendix and Index* (Imperial Blue Book 1836 no. 7, 538) (facsimile: Cape Town: C. Struik, 1966), p. 216.

59 *Report from the Select Committee on Aborigines*, p. 217.

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.[60]

The scandal of Philip's 'proprietary right' faded away soon after the Report was printed however, 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.[61] From the late 1820s onwards, it would only be white settlers who would raise the issue; though they would do so not to discredit the LMS right of alienation, but rather to dispute the Griqua's right of acquisition. This crucial development is considered in the next chapter.

CONFRONTATION AND REMOVAL:

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

60 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 *Report from the Select Committee on Aborigines*, p. 621.

61 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 CAD, GH 19/5.

mighty Griqua state, could only unite those he saw fit to become ‘Griqua’, and expel those he thought hindrances.

The ten years which 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 assimilated into the Griqua community. The historian Robert Ross interprets this development as follows:

> 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.[62]

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.[63] Ross’s point, 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

62 Ross, *Adam Kok’s Griquas*, 24.

63 Ross, *Adam Kok’s Griquas*, 33-4, 79.

talents of the Griqua Captains who were driven to keep the polity united through thick and thin.

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 1827-8 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 of the springs had been taken by Griqua and *trekboer* settlers anyway.[64]

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 into a place unsafe for the San, describes the

64 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'. CAD, Lieutenant-Governor (LG)/9.

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.[65]

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.[66]

65 CWMA 1592, John Melvill's Diary, reproduced in Schoeman, *Griqua Mission at Philippolis*, pp. 40-1. (Hereafter: *Melvill's Diary*).

66 *Melvill's Diary*, pp. 44-5.

[…]

> 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?[67]

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 men 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’.[68] For Stockenström, an influential *landdrost* at the time, 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).[69] 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.

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67 *Melvill’s Diary*, pp. 45.

68 Stockenström, *Autobiography*, v. 1, p. 226.

69 Adhikari, *Anatomy of a South African Genocide*, p. 62.

‘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’.[70] 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 ought we approach the missionary archive with scepticism when it comes to the topic of San genocide.[71]

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 a number of repetitive complaints to this effect, emanating from the farms of settling *trekboere* in this period, testifies. The Cape administration responded to these warning signals; and early in 1830 it was Stockenström, promoted to

70 *Melvill’s Diary*, p. 55.

71 The best attempt to overcome these problems of the archives with a narrative of San genocide is Jared McDonald, ‘Paper for Adhikari’s Book’, in Mohamed Adhikari (ed.), *Invariably Genocide?* (forthcoming, UCT Press, 2013).

Commissioner General by this time, who was given the job of investigating these grievances.[72]

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.[73]

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.[74] 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,

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72 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.

73 CAD, LG/9.

74 Johannes Coetze's compaign continues in the following chapter. In this commissioned report, his surname is spelt 'Coetzee', but in other government publications and press reports the same individual's last name is spelt 'Coetze'.

> 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, Coetze 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.[75]

Field-Cornet Schalk Burger, deflecting the charge of atrocities laid against him by the Griqua, likewise referred to a chilling conversation he had with a Griqua man:

> One Evening a Commando of Griquas passed my location […] I took [one of them] aside to my tent and asked him upon what principle he intended to act. He said 'I will destroy all the Bushmen I meet with'.[76]

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

75 Evidence of Johannes Coetzee. CAD, LG/9.

76 Evidence of Schalk Burger. CAD, LG/9.

encountering Hendrick Hendricks out in the *veld*, where he 'gave a full account of the Destruction of the Bushmen 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'.[77] 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.[78]

Two separate reports of Griqua inflicting massacres upon the San dominate the hearing. As Stockenstrom would summarise back to the Cape in March of 1830:

> 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.

77 Evidence of Korana Chiefs. CAD, LG/9.

78 Evidence of Herculus Jacobus Visser. CAD, LG/9.

> 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.[79]

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 to say on record that the *trekboere* often sponsored their commandos against the San.[80] 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.[81]

'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

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79 Stockenström, *Autobiography*, v. 1, p. 376.

80 Evidence of Abel Pienaar. CAD, LG/9.

81 Evidence of Hendrick Hendricks. CAD, LG/9. 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': Evidence of Schalk Burger. CAD, LG/9.

Griquas, about the possession or occupation of that part of the Bushman country, into which both parties have of late migrated'.[82] 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 1836-7, 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. 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'.[83]

As I show in the following chapter, the Griqua, with this country that Philip notoriously 'gave' them, would create a system of property relations that relied upon clever tenure

82 Stockenström, *Autobiography*, v. 1, p. 378.

83 Evidence of Jan Pienaar. *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.* CAD, HA89, 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.

restrictions for the white Boers, who sought to assume control of the lands by any means possible.

CONCLUSION:

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 to 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 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 fifty years beforehand campaigned against the San in nearby regions – this is easy to believe.[84] 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), mixtures – had moved in and appropriated the land. The LMS and other missionaries began to forget about the Khoe-San, turning their concerns instead predominately toward 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.

84 See Adhikari, *Anatomy of a South African Genocide*, pp. 28-77.

3.
THE GRIQUA LAND REGIME AND ITS CHALLENGES.

INTRODUCTION

In the first fifteen 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: coherent to both the Cape Colony and Boer communities, and resilient in the face of serious challenge.[85]

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. Other executive roles included 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.

85 The term 'Captaincy' appears to have been coined by Robert Ross, 'Griqua Government', *African Studies* 33, 4 (1974), 25-42.

‘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.[86] 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; and although Abraham won this particular election, the steadier-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.[87]

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 could 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.

86 Ross, ‘Griqua Government’, 28.

87 Ross, ‘Griqua Government’, 28, 32-3; Robert Ross, *Adam Kok’s Griquas: A Study in the Development of Stratification in South Africa* (Cambridge: Cambridge University Press, 1976), 34-9.

> 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'.[88]

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 nascent 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

88 Answers to questions proposed to the Chief Adam Kok, in a letter from the Colonial Secretary, 18 April 1845, reproduced in Karel Schoeman (ed.), *Griqua Records: The Philippolis Captaincy, 1825-1861* (Cape Town: Van Riebeeck Society, 1996), p. 93.

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, as I show below, by developing two distinct arguments that separately discredited the Griqua land regime from different angles. On the one hand, often the Griqua's Boer competitors 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 arbitrary.

Deploying these kinds of arguments, the white settlers of Transorangia wore the Griqua land regime down by attrition, and won this 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. They had snatched sovereignty from the sickly Griqua state; and in the early 1860s they forced the stateless Griqua to relocate far away from the middle Orange River.

DEVELOPING A LAND REGIME:

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.[89] 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 food, but should rather be sent to market.[90] 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

89 'The Tenure by which the Griqua hold the Lands of Philippolis' (1842), Council for World Missions Archive (hereafter: CWMA) 266, (LMS 18/4/A), Appendix Two. This document, penned by Philip, contains some interesting observations about Philippolis, though on more than one occasion, Philip gets his information quite wrong.

90 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), Volume Two, 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]), 87.

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, 776,996ha, or just short of 2,000,000 acres.[91]

The extent of this territorial dominance far exceeded anything achieved by the Old Inhabitants and the San. And the Griqua occupation was a different kind of occupation trialled by anyone before it. 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, and allow farmers 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. 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

91 John Melvill's Returns (18 January 1831), CWMA 164, reproduced in Karel Schoeman (ed.), *The Griqua Mission at Philippolis, 1822-1837* (Pretoria: Protea Book House, 2005), 63.

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.[92] 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.[93]

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.[94] 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

92 Law Number 3, 'Dorp's wetten'; Law Number 6, 'Van roovery en misdaad tegen goed en diefte'; Law Number 7, 'Over schade'. CAD, Griqualand East (GO)/2. The English translation appears in Schoeman, *Griqua Records*, 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.

93 Andrew Smith was witness to this process at the end of 1835 **(? Check),** 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), Volume Two, 180-2.

94 '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), 64-71.

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 temptation to trade away land holdings 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'.[95] A solution had to be found.

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, a number of others with illegal freehold rights issued by renegade Griqua – and he would assess the situation with sagacity. A new land register was created, and regulations were

95 Adam Kok III to John Philip, 31 May 1842, CWMA Incoming Letters (LMS 18/1/D), reproduced in Schoeman, *Griqua Records*, p. 45. 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.

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 Captain and *raad*, or otherwise the transaction would be considered invalid.[96] 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, but completely deny its availability to non-Griquas and non-British subjects, instead issuing only short-term leases to them.[97]

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 it. For the most part, they were the less republican type of Boer, who were disinterested – for the moment, at least – in raising flags in Griqua territory, taking the land by force, and intimidating landowners (such as what Jan Mocke and his radical troupe were contemplating at the time, the likes of which are considered shortly below).[98] On the contrary, these settlers, no more than a hundred 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

96 Law Number 1, 'Betreffende het transport of verkooping der plaatzen'. CAD, GO/2; English translation in Schoeman, *Griqua Records*, 241.

97 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 Subjects, if they did not continue true to the Colony, their bargains for our lands would be broken'. See Minutes of a Conference at Colesberg, 31 Dec 1842 (no. 3), CAD, Lieutenant-Governor (LG)/605.

98 **See below, pp. ??.**

and pledging loyalty at the same time to the Crown, which they did on, probably around the middle of June in 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 'are bound to state to the members of the community the number of years they have agreed on, and the sums paid for hire, and the possessors of the lands are bound to inform the Chief & Council of their having hired the said lands'; and where settlers had come without making leases, 'three successive years in all respects' were allocated for a proper lease to be created with a Griqua.[99] Importantly, whether by chicanery or ignorance (and probably the former), the 1840 treaties said nothing about the Griqua law restricting complete alienation.

99 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, it more likely to be in the vicinity of the latter). CAD GH 8/10.

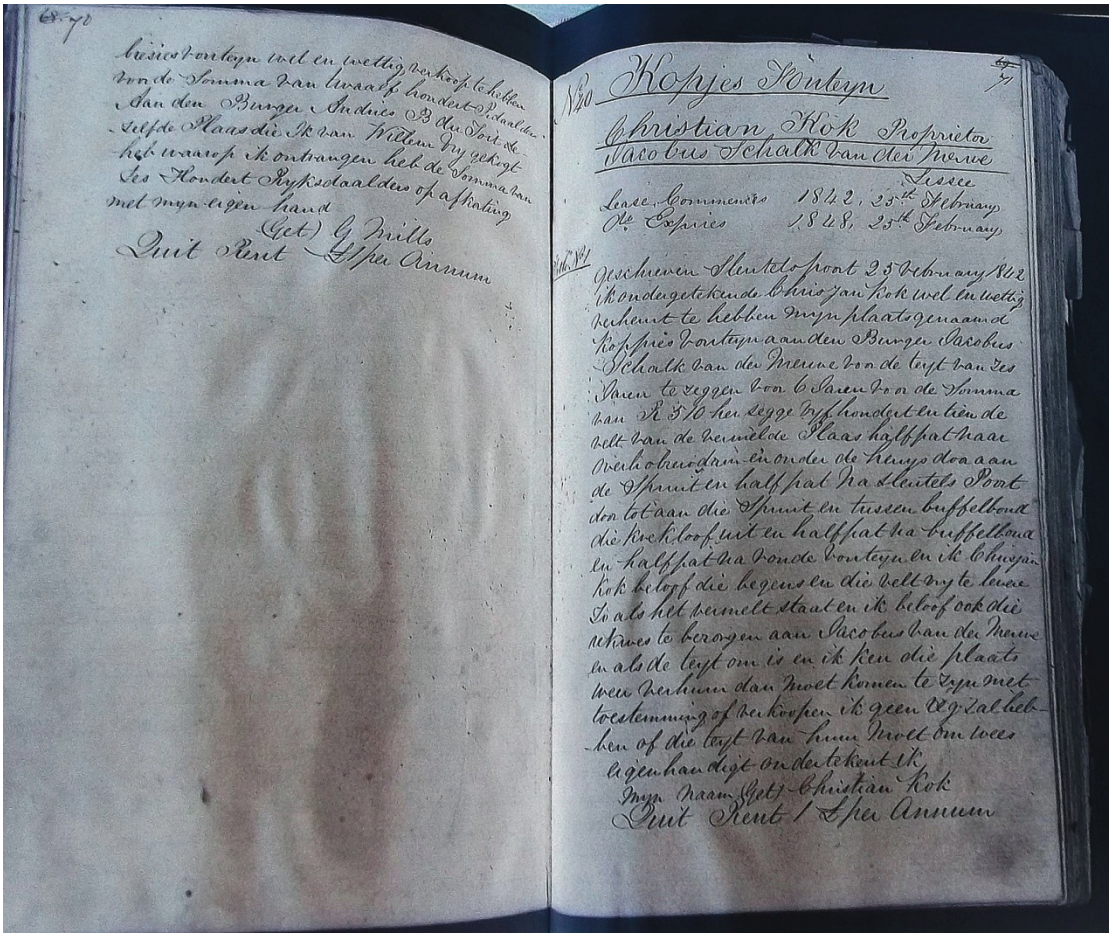

Figure 2: An example of a Griqua lease.
No. 40. Kopjesfontein.
Between Christian Kok (proprietor) and Jacobus Schalk van der Merwe (lessee)

'Three Years was the common time' for early leases, so claimed Philip in 1842.[100] But the 89 receipts in the Griqua land register for the period between 1837 and 1842 reveal his misjudgement on the Griqua land regime yet again. There was, in fact, considerable variation in the lease periods, which were commonly set up to twenty years, and sometimes even more.[101] Freehold continued to be tightly restricted, however, and this quickly concerned the white settlers. Though there was a handful or two who had

100 John Philip to Sir George Napier, 25 August 1842. CWMA 266 (LMS 18/4/A).

101 Griqua Land Register and Letter Book, Philippolis. CAD, VC137.

managed – at great cost, and against the wishes of the Captain – to secure freehold rights from individual Griqua secretly, 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.[102] As Johannes Coetze plainly put it to a colonial enquiry, 'It is hard for us who are faithful to the Government to have no land'.[103] Another white settler, Abel Pienaar, made his point that

> 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.[104]

To this, John Hare the Lieutenant-Governor 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

102 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.

103 Testimony of Hans Coetze, Minutes of a Conference at Colesberg, CAD, LG/605 (no. 2). Though the transcript gives his name as 'Hans', this was undoubtedly the settler Johannes Coetze, who was vocal with respect to the Griqua extermination of the San and his own dealings with a Captain called 'Danster'. For this, see earlier, ?? and below??.

104 Testimony of Abel Pienaar. CAD, LG/605 (no. 2).

> confidence from him but I will neither take from the Griqua their lands by force myself, neither will I furnish others to do it.[105]

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 again 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

105 Hare's Response. CAD, LG/605 (no. 2).

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 forty year leases.[106] 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

106 Maitland Treaty, 19 February 1846. The original resides along with several others framed by Maitland at CAD, GH 19/5.

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 more than ever at each other's throats – and each group was calling on the Crown to step in and resolve the matter once and for all.

CHALLENGES TO THE LAND REGIME:

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'.[107] 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.[108]

107 CAD, LG/9.

108 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]), Volume One, pp. 213-4, 224-6. See also Andries Stockenström to Colonel Hare, May 14 1845. CAD, Government House (GH) 8/14.

The Griqua were never ignorant of this Bushmanland argument. ‘They say it is Bosjemanland, 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 Bosjeman land. But, Sir, where is not Bosjemen land? From here all along the Great River to the great sea ocean is Bosjemen land, and Graaff Reinet and everywhere where the Boer resides is also Bosjemen land.[109]

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 into 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 intergroup fighting, a drawn-out leadership battle, and even a sex scandal featuring himself and the wife of a Griqua.[110] Probably the most pressing issue however was the problem of the white settlers, who

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109 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*.

110 See Schoeman, *Griqua Mission*, pp. 65-105.

still clung onto 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.[111]

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.[112] The Bushmanland argument would re-emerge later; in the meantime, the Boers were split into two main factions, each of which with their own strategies of securing individual property rights in land: on the one hand, there were those respectful of the Crown as the reigning sovereign order,

111 Kirby, *Diaries*, pp. 73-4.

112 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).

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 whom 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, many 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 it was confirmed to them 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.[113]

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 divvy out 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

113 Andries Stockenström to Benjamin D'Urban, 13 January 1837. CAD, LG 616/74.

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.[114] 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 the Cape were over.[115] 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.[116]

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 1842-3.

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114 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.

115 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 pp. ??.

116 Adam Kok III to Jan Mocke, 25 October 1842; English translation appearing in the *South African Commercial Advertiser*, and reproduced in Schoeman, *Griqua Records*, Doc. 45, p. 48. See also Doc. 46, p. 49-51.

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'.[117] That Hare issued this document flanked by a significant military presence seems to have 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; so too would there be a large number of white settlers eager for answers, many probably with voided title deeds 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,[118] whose

117 *Government Gazette*, no. 1934, 13 January 1843. Part of this appears in Southey's report for the Diamond Fields Dispute. See CAD, HA90, Annexure 74 to 1872.

118 Statement of Mr. Ortlepp. CAD, LG/605 (no. 3): 'the Country they now occupy formerly belonged to the Bushmen and not to the Griquas'.

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.[119]

The argument made by the settler Johannes Coetze, 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. He claimed to have done so in the year 1830, for himself and 'the Burghers of his Field Cornetcy'.[120] Coetze 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).[121] 'Adam Kok was not at Philippolis and the Bushmen were sole possessors of the land', Coetze argued. Of course, Adam Kok II *was* at Philippolis at this time, as

119 Statement of Hendrick Hendricks. CAD, LG/605 (no. 3).

120 Statement of Hans (i.e. Johannes) Coetze. CAD, LG/605 (no. 2).

Coetze was probably aware; his point rather seems to have been that the Captaincy lacked full control over lands this far north in 1830.

Coetze'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.[122]

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121 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 of which other researchers, it is hoped, will get decisively to the bottom. Schoeman, *Griqua Records*, 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.

122 *Grahamstown Journal*, 26 January 1843; See *Grahamstown Journal*, 16 Feb 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.

The Cape representatives appear not to have been persuaded by this argument.[123] Unimpressed, Coetze and his partner van der Walt immediately set out to locate 'Piet Krankuil, a Bushman chief', to confirm the legitimacy of their purchase.[124] 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 quite taken by Hendricks' 'Rule Britannia'-style of rebuttal, but there appears more to it than this.[125] Surely not of ignorance, but rather we must suspect by choice in the interests of strategy, they saw the history of the region differently. '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', stated Hare at the first of the meetings. '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

123 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. CAD, LG/605 (no. 2).

124 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.

125 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.

bound to respect him as such – and they must do so'. For the moment, Kok III's claim to Philippolis would be upheld, and never was the San question taken as seriously as, for instance, Stockenström had and continued to do.

British protection was secured. Before 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.[126]

These sentiments – vintage rights talk, to be sure – capture how the once fully independent Griqua Captaincy was becoming increasingly reliant upon British 'help' to hold onto its land regime. Kok III, deep down inside, must have known this himself; indeed, earlier on in the very same meeting the Captain admitted of 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'.[127] As we will see, this difficulty regarding jurisdiction would lead to a major turning point in Griqua-settler relations.

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126 Hare's Response. CAD, LG/605 (no. 3).

127 Statement of Adam Kok III. CAD, LG/605 (no. 2).

Over the next two years, with the 'rebel' contingent re-emerging with vengeance and stirring up the community, policing Philippolis became near impossible.[128] 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:

> if such proceedings are not instantly checked, *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.[129]

The following month, Hare reassured the Captain that 'all Inhabitants, Dutch and English', that came into his territory, even 'British Subjects', 'were nevertheless amenable to [his] Laws'.[130] 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

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128 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 CAD, GH 8/14, and Ross, *Adam Kok's Griquas*, pp. 55-6.

129 Minutes of a meeting and enclosure to despatch to Sir George Napier, 28 March 1844. CAD, GH 8/13. Emphasis in original.

130 Hare to Peregrine Maitland, 11 April 1844. CAD, GH 8/13.

Mills', only to face a horde of armed settlers assembled at the Modder River with violent intent.[131]

Another episode, with greater consequences, came with the attempted apprehension of 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.[132] 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.[133]

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131 Rawsthorne to Hare, 12 February 1844. Colonel Hare to George Napier, 16 February 1844. CAD, GH 8/13.

132 The following account comes from CAD, 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'.

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 were the negotiations between Kok III and Maitland in the immediate aftermath of the conflict.[134] 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 did.

The treaty eventually entered into between Kok III and Her Majesty's representative Maitland sought to address these issues. 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 above – 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 – 'all 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 to be decided not by he and his *raad* as before, but by a permanently installed 'British Resident', who possessed a kind of floating jurisdiction over the Transorangia with almost full magistracy powers.[135]

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133 See, for instance, Rawstorne's Notice to the Emigrant Farmers, 23 April 1845. CAD, LG/373. See also the collection in CAD, GH 8/14.

134 For the lead-up to this event and its aftermath, see Ross, *Adam Kok's Griqua's*, pp. 56-62.

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 particularly cases regarding property that might be settled quickly.[136] 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 fifteen 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.[137] The advice given to the settlers in 1842-3, to defer to the irrepressible power of contract, was heeded.

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.

135 Maitland Treaty, Articles 22-26, in CAD GH, 19/5. 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*.

136 'Notice with a View to the investigation of Future Settlement of Claims', 17 December 1845. CAD, GH 10/1.

137 Records, Court of the Special Magistrate. CAD, GH 10/1.

White settlers often showed contempt of it.[138] 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.[139] The court's importance should not be underestimated however, for it had made the Captain's job redundant. Kok III was often witness to the hearings, but he was distanced from decision-making. Thus, however badly he struggled exercising it beforehand, he had, after late 1845, 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 receive protection for it.

DESTRUCTION OF THE LAND REGIME:

138 As, for instance, in the case regarding Matheus Jacobus Oosthuisen, who stormed out of the room, without settling 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. Records, Court of the Special Magistrate, 5 and 8 January 1846. CAD, GH 10/1.

139 See the letters outward for January and February 1846 in CAD, GH 10/1.

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 was a very pressing issue. But there were other urgent matters. War with the 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.[140] 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.[141] 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'.[142] 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

140 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).

141 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.

142 Ross, *Adam Kok's Griqua*, p. 63.

reputedly hurled around the room.[143] 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 which were far worse than any other to which he had previously consented. So this 'treaty' 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.

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).[144] 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

143 For this, see Ross, *Adam Kok's Griquas*, pp. 63-5.

144 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*) than any property convention. See Schoeman, *Griqua Records*, pp. 130-1, 268.

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.[145]

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.[146] The truth, that not just a portion but the *entirety* of Griqua

145 *Government Gazette* no. 2204, 24 February 1848. Original date of treaty was 24 January 1848.
Reproduced in Schoeman, *Griqua Records*, 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' duation 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.

146 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.

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.[147]

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'.[148] Finally it would appear the claims of Johannes Coetze and others were taken seriously; more than that, this

147 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).

148 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.

argument had now been taken up in officialdom, affecting no doubt how many perceived the question of land rights in Philippolis thereafter.

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.[149] 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 were besides stuck in Bloemfontein residing over the entire Sovereignty.[150] They stood away from the Griqualand question, issuing warnings in public and title deeds in private, until, after a few years, their jurisdiction became superfluous too.[151] In the meantime, forty 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

149 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).

150 The Resident was largely preoccupied with pacifcying 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.

151 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.

Griqua law against alienation was seemingly voided, opportunistically emerged in greater numbers than before to claim they had purchased from individual Griqua.[152]

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.[153] 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 recorded sales

152 Ross writes how Adam Kok claimed that the ORS misinterpreted the policy. He cites a letter from Kok and Council to Smith, 22 Feb 1848, in GH 22/3, which I could not find at that location. See Ross, *Adam Kok's Griquas*, pp. 81-2.

153 Ross, *Adam Kok's Griquas*, pp. 81-93.

occurred for the year of 1854 alone. Over the next six years, 153 Griqua farms would be sold to Boers.[154]

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.[155] He accepted compensation and looked to the British; the only offer they made him was a strange one: 'a tract of unoccupied country lying on the south-east side

154 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.

155 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

of the Drakensberg', hundreds of kilometres away.[156] 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'.[157]

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.[158] 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.[159]

CONCLUSION:

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

156 Sir George Grey: Memorandum Concerning the Occupation of Nomansland by the Griquas (9 November 1860). Reproduced in Schoeman, *Griqua Records*, p. 213.

157 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. 255-275.

158 OFS Government: Proclamation of Philippolis as a District of the Free State (22 April 1862). Reproduced in Schoeman, *Griqua Records*, pp. 223-4. See also Schoeman, *Griqua Captaincy*, pp. 236-9.

159 Ross, *Adam Kok's Griquas*, p. 103.

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 the Griqua land regime may largely be attributed to two powerful arguments that circulated 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.[160] Others 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 onto 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 register 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

160 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 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 van Aswegen, 'Verhouding Tussen Blank en Nie-Blank', pp. 173-4. For reports of Boer attacks on San in 1854, see the letter-to-the-editor campaign of Thompson, *Word on Behalf of the Down-trodden*, pp. 22-7.

period were unpleasant, and never again did their Captaincy boast as much influence as it did during their time at Philippolis.

Though out of sight in the populous Transkeian territories, the Griqua people remained resilient enough to see the rise and fall of *apartheid*.[161]

161 For this, see 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. See also Edward Cavanagh, *The Griqua Past and the Limits of South African History* (Oxford and Bern: Peter Lang Publishers, 2011).

4.
THE ERASURE OF PAST INTERESTS IN LAND AND THE CREATION OF AFRIKANER ORANIA.

INTRODUCTION:

This chapter, and the one after it, explore the same issues as the two chapters on the Griqua people of Philippolis. Here, I describe how several claims to the land of (what would after 1991 become) Afrikaner Orania, have developed over the course of South African history, from colonial annexation to the present-day period. This is a narrative similar to that which precedes it, and indeed, 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, about power and who has it.

At the outset, I introduce the political dilemmas faced by the Afrikaners of the 1980s. Then I provide a legal-historical background to lands in and around Orania, from earliest times up to its purchase in 1991. Before concluding, I call upon a number of sources to reproduce a significant event in the history of the region – the moving in of Afrikaners, and the erasure of past interests in land.

POLITICS:

But who are the Afrikaners? They are 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 homogenous group. Theirs is a history intriguingly replete with internal political divisions: starting with those 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 with the *verkramptes* and *verligtes* in the ranks of the National Party and the *Broederbond*, and so on it has gone up to the present.[162]

Apartheid was close to the hearts of many Afrikaners. After several attempts to preserve the regime by the National Party miserably failed – 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 foremost concerns among these Afrikaners; and several organisations – cultural movements, political parties, pressure groups and others – began to throw around the idea of a separate *volkstaat*.[163]

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162 The most accessible and comprehensive history of the Afrikaners is, and probably will remain for some time, Herman Giliomee, *The Afrikaners: Biography of a People* (London: C. Hurst, 2003).

Amid the many negotiations associated with the transition from *apartheid* segregationism into democratic integrationism, a number of different *volkstaat* designs were explored. These were optimistically hoped by many right-wing Afrikaner nationalists to be installed in the Cape, the Free State, and the old Transvaal (across parts of what are today's Mpumalanga, Gauteng, Limpopo, and the Northwest 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.[164]

163 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 Dissertation (University of Stellenbosch, 2007), 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. 627-67.

164 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), 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 http://www.volkstaat.net/, accessed 14 January 2012.

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 100km downstream (north-west) from Philippolis, on the other side of the Orange River from it – had come onto the market in 1989, and was perfect for his *volkstaat* project. Before long, a private company comprising of fifty 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.

LAND:

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. [165]

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

165 Evidence of stone-age occupation can be traced back tens of thousands of years, but an abundance of rock art in the greater Orania region, 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 4000-6000 years old. 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).

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 1822-1824, 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.[166] 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.[167] Though the period was a bloody one, there were no wars of conquest *per se*; there were a few treaties, but none (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.

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166 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.

167 For reproductions of the Punishment Act and Smith's Annexation, see Karel Schoeman (ed.), *Griqua Records: The Philippolis Captaincy, 1825-1861* (Cape Town: Van Riebeeck Society, 1996), pp. 32, 107-10. 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.

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 of these were, of course, 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 – 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 either side of the Orange 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.[168] 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

168 Pienaar, 'Die Aanloop tot en Stigting van Orania', p. 57.

property reputedly cost Vermeulen a whopping £3952, proving, firstly, just how impenetrable the market in land had become for individuals unversed in the cash economy and private accumulation by this time, and suggesting, secondly, a degree of speculation-induced inflation amid the incipient diamond rush that was taking place just 150km to the north, in Griqualand West.[169] 'Settler capitalism' had arrived in Transorangia, it seemed, for which non-settlers were ineligible.[170]

Much of the land remained in the Vermeulen family's hands until 1950, when 'Vluytjeskraal was sold for £5 per morgen to Gideon Botha'.[171] Just over a decade later, a small portion of the property – '2769ha, 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

169 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.

170 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).

171 Pienaar, 'Die Aanloop tot en Stigting van Orania', p. 57.

the mid-1960s.[172] This was a calculated and well-publicised project, and it required the construction of two major dams and a few riverside stations.[173]

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 worksite – and this explains the creation of the DWA's self-fashioned 'Vluytjeskraal town'. By the end of the 1960s, this construction town had become 'Orania'; at the expense of the government, it transformed into a fully-equipped *dorp* of 483ha exclusively for DWA employees, complete with schools, church, town hall, recreational facilities, and a rich surrounding of irrigable land.[174]

Approximately 200ha of this 483ha 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', according to Orania's resident historian and former *dorpsbestuurder* Manie Opperman. 'The white people

172 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. Orania Dorpsraad Archives (ODA).

173 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 Dissertation (Bloemfontein: University of the Orange Free State, 1999). For an idea of the kinds of propaganda used by the DWA, see *The Orange River Development Project and Progress* (Johannesburg: Voortrekkerpers, 1965).

174 Andreas Duplessis, *Orania in 'n Neutedop* (Orania: n.d.); Pienaar, 'Die Aanloop tot en Stigting van Orania', pp. 57-8;

lived in one part; the workers lived away where they weren't seen'.[175] Furthest away from the *dorp*-proper was the *Kamponggeriewe*, a black location for the project's black migrant labour force, some of whom from as far away as the Transkei Bantustan, approx. 200 strong; 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 sixty-four small houses at an area no greater than 80ha or so, and a small compound with twenty, 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).[176]

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.[177] 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.[178]

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175 Interview with Dr. Manie Opperman, Orania (17 March 2011).

176 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. ODA. See also Matimu Heritage Solutions, *Report of the Research into the Land Claim by the Orania* Community (Restitution on the Commission of Land Claims, February/March 2005), pp. 13-8 (Hereafter: *Report on Orania*); T. L. Langenhoven (former overseer of Orania project) to H. Opperman (Orania *dorpsraad*), 27 September 2005. ODA.

177 Nearby farming land must here be distinguished between 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.

178 *Report on Orania*, pp. 20-1.

By the early 1980s, the project had downsized, and most of Orania's engineers and labourers were offered other positions in the DWA 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 those of *Grootgewaag*'s empty houses had attracted squatters – a mixture of Coloured and Black families[179] – from the nearby region.[180]

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 483ha 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

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179 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.

180 Interview with Opperman (17 March 2011); Charles Leonard, 'In Search of a Homeland', *Sunday Star* (17 February 1991), p. 1. See also *Report on Orania*, p. 18.

been completed, the residents would be allowed to keep their homes'.[181] 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?'[182] 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 2769ha 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'.[183]

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,

181 *Report on Orania*, p. 38

182 *Report on Orania*, pp. 34-5.

183 Brown, 'Proposal', p. 4.

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.[184] Unfortunately, Brown gave no reason why he thought it best to leave 'Township Orania' for the current inhabitants with their tenure in a kind of limbo on the one hand, while recommending the rest become alienated into private lots on the other hand. 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.[185] 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).

184 '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.

185 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'.

Nevertheless, in 1989, it was passed onto the Department of Public Works and Land Affairs for disposal.[186]

An entrepreneur from Johannesburg named Jacques Pretorius bought the town in September of 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.[187] '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"'.[188] Accordingly, in August of 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).

CONFRONTATION AND REMOVAL:

Early in 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.

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186 De Beer to Otto; Director-General (Water Affairs and Forestry) to Administrative Secretary (Public Works), 21 October 1996. ODA. See also Brown, 'Proposal'.

187 Gunning, 'Wat Orania Regses Kan Kos', p. 4; Interview with Opperman, (17 March 2011).

188 Interview with Opperman, (17 March 2011).

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?'[189]

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.[190]

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,

189 Mariechen Waldner, 'Ons wil nie Weg nie! Waar moet ons Heen?', *Rapport* (17 February 1991), p. 10.

190 *Report on Orania,* p. 28.

> 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.[191]

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 2004-5. 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.

191 Interview with Opperman, (17 March 2011).

> 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.[192]

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).[193] 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 – 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

192 *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.

193 *Report on Orania*, pp. 25-8, 32.

accommodation'.[194] 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.[195]

It has been estimated that around 500 people were living in Orania, mostly in *Grootgewaag*, towards the end of 1990.[196] Without any written rights or deeds, all had become 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 alarmed warning 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 Orania 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

194 *Report on Orania*, pp. 27-8.

195 'Grootgewaag se Kleurlinge wil nie Padgee nie', *Die Transvaler* (20 February 1991), p. 9.

196 '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*'.

unawares about the sale – the other of the 'distinct experiences surrounding their removal', as the Report puts it.

Starting in the early months of 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[197] – 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 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.[198] 'We were removed in a very painful manner', writes 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.[199]

197 For the March 31 ultimatum, see 'Grootgewaag se Kleurlinge', p. 9.

198 *Report on Orania*, p. 29.

199 *Report on Orania*, p. 29.

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.[200]

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 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.[201]

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200 *Report on Orania,* p. 30.

201 *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.

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 unique – 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.

CONCLUSION:

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's modest Orania would prove the most successful.

Orania, alienated by the 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 to hold property in land had always been difficult for non-settlers 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.

5.
The Oranian Land Regime and its Challenges.

INTRODUCTION:

Right from the *volkstaat*'s conception, the brains behind Orania faced a dilemma. On the one hand, they wanted to create a community allotted into 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, a unique and 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* (Vluytjeskraal 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 that 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'.[202] 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.

Between 1991 and 2011, as I show in this chapter, both the VAB and the Orania executive 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.

DEVELOPING A LAND REGIME:

202 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 the 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).

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 another business entity: 'Vluytjeskraal Pty Ltd' (also known as 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 Africa as the 'share block'.[203]

Share block regulations first appeared in the *Share Blocks Control Act* of 1980 (and would be amended four times before 1989).[204] In many respects, the regulations are similar to *strata title* (also known as *condominium*), developed in the last sixty years or so in the United Kingdom, the United States, 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,

203 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 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'.

204 *Share Blocks Control Act* (No. 59 of 1980).

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.[205]

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.[206] 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.[207] 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

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205 Quote is from *Share Blocks Control Act*, §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).

206 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.

207 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.

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.[208] 'We have to okay the newcomer', confirms John Strydom, public relations officer,

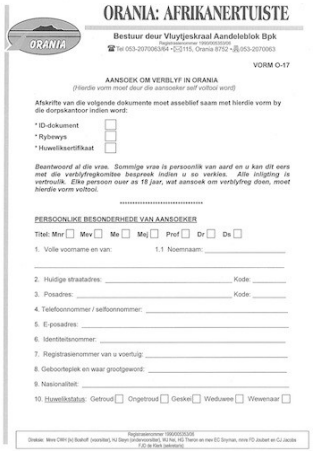
> which means that we have to have an interview with him, we have to explain to him what Orania is all about, and we have to make sure that he understands it firstly and that he agrees to that. If we are unhappy – if somebody comes here and he is a Scot, and he's not interested in the Afrikaner culture – we will try and convince him that, you know, this is not really your type of thing, why do you want to buy here?[209]

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 procedures, deeds of association, and *grondwet*

208 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.

209 Interview with John Strydom, Orania (17 March 2011).

(constitution). These are contained in the *Aansoek om Verblyf in Orania* (Application for Residency in Orania).[210]



ORANIA: AFRIKANERTUISTE

Bestuur deur Vluytjeskraal Aandeleblok Bpk

VORM O-17

AANSOEK OM VERBLYF IN ORANIA

(Hierdie vorm moet deur die aansoeker self voltooi word)

Afskrifte van die volgende dokumente moet asseblief saam met hierdie vorm by die dorpskantoor indien word:

* ID-dokument
* Rybewys
* Huwelikssertifikaat

Beantwoord al die vrae. Sommige vrae is persoonlik van aard en u kan dit eers met die verblyfregkomitee 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 AANSOEKER

Titel: Mnr ☐ Mev ☐ Me ☐ Mej ☐ Prof ☐ Dr ☐ Ds ☐

1. Volle voorname en van: 1.1 Noemnaam: _____

2. Huidige straatadres: _____ Kode: _____

3. Posadres: _____ Kode: _____

4. Telefoonnommer / selfoonnommer: _____

5. E-posadres: _____

6. Identiteitsnommer: _____

7. Registrasienommer van u voertuig: _____

8. Geboorteplek en waar grootgeword: _____

9. Nasionaliteit: _____

10. Huwelikstatus: Getroud ☐ Ongetroud ☐ Geskei ☐ Weduwee ☐ Wewenaar ☐

Figure 3: Front page of the application form.

The *grondwet* has nine clauses. The first three 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.

210 *Aansoek om Verblyf in Orania*. I am grateful to John Strydom and the Orania *volksraad* for agreeing to provide with a copy of this document.

> 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 four and five 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 six and seven are more complicated, referring to local authority, internal laws, and social order. Most interesting here is the supremacy afforded to 'the jurisdiction of the Vluytjeskraal 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, results in an in-house process – and this is the way the executive likes law done. The first phase is *mediation*, with hearing(s) 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 in Orania of the signatory is terminated.

Clauses eight and nine 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 nineteen, 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 thirteen 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 it goes quite a bit deeper into communal relations and how to 'practice good neighbourliness' – rules established in the interests of maintaining a 'well-ordered society'.

The *Aansoek om Verblyf in Orania* – an intriguing, seventeen-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 Vluyjteskraal 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.[211]

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. 'If I have a share', so says Maritz, hypothetically again,

> 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 Vluyjteskraal 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.[212]

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 in Orania[213] – 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

211 Interview with Hanri Maritz, Orania (17 March 2011).

212 Interview with Maritz (17 March 2011).

usage of the land', according to Maritz.[214] '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.[215] 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 483ha 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

213 Indeed, the prices given by Maritz as an example are very modest. Nowadays, it is not uncommon for small, simple (and frankly unflattering) houses to fetch well over R1m each. At minimum this represents something like a 20-30x increase within the space of just twenty years. Given the unpredictable Rand in the 1990s, it is difficult to put this into perspective; more recent data is 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 5x for the period 2005-2011, the more recent period 2008-2011 seeing an increase of over 3x 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.

214 Interview with Maritz (17 March 2011).

215 Interview with Strydom (17 March 2011).

> in here without [buying] property still have to go through the whole procedure that I explained to you earlier.[216]

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; 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.[217]

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 bodies corporate 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 however is where ultimate ownership lies: in Israel, full title tends to be vested either in

216 Interview with Strydom (17 March 2011).

217 *Aansoek om Verblyf in Orania* (Guidelines, Regulations and Procedures, Sections, 14.1, 14.2).

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.[218]

Today, Orania has grown to accommodate around 1000 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 program of all-white education in Orania. The economy is modest, but strong: the farming community appended to Orania boasts a bountiful produce of pecan nuts, grain and 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 a number of 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

218 Smadar Ottolenghi, ‘*De Facto* Membership in a *Kibbutz* and *Moshav*’, *Tel Aviv University Law Review* 4 (1978-9), pp. 115-41; Smadar Ottolenghi, ‘Membership in a *Moshav Ovdim* – From Strict Admission Procedures to Automatic Membership’, *Tel Aviv University Law Review* 7 (1985-6), 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. 471-491.

recruited especially for Orania).[219] Two other main sources of revenue, both tapped into by the VAB, keep the *dorp* functioning as a normal town. One of these is the artificially stimulated 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 by shareholding residents monthly. 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 R1,500-2,000 per month.[220]

This seems like a lot of money to spend on upkeep, but the VAB have an eye on the future, and so regard 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

219 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.

220 Interview with Maritz (17 March 2011). The term 'levy fund' comes from the *Share Blocks Control Act*, § 13 (1).

inclined to make improvements to their plots. Equally pragmatic is the VAB's policy toward 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.[221] 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.[222] Again, this policy is in the best interest 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.[223]

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

221 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).

222 Interview with John Strydom (21 July 2011).

223 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.

with significant diplomatic skills and canny legal strategies to protect its bestowal of partial autonomy, and the entitlement to land, as explored below.

CHALLENGES TO THE LAND REGIME:

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.[224] 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.[225]

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 (and would later be known as *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

224 See, for a pivotal piece of legislation, the Municipal Structures Act, 1998, Act. No. 117 of 1998.

225 *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.

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 as provided in Article 38 of the Constitution of the RSA' – and the matter was 'postponed' until the government could organise a 'later adjudication'.[226]

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.

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226 *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 Febraury 2002), p. 4. Section 38(c) of the Constitution 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'. See *Constitution of the Republic of South Africa* (Act No. 108 of 1996).

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, relying mostly upon Section 235's protection for small, autonomous communities[227]; 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 puts it,

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227 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.

> The government looked at it, and they shelved it. And it is shelved. 20 years now [since Orania's purchase]. 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.[228]

The next serious threat to Orania came in the year 2004. When the *dorp* first came onto the market in the late 1980s, 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.[229]

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 re-acquiring 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 onto 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

228 Interview with Opperman (17 March 2011). See also Spies, 'Orania vs Regering'.

229 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*.

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 1994-2004, 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'.[230] But how would Orania get around the problem, and avoid seeing their *dorp* frequented by cheap, non-Oranian (i.e. 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, private land company acquiring land on behalf of Orania. The KK was established in 2002, and has expanded Orania's sphere of influence by 5000ha since this time, and continues to grow.[231] Three large KK farms extend well beyond the Orania *dorp* into neighbouring municipalities, and a number of others more closely surrounding the 483ha *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 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

230 Interview with Lukas Taljaard, Orania (20 May 2011).

231 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.

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'.[232]

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'.[233] The Orania executive, like Taljaard, is keen to see the 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 chapter before this one, that laid upon it by a community of

232 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.

233 Interview with Strydom (17 March 2011).

claimants supported by the Commission on the Restitution of Land Rights. When, at the end of winter in 2005, a claim to the entire 483ha region of 'Vluykieskraal [sic] Farm, today known as Oranje [sic]', was processed and gazetted, the community of Orania was caught completely off-guard.[234] By the time it came to the attention of the Orania executive, in fact, the sixty-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.[235]

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.[236] It is uncertain where this figure of sixty 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'.[237]

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234 *Government Gazette*, no. 27846. Notice 1333 of 2005.

235 Lezanne Rungasamy (Deputy Director, Regional Land Claims Commission, FS/NC) to H. Opperman (Orania *dorpsraad*), 12 October 2005, ODA. *Promotion of Access to Information Act* (no. 2 of 2000).

236 Yolandi Groenewald, 'Coloureds claim the volkstaat', *Mail and Guardian*, 18 November 2005. Available online at: <http://www.mg.co.za/article/2005-11-18-coloureds-claim-the-volkstaat>, viewed 10/1/2011;

237 Matimu Heritage Solutions, *Report of the Research into the Land Claim by the Orania* Community (Restitution on the Commission of Land Claims, February/March 2005), pp. 13-8 (Hereafter: *Report on* Orania), p. 19.

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.[238] Later it was confirmed that the claimants were regarded as 'a community' in terms of the 1994 *Restitution of Land Rights Act*, 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'.[239] 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.[240]

238 Minutes of Meeting Regarding Orania Restitution Claim, Regional Land Claims Commission (RLCC): Northern Cape, 12 October 2005, ODA, p. 2.

239 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, ODA. See also the 1994 Restitution of Land Rights Act, available online at:

240 Minutes of a Meeting, 12 October 2005, ODA, p. 3.

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.[241]

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.

241 Willie Spies (Attorney for the Community of Orania) to Mr. Sugar Ramakarane (Regional Land Claims Commissioner, FS/NC), 1 December 2005, ODA.

> 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![242]

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 sixty-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.[243]

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. $US400,000-725,000 at the time) to a community of 'about 20 families',

242 Interview with Opperman (17 March 2011); Interview with Opperman (18 May 2011).

243 Spies to Ramakarane. See also J. F. van der Merwe (Dorpsbestuurder of Orania) to Mr. Sugar Ramakarane (Regional Land Claims Commissioner, FS/NC), 3 October 2005, ODA.

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.[244]

CONCLUSION:

The Orania *volkstaat* has been established on land formerly owned by the DWA. It has been sequestered and offered to settlers as shares by the 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 Native 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 market bubble – not in land *per se* but in shares

244 *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. Available online at: <http://www.news24.com/SouthAfrica/News/Orania-pleased-at-land-claim-20061205>, viewed 10/1/2011.

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.[245]

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 re-instated. 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 483ha 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.

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

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245 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.

6.
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 over hundreds of years. 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 on a number of factors, as we have seen.

Taking note of the economic contexts provides one way to explain the rise and fall of these land regimes. The traditionally hunter-gatherer San of greater Philippolis were locked out of colonial markets in land and sheep. They were superseded first by the Griqua, who adopted a mixed economy based upon pastoralism. Then, the San and the Griqua were both comprehensively superseded by the Boers who came to dominate networks of trade and produce in the Transorangia. The titleless residents of Orania also faced economic disadvantages. When the unemployed inhabitants of Orania, redundant former employees of the Department of Water Affairs, had their homes taken away from them, Orania was shortly afterwards converted by its new owners into an artificially enclosed market system where their labour was of no value.

Another common determinant in these two narratives is the prevalence of what I call rights talk. 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 London Missionary Society. 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.

There are immense differences in discursive context between the two case studies, but 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 program of municipal reform. Of all the communities affected by the program – 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.

Economics and rights talk are important factors to consider in both case studies, but the main factor in the rise and fall of land regimes I have tried to stress throughout this thesis is the influence of the sovereign order. Let us first take the Griqua example. If, as several legal-historical scholars have noted of late, that 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.[246] 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. They attempted to become sovereign over Philippolis by creating their Captaincy and emulating settler/European styles of property, and were successful: Kok III was identified by the British administration at the Cape Colony 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 with the 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

246 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).

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 for 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 – is that this 1991 removal was the *only* dispossession recognised by the Commission.[247] 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 before the end of 1998 now have no chance to do so).[248] 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

247 Elsewhere, jurisprudence and popular understandings of indigenous land rights are informed (sometimes controversially) by a historical imagination that considers the interaction between indigenous and settler communities from the very *origins* of settler colonialism. This body of law flourished from the 1970s onwards mainly (but not only) in Australia, New Zealand and Canada, though today its momentum has stalled. The best account of this is Paul McHugh, *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford and New York: Oxford University Press, 2011).

248 *Restitution of Land Rights Act* (no. 22 of 1994). Available online at: <http://www.info.gov.za/acts/1994/a22-94.pdf >, accessed 14 June 2011.

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 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.

Though it remains to be seen which land regime will replace Orania, the formula for such a transfer, I contend, may exist right here in this thesis.

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