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**Forging Natal: land rights in a colony of settlement**

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forge – verb

1. to form by heating and hammering; beat into shape.
2. to form or make, esp. by concentrated effort: to forge a friendship through mutual trust.
3. to imitate (handwriting, a signature, etc.) fraudulently; fabricate a forgery  
*www.dictionary.com.*

Natal perhaps is a solitary instance of a Colony having been established by Great Britain without cost to Imperial funds.  
*The Colonial Office List, 1866, 64.*

Unhappy Mr Peel, who provided for everything except the export of English relations of production to Swan River!  
Karl Marx, *Capital*, I, chapter 33.

## **Introduction**

Like water and air, land is a necessary and unvaried condition of our physical existence: but perceptions of land and social relations with land used, occupied, claimed, exchanged, won, divided, destroyed, lost and longed for are as vast, varied and dynamic as life itself.

This paper examines some aspects of changing attitudes to, and concepts of, land in relation to an extent of territory on the south east coast of Africa, between the Indian ocean and the Drakensberg escarpment, known as Natal. It should be read as a draft chapter of a study of Theophilus Shepstone and deals with the situation before his arrival in 1846 and prepares the way for it. African attitudes to land are not dealt with explicitly – although a main objective is to point to the significance of the African presence and its historiographical neglect as a determining force. African land policies are dealt with explicitly in the next chapter, which I summarise as a postscript in order

to provide a context and to situate this already too long paper in some of the debates which have already taken place in the seminar.

In the writing of the chapter I have had to confront some of major historical questions of the era. The movement of Afrikaner<sup>1</sup> pastoralists into South Africa in the late 1830s, their conflict with the Zulu kingdom, the establishment of an Afrikaner republic in Natal and its annexation as a British colony in 1843 have been the subjects of research and controversy over historiographical generations. The debates raised have been important: was Natal occupied, empty, or emptied of Africans when they arrived there in the late 1830s? how can the trekkers best be characterised? as frontier farmers seeking to continue older ways of life in the face of modernity and the spread of capitalist relations, or were they early manifestations of these forces?<sup>2</sup> Were they a threat to Zulu autonomy or did they release divisive tendencies already existing within the kingdom? Why in a time of retrenchment, social unrest, and the ascendancy of free market ideologies did the Britain government assume responsibility for a region in which potential revenues were so tenuous and administrative costs likely to be so burdensome? Historians have dealt in detail with the proximate causes of the annexation of Natal,<sup>3</sup> but in so doing have overlooked the economic framework in which the acquisition took place and its role in decision making. This paper seeks to compare attitudes to land, land policy and the legal status of land amongst different groupings as they struggled to occupy and obtain rights to land in what became the territory that became known as the colony of Natal.

### **Naming Natal**

It was given this name by Vasco de Gama commander the Portuguese vessel searching for a route to India in order to open what was seen as the East to seaborne trade. 'Natal' was chosen because of the belief that it was on that day, 1,497 years previously, that the earthly son of an eternal deity was born. Some historians believe that de Gama was in fact off another part of the coast<sup>4</sup> but the historical significance of the event lies beyond the specific location of the territory in time and in space: its importance lies in the event itself: the recording and the naming of an extent of territory by a European expedition that assumed the right to define the land of others in the name of a living god and justified it in the pursuit of wealth and trade. In all their historical developments and variations over the next half millennia these assumptions remained essential imperatives: recording discovery in the name of religious belief, and progress through economic appropriation and political dominance.

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<sup>1</sup> Afrikaner, trekboer, trekker, boer – I use all these words in this paper – depending on the context, but the fit is always somewhat arbitrary and never seamless.

<sup>2</sup> Amongst the secondary sources I have found particularly useful are Howard Lamar and Leonard Thompson, (eds) *The Frontier in History. North America and Southern Africa Compared* (New Haven, 1981); Jeff Peires, 'The British and the Cape, 1814-1834' in R. Elphick and H. Giliomee (eds) *The Shaping of South African Society, 1652-1840* (Cape Town, 1989); Timothy Keegan, *Colonial South Africa and the Origins of the Racial Order* (Claremont, 1996); Norman Etherington, *The Great Treks. The Transformation of Southern Africa, 1815-1854* (Great Britain, 2001); Hermann Giliomee, *The Afrikaners. Biography of a People* (Cape Town, 2003).

<sup>3</sup> John S. Galbraith, *Reluctant Empire. British Policy on the South African Frontier* and E.H. Brookes, and C.deB. Webb, *A History of Natal* (Pietermaritzburg, 1965), Chapter V.

<sup>4</sup> Brian Stuckenburg, 'Vasco de Gama and the naming of Natal', *Natalia*, 27, December 1997.

But it took centuries for these imperatives to be realised. The narrow continental shelf, heavy seas, unpredictable on-shore winds, silted river estuaries and the absence of safe harbour made it a dangerous coastline. Once it was understood that there was no navigational necessity to keep close to it, Natal became a name given to territory sometimes seen on the horizon on the way to somewhere else. In the three centuries after its baptism Natal was figuratively and literally marginal. The phrase Terra de Natal appeared on the maps in various forms but without further information or development. Survivors of shipwrecks and rare visitors gave accounts which suggest the continuity between the people they came across and the later written historical records, as well as their concern for people with “no money .... but give cows for wives...are amiable... but very lazy, which probably is for want of commerce.”<sup>5</sup> But generally accounts of a territory upon which it was difficult to land, let alone explore, slave and trade, were intermittent and obscure. -

External changes came slowly. After a century and a half Portugal’s commercial dominance of the East was challenged by the Dutch whose eventual victory was marked by the VOC’s establishment of the settlement at the Cape in 1652. At the end of the next one hundred and fifty years another change in the standing of the world’s great commercial powers was marked by the eventual defeat of the French in 1815 and with it Britain’s assumption of authority at the Cape as the world’s dominant trading and manufacturing nation and the forces and ideas released by the industrial revolution saw the confirmation of British power around the world.

With this came economic and political innovation together with an inquisitive, aggressive approach driven by the need to discover, to acquire, to expand and if necessary to conquer. In 1822 the British naval officer responsible for charting the coast of Natal met other characteristic products of the age: men driven to the edge of empire by retrenchment and recession looking for economic opportunity; men on the make; some backed by commercial firms in the Cape and London, others independent young men from the metropolitan urban poor hoping to make good through adventure, others fallen on hard times, angry, opportunistic; and all of them, driven by that entrepreneurial spirit of those (and these) times, unscrupulous, voracious, violent and greedy.

Lt Frances Farwell, and ex-midshipman James King, were mounting speculative ventures along the south east African coast.<sup>6</sup> Henry Francis Fynn and Nathaniel Isaacs were a few years younger and looking for opportunities in trade. All four of these men left documentary records of their experiences in Natal which form the basis of the many books of the subject. None of them are reliable and all of them are indispensable sources for these times. They also left behind another artefact characteristic of the age – the ‘treaty’, ‘deed’ or ‘cession’ by which the local ruler, in this case the Zulu king Shaka kaSenzangakhona, granted them and their heirs great stretches of land. The claims these documents make are extravagant and ridiculous, but they should not be treated merely as preposterously fraudulent. Like the notorial deeds by which Farewell and Company and its backers, financed and insured their

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<sup>5</sup> John Bird, *The Annals of Natal. 1495 to 1845*, I (Pietermaritzburg, 1888), 58, 59. The writer of these phrases seems to have been a ship’s captain – and the same man said to have rescued Alexander Selkirk (Robinson Crusoe).

<sup>6</sup> Brookes and Webb *A History of Natal* (Pietermaritzburg, 1965). 17, citing Hattersley, ‘Francis George Farewell, and the Earliest Natal Settlers’, *Africana Notes and News*, XIV, 315-20

explorations,<sup>7</sup> they were a serious attempt to attend to the legal demands of economic expansion, to insert themselves, and the merchant houses in Cape Town and London, securely into the commercial world in the hope of ultimately realising their hunting and trading ventures and land acquisitions as serviceable capital. They are, like the misspelled names on the maps and the lists of unknown witnesses to the land cessions, attempts to give an air of veracity, legal substance and commercial respectability to the major theme of modern history: expansion and dominance by taking the private possession of the resources of others in the cause of capital accumulation.

The claims to respectability and responsibility in the sources stand out in contrast to the reality of the settlement in Natal. When James King returned to Port Natal in 1827, he quarrelled with his business partner and factions formed amongst the settlers. In the absence of their own resources they, Farewell excepted, had adopted the local methods of domestic production and established homesteads dependent on the labour of African women – the effective material reality behind the racist phrase ‘went native’. With the African homestead as the base of their operations and protected by the Zulu king, they employed men to hunt elephant and hippo and collect the ivory and the hides which formed the basis of their operations. The king was aware that the traders were the harbingers of significant change but soon come to understand that in themselves they were only very ordinary, inconsistent and quarrelsome representatives of a greater power. The Zulu king complained ‘Mr King tells him one thing and Mr Farewell another and that consequently he cannot believe either of them’ and was in the act of trying to persuade the authorities in the Cape to send him ‘an accredited agent’ when he was assassinated and succeeded by his brother Dingane.<sup>8</sup>

With the new king came the re-organisation of African power relations in the region and relations with the hunter-traders at Port Natal. The king himself consolidated his power within the central core of the kingdom while re-arranging settlements on its margins in Natal, giving certain *amakhosi* particular powers and duties. As Dingane secured his position, numbers of his predecessor’s favourites moved away from the kingdom and through Natal in search of safety. One consequence of this was that the number of Africans who attached themselves to hunter-trader homesteads at Port Natal, and the settlement came to be seen increasingly as a haven for malcontents and therefore a threat by the Zulu king.

By 1829 the settlement at Port Natal was becoming smaller in number and in authority. James King had died in 1828. Farewell, while recognising and giving abeyance to the Zulu power while in Natal, made a journey to the Cape to obtain trade goods, financial investment, and official support for the settlement – but was killed while returning. In 1830 the Port Natal settlement was attacked by Dingane. Once the army had left only three traders emerged from their hiding places in the bush. But interest had been aroused in the settlement and its commercial potential, and soon a new generation of traders began to make their way to Port Natal. The overland route was now becoming better known. Grahamstown traders, most of them originating

<sup>7</sup> They can be found in B.J.T. Leverton (ed.) *Records of Natal* (Pretoria, 1984), I, 5ff.

<sup>8</sup> B.J.T. Leverton (ed.) *Records of Natal* (Pretoria, 1989), II, ? to Colonial Secretary Bell, 10 October 1828, 16, and encs. Some of these ideas were presented in ‘Shaka kaSenzangakhona – a reassessment’, *Journal of Natal and Zulu History*, 16, 1996.

amongst the English settled on the eastern frontier ten years before made their way there. An exploratory expedition in 1832 led to renewed interest by the Cape Town commercial community but their memorial to the King in Council that there should be official support for a settlement at Port Natal was rejected.<sup>9</sup>

But the British decision not to become officially involved ran counter to the intentions of a number of significant local initiatives. To the pressure from commercial interests for government support were added spiritual ones. In Natal and the Zulu kingdom they came in the person of Allen Gardiner, ex commodore in the Royal Navy, now driven with an extraordinary energy and the confidence of the age, to save the souls of the Zulu. He also assisted the settlers in establishing the rules for a town board to lay out streets and give the settlement at a Port Natal a name, Durban, on whose behalf he appealed personally but unsuccessfully for recognition as a British settlement. In 1840 the South African Land and Emigration Association pressed the Colonial Office to investigate Natal's potential as a colony. The officials solicited information and passed it on to the Board recently set up to deal specifically with such matters, the Colonial Land and Emigration Commissioners. They decided that the available evidence on its natural advantages it was 'not a country in which, so far as we are present informed, there would be any sufficient reason to found a new British settlement'.<sup>10</sup> There were however political considerations as well, and the Commissioners raised the possibility that recent arrival in Natal of emigrants from the Cape might require the British to act against the possibility of regional instability.

### **the trekkers**

It is estimated that in 1837 8,000 people, half of them in service, left the Cape with the objective of settling in the beyond the colony's borders. The size of these communities and the distances they moved was novel; but the process of seeking out new land, driving out or capturing the African inhabitants, killing the wild and depasturing the domestic stock was not. The basic practices and social structures had developed on the frontiers of the Cape for many years past. Settling on land, dislodging those who were using it, and opening up more had long been a feature of life on the frontier. These practices gained their greatest intensity amongst the trekboers who were organised around dominant patriarchs and their families, supported by the labour of bonded herders, cultivators and domestic servants the trekboers extended their occupation of the land. The economy was parasitical: when the land and its resources were exhausted, the increasing numbers unwieldy, new land was sought out beyond the formal frontier, the trekboers combining in commandos which used the mobility of the horses, the firepower of their guns, and ox-drawn transport to establish themselves and their sons on new land and appropriate the labour and the lives of hunters and pastoralists living there. As distances increased so the links between the trekboers and the settled areas of the Cape became more tenuous. But they were never severed and even the most independent, far-ranging trekkers never lost a sense of their unique origins in the Dutch settlement at the Cape, an awareness of their founders' religion, and the need for basic commodities, gunpowder and lead amongst them. Moreover, no matter far they moved, the world moved with them. In the aftermath of the Napoleonic wars Britain established itself at

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<sup>9</sup> Percival Kirby, ed., *Andrew Smith and Natal. Documents relating to the early history of that province* (Cape Town, 1955), Bell to the signatories of the Merchant's Petition 12 March 1835, 176.

<sup>10</sup> Kirby, ed., *Andrew Smith and Natal*, Colonial Land Emigration Commissioners to Colonial Office 11 February 1841, 233.

the Cape bringing with it changes to the system of land tenure from loan farm, request farm, to quit-rent, an annual payment on occupation, and the demand for registration and surveying. The legal system was altered, including attempts to reform labour practices, disrupting the lives of the frontier farmers. Confrontations with African farmers on the eastern frontier created insecurity and sporadically direct confrontations in which both sides suffered severe losses. The insertion of 5000 British settlers on the frontier in 1820 caused further confusion amongst the Dutch speaking farmers – but it also intensified the commercial aspects of frontier farming life, causing distress, but also creating new opportunities. All of these factors, the degeneration of pastures through overstocking, population increase and land shortage, the insecurity on the frontier and the attempts by the British administration to bring the inhabitants of the Colony within its legal and fiscal regime, threatened the trekboer way of life and, in order to retain, persuaded them at the end of the 1830s to distance themselves from British rule.

But it was not just a conservative move – amongst of the trekkers, the leadership especially, it also held out the possibility of commercial opportunities once the new farms were established, settlements developed, and communication opened with the wider world.

Discussion amongst historians about the nature of the pastoralists who moved beyond the borders of the Cape Colony in the late 1830s has been intense. The Afrikaner nationalist view of a unique people determined to preserve their culture and religion has long since been rejected, as has the liberal view of a people whom progress and enlightenment passed by, and in the process brought into being an archaically modern, racist South Africa. However historians remain divided on where the analytical emphasis should be located: on the trekboers as an increasingly isolated, inward looking, increasing population, determined to find a way to remain unchanged their parasitical pastoral way of life, or as pastoralists who despite their claims to autonomy remained inextricably linked to the market and the goods it provided, and were searching for a way to advance these connections? For our purposes these two views can remain poles and we can see in attitudes to land examples of both: the majority of trekkers in a violent and promiscuous search for land and pastures to perpetuate personal, patriarchal rights to land, grazing and hunting; but also a significant number, often in positions of leadership, very aware of the economic and the political context in which they lived albeit on the periphery, and in consequence of the wider social economic and political obligations required by the world of commerce, legal obligation, and the state.

Piet Retief, the leader of the group of trekkers who first came into Natal was an example of the latter grouping. He was experienced man of business, well known on the eastern Cape frontier, and although an unsuccessful trader in goods and speculator in landed property, was a successful manipulator of frontier press and the historians who used it as a source. His reports of his progress sent for publication in the *Graham's Town Journal* suggest a man over-confident in his ability to manipulate public and official opinion in the Cape and when this misplaced confidence was extended to his influence over Africans it ended in tragedy. He trekked in a northerly direction across the Orange river in the winter of 1837. In September his scouts reported that they had found breaks in the mountain range and passes down into

Natal.<sup>11</sup> Retief decided that the wagons should stay where they were while he moved into to Natal explore the situation: ‘I want to trade, and we must, therefore, endeavour to find a harbour.’<sup>12</sup> To those who disagreed and tried to warn him of the possible consequences of too hasty an approach he countered with his experience: ‘I have been taking lessons on your frontier for the last twenty-two years, and know what should be done or what should be left undone.’<sup>13</sup>

At Port Natal he was welcomed by the settlers. Arrangements were made to accompany Retief on a visit to the Zulu king where

Dingaan’s question was: ‘What are you wanting here?’ Retief, through his interpreter ... answered: ‘We come from far; our country is small, and we are becoming numerous, and can no longer subsist there. We see that you have a large country which lies waste and unoccupied from the Drakensberg to the sea, and we wish to purchase that country from you.’<sup>14</sup>

On 7 February 1838, when Retief and the 100 men in his force was making the final arrangements for the cession of land at Dingane’s Mgungundlovu homestead the Zulu fell on them, and dragged them off to the place of execution. The Zulu king then mounted surprise attacks on the trekkers’ wagons scattered around the southern tributaries of the Thukela: it was estimated that 300 trekkers or nearly half their number were killed and about the same number of their servants. 25,000 head of cattle were driven off into Zululand. At the end of the year the trekkers with reinforcements provoked the Zulu army to attack a position defended by trekker firearms and inflicted a severe defeat. Both sides fell back to positions on either side of the Thukela/Mzinyathi rivers, the trekkers having found on Retief’s body the document they needed as proof that Dingane ceded to Retief and his followers

the place called ‘Port Natal’, together with all the land annexed, that is to say, from the Dogela (Thukela) to the Omsoboobo (Umzimvubu) westward; and from the sea to the north, as far as the land may be useful and in my possession.<sup>15</sup>

Not only was there this document but there was the fact that they had paid for this land – with their blood. And, when in 1840 Dingane’s brother Mpande crossed into Natal and entered into an alliance with the trekkers in which they attacked the Zulu king and unseated him from the throne, it seemed as if the debt was paid, in a treaty for land up to the Black Mfolosi river and 40,000 head of cattle and, a conservative source has it, 1,000 children.<sup>16</sup>

### **trekker land policy in Natal – African resistance in Natal**

It now seemed possible to turn these general paper claims to land into physical occupation. Individual claimants moved first into the areas along the route from the Drakensberg to Durban, that is the series of intersected table lands between the low bushveld of the Thukela basin, and the highlands towards the escarpment – the ‘midlands’. The coastal belt with its horse-sickness and tick-borne cattle diseases was not as attractive as the higher land to the west. Durban, Weenen, and Pietermaritzburg were chosen as settlements with the latter in its central position as the capital and the

<sup>11</sup> J. C. Chase, *The Natal Papers*, (Graham’s Town, 1843), letter by Retief 9 September 1837, I, 111.

<sup>12</sup> Bird, *Annals*, D.P. Bezuidenhout, in I, 367. This account, it should be noted is that of an eyewitness but was made many years later.

<sup>13</sup> Chase, *Natal Papers*, Letter by Retief 9 September 1837 I, 112.

<sup>14</sup> Bird *Annals*, Bezuidenhout, ‘The Pioneer’s Narrative’, I, 368.

<sup>15</sup> Bird, *Annals*, I, ‘Cession of Port Natal to the Boers by Dingaan’, 4 February 1838, 366.

<sup>16</sup> E.A. Walker, *The Great Trek* (Cape Town, 1938), 204.

seat of the governing body – the Volksraad which included amongst its number a few members which some administrative experience, and who tended to be more cautious in their proceedings, closer geographically and by temperament to the administrative centre in Pietermaritzburg, than the more distant trekker rank-and-file for whom direct, physical action was more natural.

All settlements have their founding myths, or legal and philosophical justifications for the occupation of land. Those who settled Natal had no need for a Lockean labour theory nor an argument based on the concept of *terra nullians*. The claim to land in settler Natal was a simple historical one: but for the starving few who in their desperation sought the protection of the first hunter-traders at Port Natal the land had been emptied. The same idea was assumed in Retief's first letter to Dingane when he wrote of the trekkers' 'desire to establish themselves in the country which is uninhabited and adjacent to the territory of the Zulus.'<sup>17</sup> This was developed further after 1839 when the increasing awareness of the presence of Africans in Natal was explained by the peace which the trekkers had brought to the country by defeating the Zulu. As time passed the argument that the African population of Natal was made up of Africans liberated by the trekkers' defeat of the Zulu army became increasingly doctrinaire. For generations to come the central justification for denying Africans land rights was the assertion that they were not native to the territory but newcomers, most of them refugees from the Zulu kingdom.

There can be no doubt that with the defeat of Dingane a large number of Africans gained the confidence to return to Natal and establish themselves on the land. This number was increased with the re-organization of Zulu power within the kingdom and after 1840 when Dingane's brother, Mpande, crossed into Natal with thousands of followers, allied himself with the trekkers, defeated Dingane and assumed the Zulu throne. Having said this there is no doubt that the majority of Africans in Natal in say 1843 were people who had never left their land<sup>18</sup> or who had continued to work their land while living in defensive positions or had been in hiding either from the Zulu or from the trekkers themselves or had been placed on the land by the Zulu kings or were returning to their land,<sup>19</sup> as they had done at times throughout the reigns of the Zulu kings, and often under their instructions. The idea that Natal was empty, except for a few thousand largely in the vicinity of Port Natal, was contradicted even in the trekkers' own accounts. *The Diary of Erasmus Smit*, written from the midlands on the Bushman's river, has a number of entries describing the looting of surrounding homesteads and bringing out scores of wagon loads of grain 'so that through God's guidance we harvest and eat what others have planted.'<sup>20</sup>

But, as in so many conflicts over land, it is not the rights or wrongs of the opposing arguments that is most significant: it is the debate itself, its terms, and its role in the different phases of Natal's history and what it represents. From the time that the trekkers defeated the Zulu army in December 1838 it was the presence of Africans on the land they claimed in Natal that was the subject of their deepest concern. It was not

<sup>17</sup> Bird, *Annals*, I, 'First letter of Retief to Dingaan', 19 October 1837, 359-6.

<sup>18</sup> The best known example is that of the Nthuli of Mnini – and this was because, living at the port, they were noticeable.

<sup>19</sup> C.de B. Webb and J.B. Wright, *The James Stuart Archive*, IV, Evidence of Mqaikana kaYenge .

<sup>20</sup> *The Diary of Erasmus Smit*, (Cape Town 1972), entry for 30 January 1838. See also entries for 23 June, 3 July, 1 August 1838 . But see also pp. A.T. Bryant's excoriating attack on Cloete's analysis of the situation in *Olden Times in Zululand and Natal* (London, 1929) 237-41.

that they objected to an African presence: it was important that there should be some, paying rent in kind and in labour as herders, agricultural producers and servants. It was that their numbers had to be restricted. On the northern and eastern borders was the Zulu kingdom, an over-present source of anxiety: from the west farmers in the midlands bordering on the Drakensberg suffered livestock raids by the Bushmen living in mountain retreats. Now into the central areas which should have formed the settled and secure core of Natal it appeared that the number of Africans was increasing and threatening to get out of control. As J.N. Boshoff, ex-Cape official and prominent member and advisor to the Volksraad said a few years later

The Volksraad, and the Dutch people, saw what such a state of things would lead to, and since the commencement of the year 1840, hardly a session of the Volksraad was allowed to pass without mooted this subject, and urging that this evil should be counteracted in an effectual manner, before the tribes should become so numerous that insurmountable obstacles would present themselves.<sup>21</sup>

But this situation can be seen from another perspective – that African determination to occupy and use the land as a productive resource was creating insurmountable obstacles to an effective Boer occupation of Natal. More than this it provoked the Boers into unwise actions including the threat of mass removals – which, in turn, persuaded the British that the Boers in Natal threatened the stability of the whole region which might require British intervention. From this point of view it was the productive African occupation of Natal by Africans that made it impossible for the Boers to assert their dominance as land owners.

This is not say they didn't try: and while violence and the threat of violence was used it not only attracted the attention of the British but it also worked against the possibility of establishing a productive boer community. Much energy was spent in exploring the land, selecting desirable tracts, and attempting to submit claims to the Volksraad and its Land Board. There was something of a scramble. The Natal trekkers were joined by others from the Cape and the highveld, and soon land claims were being made to land beyond the Thukela and south of the Mkhomazi. The size of the farms was said to be 3000 morgen that is roughly 6000 acres – the same as those occupied on the Cape frontier. Their situation was described in terms of any apparently obvious topographical feature and in relation to other claims: soon there were multiple claims by individuals as well multiple claims to the same land. But the dispersion of a comparatively small population over a large tract of land made effective control of Natal extremely difficult. Attempts by members of the Volksraad to order the process of land claims and concentrate them initially in the land ceded in the Dingane/Retief treaty had little effect as claimants moved across these boundaries beyond the Thukela and across the south western rivers.

But it was one thing to lay claim to the land, it was another to occupy it, and yet another to turn it into a productive resource. Or to make the same point from another perspective: it was one thing to lay claim to the land, it was another to define that claim, and register personal title to it. The trekker population was small, dispersed, lacked financial and administrative resources. Nonetheless their experience of the long established procedures at the Cape made them well aware of the need to register

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<sup>21</sup> Evidence of J.N. Boshoff, *Proceedings of the Commission appointed to inquire into the past and present state of the Kafirs in the district of Natal* ..... (Pietermaritzburg, 1852) Part II, 8. Henceforth referred to as the 'Harding Commission'.

and officially document their claims to land.<sup>22</sup> Although the processes adopted were crude and inefficient the Volksraad worked hard to facilitate land registration. It was declared that those with burgher rights were entitled to two farms of 3,000 morgen and an erf in Durban, Pietermaritzburg or Weenen. On investigation and recognition of a claim by a land board the land would be granted freehold title to be held in perpetuity on the payment of a small registration fee and an annual levy. But even the most straightforward regulations soon had to be adapted. Those men who had arrived with Retief claimed precedence over those who came later: widows claimed and received land in the name of their husbands who had died for the republic of Natal, orphans for their fathers. And with such claims and the exceptions made for them came more opportunistic ones.

### **British intervention and land policy**

Two very rough and undefined tendencies had emerged amongst the Boers by this time. Walker called the one the ‘war party’ by which he meant those who acted directly and at times violently, without too much regard for the wider consequences, placing their faith in the leadership qualities of a strong leader and defending their action in the name of the people’s will.<sup>23</sup> Against this was the ‘Volksraad party’, more partial to decisions made by an elected council following procedural principles within a legal framework. These were tendencies rather than parties and on occasion members moved their support from to another in different situations, but they did reflect differences between the less-educated, more individualistic boers who gave expression to their political feelings and objectives through popular demonstration, and the more literate ones, often with urban or commercial experience and more aware of the wider context in which they were operating, and who felt policy should be mediated by more formal administrative procedures.

In December 1840, against the wishes of members of the Volksraad, a Boer raid was made to the south west in the name of regaining stock taken by Bushmen, It turned into an attack on the Bhaca of Ncaphayi in which 30 were killed and women, children and 3000 cattle were seized. Missionaries living under the neighbouring *inkosi* Faku of the Mpondo protested to the Cape authorities. This was just what the Volksraad had wanted to avoid: actions which might provoke British intervention. And indeed this was just what the Governor at the Cape feared – Boer raids from Natal which could disturb the Cape’s eastern frontier. Napier moved a detachment of British troops in the direction of the disturbance.

It was proving impossible for the boers to create a disciplined state in Natal. The Volksraad lacked the resources, the revenue, the skills, and the capacity, to establish the necessary administrative order. Multiple claims were being made to an increasing amount of territory and while the assertion of land rights spread, occupancy didn’t. Most of the land claims were vague, often multiple and disputed, and many of the trekkers were poor, or had lost their livestock, and there was a shortage of specie. They began to exchange their claims with the wealthier members of their community or with that characteristic feature of the history of colonization – the land speculator.

<sup>22</sup> The first bound volumes of documents in Pietermaritzburg Archives Repository (PAR): Surveyor-General’s Office (SGO) I/1 is made up of these claims. They are fascinating documents, but have been worked on by a number of hands, and the veracity remains problematic. Again as I stress in the text it is the fact that the documentation of private title was seen as important, rather than the document itself which is significant.

<sup>23</sup> Walker, *Great Trek*, VII-VIII.

These ‘jobbers’ – men with time and with money, or who asserted they had money, or said they represented those who did – sought to use their assets to gain fixed property in land. With the rights to the land in Natal still uncertain the value of the land was insubstantial and the jobbers were able to buy or exchange land claims for a pittance – a handful of coins or a bag of coffee it was said. Titles to land had yet to be issued and the scraps of paper the jobbers obtained had no legal standing – but they cost little enough and speculators must speculate: who could say whether at some time in the future these grubby records of an informal transaction might not be accepted as evidence of a legitimate sale?

But while farmers and traders exchanged doubtful land rights in paper, Africans were occupying that land in reality, building homesteads, running cattle, and growing crops. As the number and therefore the power of the trekkers in relation to the extent of land decreased so the African presence appeared to grow more threatening. With this came the Volksraad’s demand for decisive action. In August 1841 it was announced that

on further complaints that the Kafirs begin to multiply amongst us, and that depredations are not only increasing, but that they make location on inhabited places, erect numerous kraals, and may become dangerous to our inhabitants... [and] with the exception of a few, who lived at Natal, had no right or claim to any part of the country...[and] not wishing that they should be driven away without any provision being made in their behalf

they should be moved to land between the Mthamvuna and Mzimvubu rivers.<sup>24</sup>

The Governor of the Cape responded by Proclamation in December 1841: in order to prevent ‘the recurrence of warfare and bloodshed’ troops would be sent to Natal. The small detachment arrived at Port Natal in May and clashed, were defeated, and then besieged by the Boers before being relieved by the arrival of reinforcements and naval cannon fire in June. Colonel A.J.Cloete, officer commanding the British force, offered the Boers amnesty – they didn’t take it up. He then ordered Africans to collect horses and livestock and violence broke out between Africans and Boers. The farmers protested but the British commanding officer was unmoved:

You have caused the horrors of this state of things, and you must bear the consequences to yourselves, your properties, your wives and children....I shall be happy to lend my best efforts to arrest any general rising or partial acts of violence of the Zulus or Kafirs; but I feel my incapacity to do much in this respect while your people continue in arms against Her Majesty’s authority ....<sup>25</sup>

To repeat, the African presence in numbers was a factor in this early history of Natal which must be recognized not just as passive problem for the Boers, but as an active presence that determined historical outcomes. The Boers were unable and unwilling to continue their resistance to both the British and the African population. Many just turned their backs on the situation and rode away while the Volksraad party was left to negotiate a peace. By the agreement the Volksraad submitted to British authority: in return they were promised protection against ‘attack by the Zulus’ and that the tenure of their farms would not be interfered with pending a final settlement by Her Majesty’s Government.<sup>26</sup> It was a standoff, tense with rumours of Zulu attacks and outbreaks of violence. Some Boers decided that it was time to move off to the less volatile and crowded highveld. Those who remained concentrated on occupying

<sup>24</sup> Bird, *Annals*, I, Extract from resolution 2 August 1841 644

<sup>25</sup> John Bird, *The Annals of Natal. 1495 to 1845*, II, (Pietermaritzburg, 1888) A. J. Cloete to A. Pretorius, 3 July 1842, 42.

<sup>26</sup> Bird, *Annals*, II, 62 Government Notice, 9 August 1842,

defensive positions or moved nearer the settlements – leaving the land open for further African occupation.

The Volksraad continued to exercise a desultory authority but Captain Smith the officer commanding British forces, pounced quickly on moves which he believed contradicted the peace terms – no activity until Her Majesty's Government had pronounced on the future of Natal. He turned down Boer requests to raid for stolen cattle, prohibited the development of fixed property in the towns,<sup>27</sup> and intervened immediately he discovered J.N. Boshoff was continuing to issue land titles. Smith believed that they had been fraudulently backdated and their issue was a seditious and treasonable act.<sup>28</sup>

Again it is not the legality or illegality of the issue of title deeds, or even the efficiency with which this was done, that is of greatest significance – but that formal registration was a necessary act if land claims were to be made secure, and therefore exchangeable, that is part of the process of the commoditization of land.<sup>29</sup> Whatever the practical shortcomings, the lack of resources and indeed a general lack of enthusiasm and means, the need for legal principle and the substantiated documentation and registration in land ownership was a feature of trekker life, and put into practice by those they chose to be their officials, who in turn drew on their experience of land registration in the Cape and modified it to apply to the new trekker republic of Natal.

### **hammering it out**

1842 was almost over before the British government made public its decisions on the possible future of Natal. Considering all options it appeared that there was no choice but to take 'the inhabitants of Natal .... under the protection of Her Majesty's Government.'<sup>30</sup> But there was no immediate act of 'annexation' and the two and a half years between the announcement of the annexation and its implementation has been called a 'curious state of transition'.<sup>31</sup> I think it should be seen rather as a vital period of negotiation during which the terms and conditions under which the District of Natal would be ruled and administered were hammered out in a process which was both revealing of the attitudes in the different interests in contention and immensely significant for Natal's subsequent history.

As a first step it was decided in London that a series of pre-conditions were to be announced to the Natal boers by a Special Commissioner. He was to insist that if the boers were to be allowed to submit to Her Majesty's authority and receive her protection they would have to accept that in the new colony there would be no distinction on the grounds of 'colour origin, race or creed', no aggression towards neighbouring states, and no slavery however named. Once this had been agreed to

<sup>27</sup> Bird, *Annals*, II, 78 Smith to Napier. 20 August 1842.

<sup>28</sup> Bird, *Annals*, II, Public Notice, 24 October 1842.

<sup>29</sup> For translated examples of these documents see *Annals*, II, Smith to Napier, 14 October 1842 ff. For copies of original titles see PRA:SGO I/1.

<sup>30</sup> The British Colonial Secretary's decision can be found in Bird, *Annals*, II, Stanley to Napier, 13 December 1842, 145 and the minute by which it was implemented by the Governor of the Cape in Bird *Annals*, II 4 May 1843, 160ff.

<sup>31</sup> And which have been largely ignored by the historians who have dwelt on why Natal was annexed and underplayed the original conditions of annexation – see (I suspect from the style and argument) Webb in Brookes and Webb, *History of Natal*, V.

The farmers and all others within the district of Natal shall be protected in the enjoyment of all such lands as they, or those from whom they derive their claim, shall have *bonâ fide* occupied for the period of twelve months previous to the arrival of the Commissioner, receiving a grant of such from the Crown, and subject to such fine or quitrents as Her Majesty may see fit to impose.<sup>32</sup>

The Special Commissioner would then undertake a detailed investigation of the land claims and report back to the Cape Governor and the Secretary of State who would make the final decisions of the mode of land holding, government, and how Natal would be administered and paid for. Until then all land dealings would have to remain in abeyance and the Special Commissioner had to make doubly sure it was understood that apart from the military there would be no external financial support and that all administrative costs would depend on revenues raised within the new colony itself.<sup>33</sup>

Henry Cloete was appointed Special Commissioner. He came from one of the oldest and wealthiest of Cape families, and had acquired his education and his legal qualifications in Holland and England before returning to the Cape where he was a prominent advocate. He therefore could be expected, and indeed did, bridge some of the gaps between the different newcomers in Natal: he spoke their language and was 'intimately acquainted with the habits, customs, and feelings of his countrymen'.<sup>34</sup> Indeed it has been stated that his appointment was suggested by J.N. Boshoff.<sup>35</sup> He believed that the trekkers' best interests would be served if they accepted the legal traditions, constitutional safeguards, and military protection implicit in British rule. This can be understood perhaps by his intense awareness of the class divisions amongst the trekkers. A decade later, fulminating on the history of mankind, he divided settled pastoralists from nomads amongst whom he included

Whether it be the Bedouin Arabs, the Koords of Asia, the Kafirs of Africa, or the Karoo Vee Boer, (cattle farmers) so long as they are not induced to settle down and to earn their bread by the sweat of their brow, and so long will they remain barbarous and unworthy [of] the name of civilized beings.<sup>36</sup>

Cloete arrived in June and travelled to Pietermaritzburg where he announced the terms of the British decision.<sup>37</sup> He was given a hostile reception. The reasons were obvious: not only were the boers to lose their independence to the British, but they were being asked to agree to the very legal principles and administrative procedures which had persuaded them to leave the Cape. A significant number threatened not just non-cooperation but violence. It was decided that a formal response would be given at a meeting of the Volksraad at the beginning of August. Meanwhile, in the interim, tensions increased as boers, including militants from the highveld, began to make their way towards Pietermaritzburg. It was widely believed that they intended to stage a coup and replace the existing Volksraad with one that would reject the British initiative.

Cloete, had his own explanations for the resistance. Although British intervention was welcomed by 'some respectable inhabitants' there was

<sup>32</sup> Bird, *Annals*, II, Stanley to Napier, 13 December 1842, 145.

<sup>33</sup> Official anxiety that the Special Commissioner would go beyond the bounds of these instructions can be found in the different instructions reprinted in Bird *Annals*, II and most urgently in an PAR: SGO. II/1, Napier to Cloete, 8 May 1843.

<sup>34</sup> According to the Governor in Bird, *Annals*, II, Napier to Stanley, 27 May 1843, 173.

<sup>35</sup> A. F Hattersley, *The British Settlement of Natal* (Cambridge, 1950), 61.

<sup>36</sup> Harding Commission, Part I, Evidence of Henry Cloete, 30.

<sup>37</sup> Bird, *Annals*, II, Cloete to Montagu, 10 June 1843, 178.

a very violent anti-British party, consisting of the very lowest order of the community, headed by some persons who bore the very worst description of characters within the Colony of the Cape of Good Hope, who seem to have a powerful influence over the ignorant and ill-informed....'

who had been successfully intimidated into silence 'the well-informed and respectable class of the community'. Then, as the conflict developed, it became apparent that even amongst the respectable class there were those who objected to the British terms out of material self-interest and as a result 'the lower class of farmers, or outlaws from the colony, are strongly supported by some of the more wealthy and influential, who are violent on the subject of their lands.' They included not only Gert Rudolph who was said to claim forty farms and Andries Pretorius who claimed ten, but the ordinary trekkers who had been guaranteed two farms by the Volksraad, feared they might lose them, and were therefore susceptible to the work of the anti-British agitators.<sup>38</sup>

But there were also pressures working in another direction. In the same month that Cloete arrived, Mawa, sister of the Zulu king's father, with thousands of followers and their cattle crossed into Natal from the Zulu kingdom. With the uncontrolled huge African population already causing great anxiety, the arrival of the Zulu vividly exposed boer vulnerability. It was, it seems to me, the need for security in life and land and the threat of the African presence that enabled Cloete to swing a sufficient number of these 'respectable' boers, including even Pretorius, to accept a settlement with the British and with it, they hoped, secure their claims to the land.

The Volksraad had chosen the first Monday in August to meet Cloete to discuss the British proposals. He did what he could to be conciliatory and find supporters amongst the members of the existing Volksraad. He let it be known that he would recommend that the boundary of Natal should be the Drakensberg and thus weakened the capacity of the highveld boers to intimidate. The Volksraad's immediate concern was Clause VI of the Proclamation – that there were to be no legal distinctions on grounds of race class or religion – which 'evidently appeared to have given umbrage to some of the members'. Cloete repeated that these were non-negotiable conditions and the boers should rather consider 'the advantages as to their political institutions which were promised to them'.<sup>39</sup> It was this argument he believed which successfully allayed their fears and on September led the Volksraad to submit to the British conditions by a vote of 25 to 1.

However there were other factors at work. One has to suspect that from the boer point of view the pledge of military protection was of greatest importance, and the misplaced notion that it would be exercised against Africans in their favour. This is apparent in the Volksraad's resolution in early September which pointed out that Africans were 'flocking into our territory' stealing cattle, and requested that the *Special Commissioner* (my emphasis) take measures to remove to the other side of the Thukela and Mzimvubu rivers those Africans not in employment, and limiting those who were to five families a householder.<sup>40</sup>

This was of course wishful thinking but it does reflect the overriding concern amongst the boers about the African presence in Natal. It seem most likely that the boers who

<sup>38</sup> Bird *Annals*, II, Cloete to Napier, 20 June 1843, Private and confidential, 191.

<sup>39</sup> Bird, *Annals*, II, Cloete to Napier, 8 August 1843, 259-60.

<sup>40</sup> Bird, *Annals*, II, Extract of resolutions 4 and 5 September 1843, and Smith to Napier 4 September 1843, 281 and 282.

were prepared to use their influence to accept the British terms represented people who were most confident in their land claims, had accumulated a number of them by purchase, especially those closer to the main lines of transport and the centres through which they passed – Durban, Pietermaritzburg and the Weenen area. Unlike the vague, disputed, unoccupied claims in the remote areas there were a number of properties which seemed to be comparatively secure and good investments. Secondly if they continued to occupy their land in numbers there might be a chance (and this was in all likelihood the gist of Cloete’s advice on the ‘the advantages of political institutions which were promised them’) that they would before long be granted some form of responsible government and in time may well be able to adapt the terms of settlement to their own advantage. But for this to happen in the future it was important not to act unthinkingly in the present, taking particular care not to draw unnecessary attention to boer attitudes towards the legal status of Africans. This was said quite explicitly later by Boshoff. Action to remove Africans, he believed had been delayed at first under the Volksraad because of the tardiness of leaders who in fact ‘derived some profit from the labor, and even productions of the natives’ and when, in September 1843, the Volksraad made proposals to Cloete on future government<sup>41</sup>

all reference to the natives was studiously avoided, partly on account of the supposed prejudices of the British nation, and Government, in favor of the blacks .... They also reasoned in this manner - 'If we obtain an elective representative government, as we cannot have any doubt we shall, from the promises held out to us on the part of Her Majesty’s Government, the question of the final settlement and government of the natives, may then be maturely considered ....’<sup>42</sup>

The disgruntled militants left for the highveld to be followed over the next months and years by Boers who abandoned or sold their land claims. Others stayed in Natal but turned their back on developments in Pietermaritzburg for the moment, but remained a dissatisfied group which in years to come became a significant factor in the development of colonial policy towards Africans. But a small but important core took up their claims to land under the terms of the agreement with the British.

### **Claims to the land**

Cloete now turned to examine the land claims in order in order to make his report to the British government. The task he had been set was huge and difficult. He had to make recommendations on Natal’s external borders; on the rights to urban plots (erfs) and associated town land; claims to farms, their registration, inspection, survey and title; crown lands; church lands; military reserve; and of course the question that was so important but so problematic that it was generally avoided – African land rights. The recommendations were passed to the Cape Governor and his executive council, then to the Secretary of State for his decisions, whereupon the procedure was reversed during which time the different parties were able to use what discretionary powers they believed they possessed. It was a lengthy and complicated process which I can only summarise selectively here.

First came the matter of the colonial boundaries. In October 1843 Cloete visited the Zulu king Mpande and secured treaties whereby the Thukela river and its tributary the

<sup>41</sup> PAR: SGO II/1, 4 September 1843. Extracts from what appears to be another translation of this document can be found in Bird, *Annals*, II, 107-9. The Volksraad’s resolution that the Special Commissioner be responsible for the expulsion of Africans of the same date is part of another tactical line initiated by Andries Pretorius.

<sup>42</sup> Harding Commission, evidence of Boshoff, 8

Mzinyathi up to its sources in the Drakensberg would form the border between the colony and the kingdom.<sup>43</sup> For the moment the southern border was left undecided. With the formidable Zulu power hopefully on the side of the British diplomatically, and on the other side of the border, geographically, Cloete turned to the question of internal land claims. Claims to plots of land in the three projected towns – Pietermaritzburg, Durban and Weenen were dealt with first. On the matter of farms his initial examination of the Volksraad Land Register suggested that 1800 claims to farms had been registered of which 500 had been inspected and reported to the land board but not surveyed. Examining the land registers more closely he concluded that 198 claims (Class A) met the twelve-month *bona fide* occupation requirement. These claims of 3000 morgen should be retained under what the boers called ‘freehold’ but the annual rent should be raised from 18s. to £2 10s. redeemable at 20 years. He also submitted for consideration a list of 173 farms which had been only ‘partially’ occupied (Class B), and 66 farms which had been purchased but not occupied (Class C).<sup>44</sup>

There were many difficulties with these claims, but one was insuperable: the stipulation that the land had to have been under *bona fide* occupation for twelve months before Cloete’s arrival. And it was this condition upon which boer protests concentrated for, they asserted, it was during just this period that, fearful that Africans would take advantage of the clash with the British, they had moved off their land into secure defensive positions.

I myself doubt whether the land could have been occupied on a significant scale even if the British had not intervened. Nonetheless it soon became fundamental to the boer protest against the annexation that the British had required boer occupation of their land at a time when it was impossible. The occupation requirement was grossly unjust – another example of their vindictive pursuit of the Afrikaner. It doesn’t bear much scrutiny. Cloete’s reports were on the one hand loquacious and ingratiating in their support of Her Majesty’s Government’s wise and just intervention in Natal: on the other he did what he could to weaken the *bona fide* occupation requirement. Thus he decided that ‘occupation’ did not require ‘residence’, the pasturing of livestock or cultivation was sufficient – which of course could be carried out by dependents or Africans said to be in the claimants employ.<sup>45</sup>

But none of this was enough for most of the boers. Cloete’s recommendations might have led to the recognition of nearly 400 claims – but justice required that all claims be recognised, and not under the conditions demanded by the British but under those decided upon by the Volksraad. Furthermore the British required a still undisclosed payment for any land grant, and there was no indication that they were prepared to protect the settlement from the daily increase of Africans, and the small detachment of British infantry without cavalry would never be able to deal with the highly mobile Zulu army. It was not for this that the trekkers had struggled and sacrificed their lives. Most of them were poor and needed immediate support. Many of the original claims had been bartered or sold anyway and the original trekkers deserved some land which it was becoming increasingly clear colonial Natal would not provide. Cloete himself

<sup>43</sup> Bird, *Annals*, II, Cloete to Montagu, 28 October 1843, 290.

<sup>44</sup> This analysis is taken from the Secretary of State’s summary of Cloete’s report: Bird *Annals*, II, Stanley to Maitland, 31 October 1844, 437.

<sup>45</sup> Bird, *Annals*, II, Cloete to Montagu, 30 May 1844, 390-1.

was said to be on the make. He had purchased three plots of land in Pietermaritzburg – an act which London rejected as unacceptable – and his secretary doubled as an agent for the Cape Town businessman Francis Collison. It was rumoured that when Cloete turned down a claim his secretary would offer a pittance for it, and then present it successfully to Cloete.<sup>46</sup> Apart from allegations of corruption on his part it was admitted even by his friends that the task he had been given was so difficult that he could not avoid falling victim to acts of deliberate fraud.<sup>47</sup>

### **‘systematic colonization’**

Napier had warned Cloete that Her Majesty’s Government would not be sympathetic to extensive land claims. Its guiding principle was to stop population dispersal, concentrate people and resources, then sell neighbouring crown land when the privately owned land had successfully achieved and maintained a suitable price. Stanley’s response was predictable: ‘feeling the injury which may be done to the settlement itself by throwing vast tracts of land into the hands of private individuals’<sup>48</sup> he reduced the Class A farms by half to 1500 morgen. The grants, London decided, should be surveyed as soon as possible, but the funds for this and for salaries of the land department would have to come from the colony itself. A deed of grant for a 1500 morgen acre farm should be £50 redeemable over 15 years and the Colonial Office spent much time on deciding how best to raise revenue from town lots and customs dues. Stanley agreed with Cloete that the huge extent of town lands offered by the Volksraad – which would enable boers to live in town and keep their herds in the vicinity – must be reduced. Class B farms should be granted but also reduced to 1500 morgen, and the proposal to compensate those who claimed Class C farms was rejected. Cloete’s attempts to bring to the favourable attention of the Secretary of State cases of particular hardship which deserved the award of land were turned down: as Stanley wrote, ‘it is scarcely necessary to say that the waste lands of the Crown are not proper means of providing for charitable objects’.<sup>49</sup>

The London decisions were referred back to the new Cape Governor, Peregrine Maitland. He, undoubtedly under advice from local officials, believed that the boer idea that a suitable farm had to be 3000 morgen was too deeply entrenched and a reduction by 50% would be rejected out of hand. Using the discretionary powers granted by the phrase ‘unless you should be deliberately of opinion that this would be likely to produce a renewed emigration of the Boers’<sup>50</sup> Maitland confirmed Cloete’s recommendation that List A farms remain at 3000 morgen and Stanley had little choice but to accept the decision. But the Boers in Natal didn’t have to. The retention of 3000 morgen for the 198 Class A claims meant little to most of them. They were bitter and resentful. They had made the greatest sacrifices to establish themselves as independent farmers only to be pursued by the British who forced their alien, dangerous and intolerant system on them. Many had sold or bartered their claims and numbers of boers began to look beyond Natal – the highveld might be less well-watered, less fertile, colder, but it was also less contested, free of the British threat, and without Africans pressing not just on the borders but living within them in

<sup>46</sup> John Clark, *Natal Settler-Agent. The career of John Moreland agent for the Byrne emigration-scheme of 1849-1851* (Balkema Cape Town 1972) 139.

<sup>47</sup> BPP: *Correspondence relating to the settlement of Natal*, 1850. Minute on Land claims by Secretary to Government, November 1849, enclosed in 39, Smith to Grey, 26 February 1850.

<sup>48</sup> Bird, *Annals*, II, Stanley to Maitland 29 July 1844, 404.

<sup>49</sup> Bird, *Annals*, II, Stanley to Maitland, 31 October 1844, 439.

<sup>50</sup> Bird, *Annals*, II, Stanley to Maitland, 9 July 1844, 406.

increasing numbers. Some boers were to stay but over the next few years most trekked again over the Drakensberg.

But contemporary quarrels framed within the context of hardy independence versus arrogant, distant policy-makers do little to explain the situation. Cloete's reports and recommendations were not received with any gratification by the Colonial Office. The difficulties arising out of colonization had been subject of intense debate for years and much experience had been gained on the subject from Australasia and north America especially.<sup>51</sup> In 1839 a board of Colonial Land and Emigration Commissioners had been set up to assist the Colonial Office with the very specific problems raised by land policies and emigration.<sup>52</sup> The officials worked within the framework which had developed out of the thinking of Gibbon Wakefield and the 'Colonial Reformers'. Their proposals on 'systematic colonization', while criticized in its details, was held in general terms to be a major contribution.<sup>53</sup> The days of free or cheap land in the colonies were long over. Wakefield's 'sufficient price' for land might be difficult to estimate in different contexts but it was accepted that the process of emigration and colonization had to be managed by balancing the price of land with the demand for labour, and funds from the sale of crown lands should be used to pay for emigration and the cost of colonial administration. By restricting grants in Natal to land occupied for a year, and then their extent, London hoped to discourage the speculator and encourage the settled, productive farmer. The revenue raised subsequently from the purchase and transfer price, rents and revenues could then be used to cover initial administrative surveying and registration costs, and establish and maintain land prices generally, including crown land.

There was one overwhelming problem however: a system which sought to establish a balance between the demands of capital, land, and labour simply did not apply in Natal at this time. Wakefield had supported his argument by using the example of the Swan River settlement in western Australia where a Mr Peel had raised £50 000 in capital and 300 emigrants to found a settlement – only to find that with land freely available he was soon without labour and subsequently without capital.<sup>54</sup> Wakefield's answer was to propose systematic colonization in which crown land was only available at a price sufficient to force the labourer to work, but not so much as to deny him the chance of eventually purchasing land for himself: it was the task of colonial officials to make this effective by keeping the price of land, labour, and therefore the accumulation of capital in balance with one another. Marx wrote a scathing chapter in *Capital* which pointed out that such schemes failed because of the impossible task of exporting social relations developed in one context (landlessness as a result of the historical development of a private property in land) into another (freely available land without the historical development of private property).<sup>55</sup>

<sup>51</sup> For a critical appreciation of Wakefield's 'discovery' by the Professor of Political Economy in Oxford, later to become permanent secretary in the Colonial Office, see Herman Merivale's *Lectures on Colonization and Colonies*, II, (London, 1842) 51ff where he also deals with an aspect not analyzed in this paper – the use of colonial land revenue to fund further emigration – a move which the boers feared and on which the Colonial Office kept its options open.

<sup>52</sup> F. H. Hitchens, *The Colonial Land and Emigration Commission* (Pittsburgh, 1931).

<sup>53</sup> W. P. Morrell *British Colonial Policy in the Age of Peel and Russell* (Oxford, 1930). And the phrase appears in the Secretary of State's (Grey) despatches to Natal in the 1840s.

<sup>54</sup> Gibbon Wakefield, *England and America. A comparison of the social and political state of both nations*, II, (London 1830) 33-6.

<sup>55</sup> Karl Marx, *Capital. A Critique of Political Economy* [1867] Pelican edition 1976, Chapter 33 'The Modern Theory of Colonization'.

The same arguments can be applied in principle, although not in detail, to the plans for the colony of Natal. Land was never 'freely available' in southern Africa. It was available after a struggle to those with the mobility of mounted men and the destructive power of firearms. But in the years after 1839 it became apparent that land in Natal was not to be secured by armed occupation either. The boers might win battles for land, but not the war. The number of Africans on the land was large and increasing. Driving and keeping them out, even if it were military and diplomatically possible, would mean the general trekker population would have to remain in defended positions making the productive occupation of the land impossible.

Although they were held responsible for it historically, it was not the arrogant prejudice of the British and their greed and intolerance which was main reason that the majority of boers lost or abandoned the land for which they had sacrificed so much in Natal. It was that they failed to understand the situation. The land in Natal was not empty. It was that it was lived upon by others: by tens of thousands of Africans who laid their claims not through concerted organised overt political action or by documented registration, but by just what the British insisted upon and the boers were unable to carry out – by occupation and by production. On the Swan river the emigration company had assumed wrongly it could impose social relations derived from a situation where the inaccessibility of land had created the wage labourer, onto one where land was free – as a consequence the concept and the person of wage labourer disappeared. In Natal it was assumed that land and labour were plentiful: they were not; only people were, and without labour, land lacked value as capital, and it was exchanged for sums which were largely meaningless, depriving the proposed colonial state of the revenue required for its establishment and its survival.

It is within the conflict between different attitudes and visions of land occupation that the setting-up of colonial Natal deserves further examination, for it was in this that future policy developments had their origins. On the one hand there were the imperial officials: in the Colonial Office, working within the paradigms of political economy; insisting that revenues be raised from the land by the application of capital and labour; beholden to immediate political pressures and the advice of their law officers and commissioners so experienced in the technical difficulties pertaining to colonial land schemes, emigration and speculation. From their deliberations with their local representatives came the precise instructions around land tenure, land price and revenues and the regulations to be implemented to achieve them. On the other hand, in Natal itself the trekkers moved through the territory, claimed this or that stretch of land as their own, described but not did define their claims and when challenged often moved on, looking for more land, hunting, trading, bartering, driving their stock – and as a result to whom the instructions from London just didn't apply.

These differences were apparent in the nervousness with which Napier repeated with added emphases his initial instructions to Cloete. He drew attention to the importance of the meaning of the words 'occupying' or 'holding' land. He pointed out that in the Cape they were used very differently from the way in which they were understood and used by the British government. In order not to overreach his mandate Cloete was to investigate not just the history of the extent of land 'held' by the claimant but also, what quantity of the land so held each has, bona fide, occupied either by agriculture or stock other otherwise - and in producing the information you must require each applicant to

satisfy you of the extent of land he has had in cultivation and the number and description of his stock by which any portion of the land has been occupied.<sup>56</sup>

This proved perfectly impossible to carry out. As Cloete reported ‘no farmer is ever capable of making even an approximating guess of the quantity of land he has under cultivation’ and

In the infant state of the Natal Colony, owing to want of markets, and the dangers attending life and property found by me under cultivation on each farm has been comparatively small.

And it was also impossible to estimate the number of livestock. Herds on a particular piece of land would belong to a number of different owners, as they were moved from pasture to pasture for the best grazing and to escape seasonal disease. Such statistics, Cloete said, would be possible only when surveyors had laid down ‘the true limits of each farm’.<sup>57</sup> But, as Governor Pine wrote a few years later after looking at the Volksraad registers, the claims were made

by such vague and extraordinary descriptions that it was impossible to ascertain what particular farms were meant; for example, one man applies for a farm where such and such a person shot a buffalo, another for a farm at the place where he and his companions outspanned .... upon a certain expedition. The geographical description of farms are for the most part equally vague and uncertain.<sup>58</sup>

Now the conflict here is not just the result of differences in interpretation: it is rooted in two different views of land rights: the official one – bounded private property and the enclosure of land defining legal occupation: on the other, practices of transhumance, migration and expansion, moving stock from one area to another, access negotiated or imposed, hunting for support over extended areas, trekking from one piece of land and opening up another, and barter when cultivation was impossible. These are of course extreme positions. The officials knew they had to adapt to a mobile unsettled boer population and indeed Cloete had to define ‘occupation’ widely in order to take this into account. The boers were well aware of the need for inspection and registration and documentation of their land claims: they also understood that payment was required for a defined extent of land, even as they resisted it. But the land claim records show that despite the attempts by officials, historians and archivists to impose order on them, they remain difficult to substantiate, unsystematic, and obscure. The records in fact reflect a situation which was not amenable to colonization in the sense the word was used in the Colonial Office. In the 1840s in Natal the common reaction to official attempts to regularise land-holdings was to dispose of or abandon them – exactly the situation that ‘systematic colonization’ sought to solve. Soon, except for the farms in proximity to Durban, Pietermaritzburg and Weenen, most of the land was unoccupied or unsold – by people who might be called settlers that is – but not by the indigenous people, the natives of Natal.

### **The African reserves**

It was only when boer claims had been investigated that Cloete felt he could begin an ‘attentive, cautious, and impartial enquiry to ‘the claims of any natives to lands....’<sup>59</sup> And as soon as he did so the racial limitations of his own perceptions, and his

<sup>56</sup> PAR:SGO. II/1, Napier to Cloete, 18 May 1843.

<sup>57</sup> Bird, *Annals*, II, Cloete to Montagu, 30 May 1844, 392.

<sup>58</sup> BPP: *Further Correspondence relating to the settlement of Natal*, 1851. Pine to Grey, 1 November 1850.

<sup>59</sup> Bird, *Annals*, II, Cloete to Montagu, 30 November 1843, 310.

susceptibility to the opinions of the equally prejudiced boers became apparent. His starting point was that it was pointless to approach Africans for their idea of their land rights: they were a people who, he wrote 'would not think of preparing any specific claims to lands, but content themselves with the occupations they held.' He then, with all the authority of Her Majesty's Special Commissioner, repeated the view that had been propounded by the first British traders and updated by the trekkers. Natal the country 'had been so fearfully devastated by the murderous forays of Chaka and Dingaan' that the population consisted of only a few thousand and they 'were found by the first emigrants dying from want and starvation.'

Independent ... of these parties, who may be considered the descendants of the aboriginal natives of this country, a most alarming influx of Zulus has taken place, chiefly within the last three or four years, occasioned by the system of indiscriminate murder pursued by Dingaan and, till within a very few months ago, Panda himself. It is impossible to form a correct estimate of their numbers ... but... they have been computed to amount at least to between eighty thousand and one hundred thousand....

Absence of security had forced the Boers to gather in defensive positions and this allowed these refugees to settle

down upon every desirable plot of ground where cultivation was easy ... [and around Port Natal] has become filled with numerous and extensive kraals, who have of late cultivated large tracts of land, and find a ready market for the sale of their produce....<sup>60</sup>

But from this point on Cloete departed from the standard boer line. This enormous African population might become a danger, but was not one at the moment. Cloete was determined to assure London, and in so doing perhaps hoping to steer the British officials away the temptation to interfere further, that the Africans offered no threat: if only

the males could be gradually induced to exert themselves, not leaving the whole labour and drudgery of the field to women and children ... a more useful, tractable, and inoffensive race could not be found anywhere than these Zulus.<sup>61</sup>

Furthermore he did not support the boer request that these people be removed beyond Natal's borders. Even if it was possible to carry this out it would create large groupings of Africans on Natal's borders which would soon form a threat. Instead, he proposed that the land occupied by the small aboriginal population should be vested in their chiefs who would hold it in trust for their people. The second group, the vast majority of Africans, the 'intruders' as he called them, should be moved to 'locations', 'a little way removed from the contaminating influence of the chief town and the port'. The American Board Missionary Newton Adams had shown how this could be done in the Mlazi district where the 10,000 Africans lived in the vicinity of his station were already benefiting from his work. The Rev Aldin Grout had proposed a similar station to the north of Durban near the Mvoti river. The right bank of the Mzimvubu, the upper Mkhomazi, the junction of the Mzinyathi/Thukela, the upper Thukela also seemed suitable reserves – perhaps six in all. Such a system Cloete believed

will lay the sure foundation of a gradual improvement in the habits and morals of this benighted people... and slowly but surely their races will become so amalgamated with the present European population as to derive every possible advantage from that intercourse, without (it is hoped) falling a prey to the vices and habits which an unlimited intercourse with the Europeans is but too apt otherwise to engender.<sup>62</sup>

<sup>60</sup> Bird, *Annals*, II, Cloete to Montagu, 30 November 1843, 311.

<sup>61</sup> Bird, *Annals*, II, Cloete to Montagu, 30 May 1844, 311-2.

<sup>62</sup> Bird, *Annals*, II, Cloete to Montagu, 30 May 1844, 315.

Although it was years before it was acted upon, and took forms which Cloete had never envisaged, the principle of ‘locations’ was accepted.

### **A ‘colony of natives’**

From the start the Lieutenant-Governor Martin West was confronted with an obvious problem. How was he to establish the district financially when the means to do so were denied him on the grounds that there was no way to pay for them? In London the Colonial Office did little more than express regret that such a financially unproductive and militarily insecure district had been added to the empire. And there was also the question of the quite unprecedented challenge of the racial imbalance. The settlers numbered only a few thousand, and even this number was decreasing: the African population on the other hand was now believed to be 80,000 and increasing.

To the Cape Governor it seemed that Natal was threatened by failure from the start: the intentions entertained by Her Majesty’s Government, when they annexed Natal to the British empire, of having a colony of European settlers in that country, are likely to be almost entirely frustrated. The trekking of the Dutch farmers beyond the Drakensberg is rapidly denuding Natal,... while the vast body of natives within the district ...and daily increased by number flocking from Panda's tyranny, threatens to occupy the territory, and to convert it into a coloured colony.

The more boers who left the greater the insecurity of those who remained, their fears intensified by the ‘the manner in which the land-claims have been arranged, which has left wide unoccupied spaces between the farms to which the claims have been recognised.’ Coercion by the military was out of the question. Some Wakefield-like emigration policy which balanced labour and capital might be possible for the land is of a nature amply to repay the middle-class emigrant for his outlay and labour; while the numerous natives settled upon the land, .... would supply abundance of labour for the cultivation of the soil. But unless something of this kind can be effected, I do not see in what way the new settlement can be prevented from degenerating into little more than a colony of natives.<sup>63</sup>

The last act of Natal’s outgoing military commandant was to state that ‘the immediate appointment of an agent to deal with the large native population of that settlement is absolutely necessary.’ The Governor at the Cape had the answer when he announced that the Resident Agent at Ford Peddie was to be transferred to Natal: ‘from his knowledge of the native language and customs [he] is better fitted than any other person I am acquainted with to discharge the duties of such an office efficiently.’<sup>64</sup> In February 1846 the 29 year old Theophilus Shepstone arrived in Pietermaritzburg to take up the post of Diplomatic Agent to the Native Tribes.

### **[Postscript: The African claims to the land**

Beyond the specifics of this chapter and the next I want to bring out the immense contrast between the processes described above (the documentation of rights to land not just for use or commodity production, but land itself as a commodity) and those which will be presented below (African rights to land determined by use). And not only is there an immense contrast in attitudes there is also an immense contrast in the historical sources: from the direct, documented often first-person primary sources used above to the primary sources on first-people used in the next chapter, always mediated by the colonial presence, none more opaque and manipulative than Theophilus Shepstone himself.

<sup>63</sup> BPP: *Correspondence relative to the establishment of the settlement of Natal*. 1848. 30, enc. West to Maitland, 24 February 1846, 42.

<sup>64</sup> BPP: 1848. 23, Maitland to Stanley, 1 October 1845, 34.

Shepstone arrived in Pietermaritzburg as an official who already had a reputation amongst Africans as a man who understood Nguni languages and experienced in African conditions customs and practices. Over the next few months African leaders, the *amakhosi* with their councillors and followers attended his office in order to *khonza*. By this they gave their political allegiance to the new authorities: in return, in their understanding, their authority over their people was recognized together with access to land on which to live, cultivate and graze their herds.

That this was the nature of the transaction is not obviously apparent in Shepstone's reports. Indeed what is apparent is that he manipulated these reports and downplayed the fact that Africans were asking for and believed they had received recognition of their right to land and exaggerated the expressions of loyalty, subjection, and admiration for their new English rulers – in the person of Somtsewu especially. But the subsequent history of Natal, Shepstone and the *amakhosi* confirms that the initial understanding between Natal's African leaders and the British representative was that the former acknowledged British political supremacy in return for the acknowledgement of African local authority and rights to land under African forms of patriarchal tenure, as understood by the concept *ukukhonza*. In so doing Shepstone moved beyond the role of Diplomatic Agent and in the process created expectations amongst Africans which were potentially inimical to the plans and ideas of colonial and settler interests. Shepstone's career can be seen as an attempt reconcile these essentially incompatible forces which he had set in motion by the alliances he made in these early years with Natal's African chiefs for the control of Natal's African population.]