

The Origins and Aftermath of the Cape Colony's 'Hottentot Code' of 1809

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On 1 November 1809 the Earl of Caledon, the first civilian governor of the Cape Colony since its occupation by Britain in 1806, passed one of colonial South Africa's most infamous pieces of legislation.¹ The 'Caledon Code' became enshrined in the minds of early-nineteenth century humanitarians as the final seal in a long process of the 'enslavement' of the Colony's indigenous population, the Khoikhoi. The proclamation was most explicit about its intended purpose: 'individuals of the Hottentot nation should find an encouragement for preferring entering the service of the inhabitants to leading an indolent life.' The most important article in the proclamation stipulated that henceforth all 'Hottentots' (as the Khoikhoi were pejoratively known) were to have a 'fixed place of abode'. 'Hottentot' servants were not to move from such an abode without a pass and could be asked by any white settler to produce one to verify that they were not bound by any contracts. Those in breach of these regulations were classified as 'vagrants'. The 'Hottentot Code' of 1809, as Caledon's proclamation became known in settler discourse, was bolstered by a law passed in 1812 that made provision for those Khoikhoi children who had been maintained by settlers in their first eight years, to be 'apprenticed' for ten further years.

Taken together, these two pieces of legislation were of great significance to the political economy of the Cape Colony, and in particular for the eastern and north-eastern districts, where the majority of Khoikhoi were to be found. There is no doubting their coercive capacities for the only option open to 'Hottentots' not resident on mission stations was to be in service of either white settlers or the colonial state. And there is indeed a long lineage of writing, dating back to the time of the passage of the legislation itself, which ascribes to the 'Hottentot Code' the origins of a kind of South African 'serfdom.' Dr. John Philip of the London Missionary Society was representative of many when he wrote in his famous *Researches in South Africa* that the legislation of 1809 consigned 'the Hottentots ... to universal and hopeless slavery.'² The 1837 British Parliamentary Select Committee on 'Aboriginal Tribes', which was heavily influenced by missionary testimony, reported that the Caledon Code did much 'towards riveting their [the Khoikhoi's] chains, as it had the effect of placing them under the control of any inhabitants of the colony, who never wanted frivolous pretexts to detain them at compulsory and

1. G.M. Theal, ed., *Records of the Cape Colony*, (London, 1897-1905, 36 volumes), vol. 7, (hereafter, *RCC*), 211-16.
2. J. Philip, *Researches in South Africa*, (London, 1828, 2 volumes), vol. 1, 148.

unpaid labour.³ And Commissioner Bigge, who headed a Commission of Enquiry into Cape affairs in the early 1820s, wrote that these regulations created a 'perpetual obligation in the Hottentots to enter into service.' The 'great majority ... remained in a state of servitude to the white inhabitants of the colony.'⁴

A diverse range of modern historians have taken their cue from such contemporaries. Eric Walker wrote that 'Hottentots' were forced into the position of 'pass-bound serfs on such terms as a farmer or field-cornet might approve or an isolated magistrate allow.'⁵ Richard Elphick, Candy Malherbe and Susan Newton-King in their influential papers by and large reaffirm this view.⁶

It is true that there is no shortage of evidence to show that Caledon's Code and subsequent legislation *did* immobilise Khoikhoi labour. The 'apprenticeship' law of 1812 was especially significant, for it had the effect of binding entire Khoikhoi households to settler farms. Indeed, the legislation of 1809 was highly gendered: the 'Hottentot' servant was 'at liberty to include *his* wife and children' in any contracts concluded with white settlers. By 'apprenticing' the children of Khoisan servants, settlers could significantly increase the labour at their disposal, and, as Bigge pointed out, they showed 'no reluctance ... to avail themselves of the opportunities which [the apprenticeship laws] have afforded.'⁷ Between 1812 and 1823 at least 2,295 'Hottentot' children were apprenticed out of the 3,933 born in this period.⁸

But it was not just that Caledon's Code weighed heavily in favour of settler interests, or that colonists 'took from Governor Caledon's regulations the extra support which they needed, and ... ignored those provisions which contravened their interests.'⁹ It was also that local authorities were blatantly corrupt in the administration of the new regulations. There were many instances in which *landdrosts* had clearly altered contracts after they had been drawn up and in other instances their names appeared on contracts 'made in their own favour.'¹⁰ After all, *landdrosts* and fieldcornets were themselves 'in the general want of agricultural labourers.'¹¹ As Elphick and Malherbe have pointed out, the Khoikhoi were placed 'at the mercy of those most interested in tying them down.'¹² To prevent children from being illegally 'apprenticed', settlers were meant to report to their fieldcornets the births of 'Hottentot' children on their farms, and *landdrost* were in turn required to keep a register of such births. But it was in the area of child labour in particular that local authorities had great powers of patronage. These regulations, too, were poorly enforced and widely abused. In districts where age-

3. Report of the Parliamentary Select Committee on the Aboriginal Tribes, British Settlements, 1837.

4. RCC, 35, Report of J.T. Bigge upon the Hottentot and Bushman Population, 28 Jan. 1830.

5. E. Walker, *The Great Trek* (London, 1934), 79.

6. R. Elphick and V. Malherbe, 'The Khoisan to 1828' in R. Elphick and H. Giliomee eds., *The Shaping of South African Society, 1652-1840* (Cape Town, David Philip 1989), 41. See also J.S. Marais, *The Cape Coloured People*, (Johannesburg, 1968), 124; S. Newton-King, 'The Labour Market of the Cape Colony, 1807-1828', in S. Marks and A. Amore eds., *Economy and Society in Pre-Industrial South Africa* (London, 1980), 177.

7. RCC, 35, Report of J.T. Bigge upon the Hottentot and Bushman Population, 28 Jan. 1830.

8. RCC, 35, Report of J.T. Bigge upon the Hottentot and Bushman Population, 28 Jan. 1830. These figures do not include the districts of Stellenbosch and Worcester, where no births were recorded, and include Graaff-Reinet only from the year 1821.

9. Newton-King, 'Labour Market', 177.

10. RCC, 35, Report of J.T. Bigge upon the Hottentot and Bushman Population, 28 Jan. 1830.

11. RCC, 35, Report of the Commissioners of Inquiry upon the Police at the Cape of Good Hope, 10 May 1828.

12. Elphick and Malherbe, 'Khoisan to 1828', 41. See also Marais, *Cape Coloured People*, 124.

old patron-client networks were well established, *landdrosts* could exercise their extensive 'discretionary power ... in the separation of the children of Hottentots from their parents.'¹³ Not only did *landdrosts* adjudicate claims made on the labour of 'Hottentot' children, but they were also free to award claims on the labour of such children to any farmer they chose.¹⁴ Some *landdrosts* 'were disposed to relax the necessary conditions of birth and eight years maintenance' and considered sufficient 'the maintenance of a child from its years of infancy.'¹⁵ The *landdrost* of the vast district of Graaff Reinet did not bother to keep a register until 1821. There was thus no way of ascertaining whether the prior conditions of 'apprenticeship' had been met or even how many children had been 'apprenticed' in preceding years.

And perhaps most revealing of all, the legislation was made to apply to those for whom it was not intended – that is, the country's indigenous hunter-gatherers, the people settlers chose to call 'Bushmen'. In 1807 the *landdrost* of Graaff-Reinet noted that the 'Hottentots' in his district were being 'generated' from the 'Bushmen.'¹⁶ The chief means by which such people were 'generated' was through the commando; above all, it was the commando that conquered the Colony's north-eastern frontier. One informant claimed to have taken part in forty-five commandos between 1784 and 1825.¹⁷ By the end of this period no independent 'Bushman' settlements were to be found on the Colony's northern frontier. And, as much as the commando was an institution of the Dutch frontier, it was under British rule that the 'Bushmen' south of the Gariep were finally overcome. Between 1800 and 1824 trekboers occupied some 50,000 square miles of 'Bushman' country, and destroyed vast quantities of game along the way.¹⁸ By 1832, except for those who had lived with the settlers 'from infancy', the 'Bushmen' had all but 'disappeared.'¹⁹

A good number of these children who had served white settlers 'from infancy' were war captives – captured by commandos and sold in the colonial economy. Although a few colonial officials, such as Andries Stockenström, were keen to put an end to this trade, it nevertheless seems clear that an unknown number of 'Bushmen' had been forced into servitude. It is almost certain that in the early years of the nineteenth century commandos were mounted with the express purpose of taking war captives. There is every reason to doubt the accuracy of accounts provided by commando leaders, but their figures, although almost certainly underestimates, are nevertheless suggestive. In the district of Graaff-Reinet twenty-four commandos were launched between 1797 and 1824. The significance of these particular commandos, however, is that far more 'Bushmen' were taken prisoner than killed in battle: ninety-seven were reported killed as opposed to 280 who were taken prisoner. These figures stand in stark

13. *RCC*, 35, Report of J.T. Bigge upon the Hottentot and Bushman Population, 28 Jan. 1830.

14. *RCC*, 30, Philip – Directors of the London Missionary Society, 155.

15. *RCC*, 35, Report of J.T. Bigge upon the Hottentot and Bushman Population, 28 Jan. 1830.

16. Cited in Elphick and Malherbe, 'The Khoisan to 1828', 43.

17. Philip, *Researches*, vol. 2, 45, 273.

18. Public Records Office, London, United Kingdom (hereafter PRO), CO 48/13, Report of Commission of Circuit – Cradock, 28 Feb. 1812, 239ff; P.J. Van der Merwe, *Die Noordwaardse Beweging van die Boere voor die Groot Trek, 1770- 1842* (Pretoria, 1988), 153.

19. Report of the Parliamentary Select Committee on the Aboriginal Tribes, British Settlements, 1837.

contrast to other districts where the numbers of ‘Bushmen’ killed exceeded those taken captive. In the same period fourteen commandos from Stellenbosch took only twenty-two prisoners, while eighteen commandos in Worcester did not take any. In Graaff Reinet these captives were ‘according to the practice of the District ... distributed amongst the Inhabitants and put out to service for a stated period.’²⁰ As early as 1812, thus, when ‘peace and quietness reigned everywhere’, ‘Bushmen’ were noted to serve the settler economy ‘with full as much care and attention as the Hottentots themselves.’²¹ The use of ‘Bushman’ servants enabled frontier trekboers to drive down the price of ‘Hottentot’ labour.²² The practice of putting orphaned children to work for settlers, ostensibly to save them from certain death, Stockenström noted in 1817, had been ‘many years in use’ and the ‘ancient custom’ was beginning to be ‘seriously abused.’²³ While colonial authorities wished to be assured that captives were not passed off as slaves, they were, in time, ‘confounded with the Hottentots.’²⁴

The Making of the Colonial ‘Hottentot’

But to see the Caledon Code as a marker of ‘serfdom’ is to miss its wider significance. The Code signalled a new form of rule that was to be in line with the reality of colonial dispossession. The Code, in other words, marked the final step in the transformation from independent peoples to ‘Hottentots’, that is, subjugated Khoikhoi in the permanent and servile employ of white settlers. In the first instance, the Proclamation of 1809 assumed that the relationship between white settlers and Khoikhoi was to be that of master and servant. It demanded that servants were to serve their masters ‘diligently and honestly, with proper submission.’ Secondly, the loss of Khoikhoi independence was underscored by the fact that all Khoikhoi were henceforth to be subject to colonial law. Thirdly, and most significantly, the overriding concern of the colonial state, as Timothy Keegan has emphasised,²⁵ was to *regulate* relations between settlers and their Khoikhoi servants and to limit the appalling violence that had come to characterise these relations in the course of the eighteenth century.²⁶ The great significance of the Code was that it sought to limit the personal and arbitrary authority of the master and replace it with the rule of an interventionist colonial state.

Thus, just a few weeks before the passage of his Proclamation, Caledon had occasion to lament the poor state of master-servant relations in the Colony’s frontier districts. The problem, as he saw it, lay clearly with the trekboers. ‘Orders after orders have been repeated to ensure ... better treatment’ of Khoi servants, but ‘the same state of barbarity which characterized these people [trek-

20. PRO CO 49/63, Returns of all Commandos or Expeditions against the Bosjesmen which have taken place ... since 1797, 16 Oct. 1824, folio 165ff.

21. PRO CO 48/13, Report of Commission of Circuit – Cradock, 28 Feb. 1812, folio.239ff.

22. RCC, 35, Report of J.T. Bigge upon the Hottentot and Bushman Population, 28 Jan. 1830, 315.

23. Cape Archives, Cape Town, South Africa (hereafter CA) GH 1/GR 16/6, Stockenström – Bird, 5 May 1817, no.697.

24. CA GH 1/GR 16/1, Stockenström – Bird, 5 June 1822, no.2265.

25. T. Keegan, *Colonial South Africa and the Origins of the Racial Order* (Cape Town and Johannesburg: David Philip, 1996), 54.

26. By far the most outstanding account of this history is to be found in S. Newton-King, *Masters and Servants on the Cape Eastern frontier, 1760-1803* (Cambridge: Cambridge University Press, 1999).

boers] for centuries still remains.’ What was needed, he noted, was an ‘improvement in [their] habits and morals.’²⁷ Governor Cradock, Caledon’s successor, was concerned to put an end to the ‘uncontrolled severity of the powerful over the weak ... the nameless tyranny of the strong over the defenceless.’²⁸

The novelty of the new legislation, as J.S. Marais has noted, lay not in the introduction of passes – these had existed in various forms even under the VOC – but in its elaborate detail. For example, contracts of labour for periods of one month or longer were to be completed in triplicate and registered before local judicial officers – *veldcornets* and *landdrosts*. For the first time, extensive measures were passed aimed at protecting the Khoikhoi against abuses of settler power. Servants now had the right to complain to local authorities against the withholding of wages. Masters were compelled to provide servants with the ‘necessities of life’ from which alcohol was specifically excluded. It became unlawful for settlers to detain servants for unpaid debt accumulated in the form of advances; such debt could in future only be recovered by legal process. Although masters retained the right to administer ‘domestic correction’, the law did seek to protect servants against gross ill-treatment. Where ill-treatment could be proved, masters were liable to a fine of between ten and fifty Rixdollars. In cases of ill-treatment ‘with mutilation’, masters were to be prosecuted ‘according to the law of the colony.’ The code went to great lengths to ensure that Khoi servants were aware of the new regulations. Fieldcornets in country districts were instructed to assemble at least one Khoi servant ‘from each house’ in their respective wards and to explain to them ‘the full meaning’ of the Proclamation of 1809. Those who failed to meet these requirements did so ‘at their peril.’²⁹

Why was the colonial state so concerned to regulate relations between masters and servants? The answer to this question clearly has to be sought in the violent close to the eighteenth century and the first British occupation of the Colony. At the end of the eighteenth century the relentless pressure of settler expansion meant that all Khoikhoi within colonial boundaries had all but lost their land and cattle. In 1799 they made their last stand in a rebellion that would not be quelled until 1803. Specifically, the unrest emerged out of the turbulent conditions that prevailed on the frontier at the end of the eighteenth century when ‘Hottentot’ servants joined the British army in putting down a rebellion of disaffected trekboers. But it soon became clear to those who fought on the imperial side that they had reason to become ‘suspicious of the good faith or intentions of the English government.’ Fearing that they would be forced ‘to return to the habitations of their old Oppressors’, the Khoikhoi threw in their lot with the Xhosa of the Zuurveld.³⁰ There was no doubt in the minds of British authorities that an alliance of Xhosa and ‘Hottentots’ threatened the very survival of the Colony.³¹ Although the frontier remained volatile for a long time, the presence of

27. PRO CO 48/4, Caledon – Castlereagh, 12 Oct. 1809, folio 247.

28. PRO CO 48/13, Circular, Cradock to Landdrosts, 20 April 1812, 327.

29. Marais, *Cape Coloured People*, 116-18; L.C. Duly, ‘A Revisit with the Cape’s Hottentot Ordinance of 1828’, in M. Kooy ed., *Studies in Economics and Economic History: Essays in Honour of Professor H.M. Robertson* (Durham, North Carolina, 1972), 28; Elphick and Malherbe, ‘Khoisan to 1828’, 41.

30. RCC, 3, Dundas – Yonge, 20 Feb. 1800, 48-54.

the British military was of crucial importance in turning the tide in favour of settler occupation. The ancient commandos were simply not equipped to extinguish a rebellion on this scale. Not for the last time in the history of colonial South Africa, the 'imperial factor' revealed clearly itself as the handmaiden of settler colonial interests.³²

More generally, the events of 1799-1803, Newton-King and Malherbe have argued, amounted to no less than a 'war of independence.'³³ It was an indication of the loss of Khoikhoi independence, and the extent of their incorporation into the colonial economy that the uprising was 'a revolt of farm servants.'³⁴ For these reasons the rebellion had lasting and important consequences for colonial policy, mostly because it brought home to the British authorities the need to regulate the working and living conditions of slaves and servants.³⁵ In the immediate aftermath of the rebellion, thus, initial British efforts were directed at stripping colonial labour relations of their excessive violence: for the first time, for example, provision was made for the registration of labour in the district of Graaff-Reinet between trekboers and Khoikhoi servants.

The Colonial Origins of the 'Hottentot Code'

But more important than the lessons learned by British colonial authorities from the events of 1799-1803, were those learned by members of the Dutch elite. To understand these, we need to return to the years of the first British occupation of the Cape Colony. It is well known that when the British first took the Colony in 1795 they could only rule with the consent of the pre-existing Dutch elite, the slave-holding class historians have called the 'Cape gentry'.³⁶ Some of those most closely tied to the VOC had lost out as a consequence of the British occupation and looked upon their new rulers 'with eyes of resentment.' For the most part, however, the British had little difficulty in making friends of the Dutch elite, especially since the occupying forces were instructed to make as few amendments to the civil administration as possible.³⁷ As a consequence, the new colonial administration 'was grafted on top of the existing civil service.'³⁸ Especially important were individuals such as the chief legal officer, W.S. van Ryneveld, Ryno van der Riet, the *landdrost* of Stellenbosch who was particularly amenable to British rule, and Reverend Vos, the Dutch minister at Tulbagh who, 'openly from the pulpit', encouraged his congregation to support the new Government. The support that the Dutch elite gave to their new rulers, however,

31. *RCC*, 3, Dundas – Yonge, 20 Feb. 1800, 48-54.

32. A. Atmore and S. Marks, 'The Imperial Factor in South Africa in the Nineteenth Century', *Journal of Imperial and Commonwealth History*, 3, 1974, 109-110.

33. S. Newton-King and V.C. Malherbe, *The Khoikhoi Rebellion in the Eastern Cape, 1799-1803* (Cape Town, UCT Centre for African Studies, 1984), 10.

34. Marais, *Cape Coloured People*, 114.

35. Marais, *Cape Coloured People*, 115.

36. R. Ross, 'The Rise of the Cape Gentry', *Journal of Southern African Studies*, vol. 9 (2), 1983, 193-217; W. Dooling, 'The Making of a Colonial elite: Property, Family and Landed Stability in the Cape Colony, c.1750-1834', *Journal of Southern African Studies*, vol. 31 (1), 2005, 147-62.

37. PRO WO 1/324, Craig – Dundas, 27 Dec. 1795, 551-73; PRO WO 1/325, Craig – Dundas, 10 July 1796, 403-09.

38. L.C. Duly, *British Land Policy at the Cape, 1795-1844: A Study of Administrative Procedures in the Empire* (Durban, North Carolina, 1968), 23.

was crucially predicated on the understanding that the British would ‘preserve to [the Dutch population], their Religion, their lives and their property.’³⁹

And crucially the Dutch settlers counted their slaves as amongst their most prized property. One of the first examples of the Dutch elite’s refusal to bend to the will of the new administration was around the question of the treatment of slaves. The condition of the Colony’s slaves pressed upon British authorities almost immediately. General Craig had hoped that a softening of judicial violence might have had the effect of ‘inspiring [the slaves] with an affection for their masters which they at present seldom feel.’⁴⁰ But the Dutch officials on whom the British depended for their rule, held very different notions of how best to govern a slave colony. In 1796 members of the Court of Justice saw substantially less possibility of ‘affection’ between masters and slaves than did General Craig. Because the jurisprudence of ‘civilized Nations’ could not be based on anything other than the ‘distinction of persons,’ terror alone, they argued, would prevent slaves from bringing ‘the whole Colony to the brink of ruin.’ And because slaves had to spend the greater part of their lives ‘for the advantage of those to whom they are subject’, the ‘State of Slavery’ was ‘always accompanied with a certain degree of Enmity against Masters.’ Nothing short of the abolition of slavery would remove these ‘inconveniences’, but since ‘the greatest part of the property of the Inhabitants of this Country consists of Slaves’, so radical a measure as abolition ‘could not be attempted without being followed by the most ruinous consequences to a number of Families.’

Members of the Court of Justice were quite clear about the nature of relations between masters and slaves and failed to bring forth any of the paternalistic rhetoric that would be heard from sections of the Dutch population in later years. The violence to which slaves were prone, they noted,

originate from the consciousness which a Slave has of his condition – from the great improbability of his being able to ameliorate his condition – from the difficulties that prevent him from even using means to effect that end – from the abuse which Masters often make of their authority – from the want of those principles which might direct and comfort them in their unhappy Situation.⁴¹

In the end Craig chose to desist, and for a short while the slaveowners got their way.⁴² Even though Craig’s successor managed to abolish the use of judicial torture in 1797, the new colonial administration simply remained too dependent on the existing ruling elite that had held power in the days of the VOC. For now, the new colonial state hesitated to tinker with cherished institutions.

When the British conquered the Colony for the second time in 1806 they found the same gentry class willing to collaborate with, and acquiesce in, British imperial rule. The Colony’s new rulers promised to free the Cape economy

39. PRO WO 1/325, Craig – Dundas, 29 Aug. 1796, 575ff.

40. RCC 1, Craig – President and Members of the Court of Justice, 7 Jan. 1796, 300.

41. RCC 1, Court of Justice – Craig, 14 Jan. 1796, 302-307.

42. RCC 1, Craig – President and Members of the Court of Justice, 4 Feb. 1796, RCC, 1, 324.

from the restrictive policies of the VOC and incorporation into the world's most dynamic economy of the day. To the old rural and urban elite, who saw the possibilities of personal enrichment and continued influence, this held endless promise. Lacking its own administrative personnel, the new government handed out all the important offices of civil administration by way of personal favour to members of the Dutch elite. Thus local Dutch officials came to dominate the Court of Justice, the middle levels of the office of the Colonial Secretary, as well as the important Orphan Chamber, which administered deceased and insolvent estates and thus controlled significant sums of money. Most importantly, the Dutch elite continued to dominate the local courts of law in rural districts, so important in the award of patronage and continued control of the servile population.⁴³ As the missionary James Read noted, the British and Batavian governments that ruled the Cape in the early years of the nineteenth century thought 'it their best policy to make [the] colonists their friends and to seek their strength in them.'⁴⁴

The illiberal views espoused by the Dutch elite in the years immediately following the first British occupation contrast sharply with those uttered in later years. It is clear that the Dutch elite had learned weighty lessons from the rebellion of 1799-1803. Whereas they had found no room for the amelioration of colonial labour relations just a few years earlier, in the aftermath of the rebellion members of the elite saw such measures as crucial. In 1801, F.R. Bresler, the new *landdrost* of Graaff-Reinet, painted a dire picture of relations between masters and 'Hottentot' servants. Servants, he said, viewed their employers 'not as their masters but as their executioners' and served them 'only through hunger and fear.' The settlers had an 'unlimited lust for power'; they regarded it as 'legitimate and inflict it without restraint.'⁴⁵ And in the same year Fiscal W.S. van Ryneveld, a leading member of the Dutch elite, in his 'Plan for amending the interior Police', laid out what was in effect a blueprint of Caledon's Code of November 1809. The Caledon Code was Van Ryneveld's Code.⁴⁶

Van Ryneveld's suggestions for the restriction of Khoikhoi mobility were premised on what he recognised as the realities of colonial dispossession. Since, he said, no 'public notice' had been taken during the years of VOC rule 'of the extortions and depredations of farmers upon Hottentots, depriving them of their lands, and afterwards driving them into the interior, or forcing them to become their Servants,' the 'Hottentots' possessed neither cattle, 'nor have any other means of Subsistence.' As a consequence, they could not 'but be servants to the farmers.' With clear reference to the Khoikhoi rebellion, Van Ryneveld had no

43. M. Rayner, 'Wine and Slaves: the Failure of an Export Economy and the Ending of Slavery in the Cape Colony, South Africa, 1806-1834', (Ph.D thesis, Duke University, 1986), 95.

44. School of Oriental and African Studies, University of London (SOAS), CWM Archives, Incoming Correspondence, Box 4, Folder 1, Jacket D, James Read, 7 November 1809. Read also claimed, probably with some exaggeration, that General Dundas, the governor of the first British administration, had told him that if he had remained in the Colony longer he would have 'hung half the colonists.'

45. Court pleading of F.R. Bresler at the trial of R.H. Brits, 28 May 1801, in A. Du Toit and H. Giliomee, *Afrikaner Political Thought*, Volume 1, 1780-1850 (Cape Town and Johannesburg, 1983), 49-50; Marais, *Maynier*, 74.

46. H. Giliomee, *Die Administrasietydperk van Lord Caledon, 1807-11*, Archives Yearbook for South African History, vol. 29 (2), 1966, 274.

illusions about the hostile and violent nature of relations between colonial masters and 'Hottentot' servants:

The Hottentots already reduced ... to slavery ... have often times shewed, and recently given convincing proofs, that they are by no means indifferent as to their situation, that they aim at revenge, whenever opportunity may favor their design. The farmer on the other side perceives very well that the Hottentot is only restrained by awe and a superior power ... in short both parties, especially in the remote Districts, consider one another in the light of enemies.⁴⁷

Much of the content of Van Ryneveld's 'Plan' and the later 'Hottentot Code' can be traced to *landdrost* Honoratus Maynier's attempts to bring the rebels of 1799-1803 to peace. Maynier, the one-time *landdrost* of Graaff-Reinet, had in fact tried to improve the 'habits and morals' of frontier trekboers long before Cra-dock saw the necessity for it, but his was a lone voice. He had long feared the consequences of allowing the violence between masters and servants to spiral out of control and warned about the possibility of a union between Khoikhoi and Xhosa.⁴⁸ As a result, he entertained complaints made against trekboers by Khoi servants. In the parlance of the trekboers, Maynier had opened his doors to the 'heathen' – a policy that earned him the reputation of being the 'attorney' and 'nephew' of Khoisan servants.⁴⁹ The upshot was that in February 1795 Adriaan van Jaarsveld and a number of other frontier settlers took over the administration of the district after forcibly removing Maynier from office. It was not until August 1799, a few years after the British had taken possession of the Colony, and in the midst of Khoikhoi rebellion that Maynier was able to return to his post. His main task was to restore order to the troubled frontier. For the most part, Maynier's attempts to open his courts to 'the heathen' met only with scorn and derision, probably as Newton-King has suggested, as a consequence of the utter poverty in which the trekboer economy was mired.⁵⁰

But in the aftermath of the Khoikhoi rebellion others were more willing to see Maynier's wisdom. At the time of the rebellion Maynier put forward a number of proposals to regulate relations between masters and servants on the frontier and to ameliorate the working conditions of 'Hottentots'. He suggested that a register of labour contracts be kept, that *landdrosts* were not to 'suffer with impunity any acts of Violence or Cruelty' against Hottentot servants, and that 'Hottentot Captains' who had become 'particularly obnoxious' be granted land for occupation. Such a system, Governor Dundas believed, would have 'excellent effects.' A system of contracts and registration was more likely to transform the 'Hottentots' into 'most useful and Industrious Servants', and if frontier settlers could be prevented from beating their 'servants "*ad libitum*"', the latter would be loath to desert their

47. RCC, 4, W.S. Van Ryneveld, 'A Plan for amending the interior Police in the Colony of the Cape of Good Hope', 31 Oct. 1801, 88-96.

48. Newton-King, *Masters and Servants*, 144; N. Mostert, *Frontiers: The Epic of South Africa's Creation and the Tragedy of the Xhosa People* (London, 1992) 291.

49. Marais, *Maynier*, 71; Newton-King, *Masters and Servants*, 144.

50. Newton-King, *Masters and Servants*, 149.

employers 'at every opportunity.' The most important lesson learned from the rebellion of 1799-1803 was that the Khoikhoi were not to be allowed to 'become wandering Tribes again.'⁵¹

Here, then, are the origins of the stipulation that 'Hottentots' have a 'fixed place of abode.' The Caledon Code was not the imposition of enlightened metropolitan thinking, nor was it the making of reactionary trekboers in search of 'serf' labour. It was a very particular *colonial* project. It grew out of the particular form of colonial rule that was bred in the Cape Colony at the end of the eighteenth and beginning of the nineteenth centuries. This was rule through local collaborators – on the one hand the reluctance and inability of British imperialism to fully stamp its authority on this colonial outpost, and, on the other hand, the adaptability of local elites to a new form of imperialism. And last, but not least, the 'Hottentot Code' was the outcome of the long eighteenth-century struggle between masters and servants in the countryside, a struggle that culminated in the rebellion of 1799-1803.

The Aftermath of the 'Hottentot Code'

As we have seen, it was easy for those in remote country districts to sidestep regularly the aspects of the Code, and to use the law for reactionary purposes. Yet, so much of the literature on early colonial South Africa, and conservative historiography in particular, is quite unconsciously concerned with precisely the regulatory consequences of the Code. The colonial state did in fact put much effort into ensuring that the Code was implemented.

A new Circuit Court, which consisted of members of the Court of Justice in Cape Town, was established by Caledon's successor, Sir John Cradock. The Circuit Court, like Caledon's Code, grew out of the thinking of the Dutch elite in the wake of the Khoikhoi rebellion. Thus in 1801 Van Ryneveld recommended that a 'Commission' leave Cape Town for an annual tour of the countryside to deliver 'prompt Justice' and to ensure that both 'Farmer and Hottentot' could 'fulfil their reciprocal duties.'⁵² Such a Commission, he argued, would be 'the bulwark of safety to every one obeying the Laws, whether slave, Hottentot, or farmer.' The Circuit Court that was eventually established was ordered to ensure the 'proper treatment' of 'Hottentots' as detailed in the Proclamation of November 1809. In addition, the Court was charged with looking out for instances of 'improper domestic correction' of the slave population. The partiality of local *landdrosts* was to be neutralised, in theory at least, by the fact that the Circuit Court was charged to investigate the records kept of punishments handed out to slaves so as to ensure that no 'unnecessary severity be practised on this unfortunate class of people.'⁵³

These attempts at bringing order to the frontier coincided with the dispersal of missionaries throughout the southern African interior. Through the missionar-

51. *RCC*, 3, Yonge – Dundas, 5 Jan. 1801, 369.

52. *RCC*, 4, W.S. Van Ryneveld, 'A Plan for amending the interior Police in the Colony of the Cape of Good Hope', 31 Oct. 1801, *RCC*, 4, 88-96.

53. G. Cory, *The Rise of South Africa*, (London, 1910, 6 volumes), vol. 1, 210.

ies of the London Missionary Society the Khoikhoi actively sought to ensure that the Circuit Court lived up to its mission.⁵⁴ It was from the mission station at Bethelsdorp – established with the blessing of the colonial government to pacify hundreds of armed Khoikhoi in the aftermath of the rebellion⁵⁵ – that the missionaries Van der Kemp and Read wrote letter after letter in which they denounced the hopeless plight of the Khoikhoi. Missionaries did not hesitate to draw attention to the shortcomings of Caledon's Proclamation, and presented a rival discourse to the workings of the 'Hottentot Code' and Circuit Courts. One of the outcomes of missionary campaigns was the second tour of the Circuit Court, in what became infamously known in settler propaganda as the 'Black Circuit'.

All in all, seventeen settlers were charged before this Court with murder. In Uitenhage, Graaff-Reinet and George, the Court heard charges of the most appalling abuse of slaves and servants.⁵⁶ In the end, none of those accused of murder were so convicted. Those found guilty of ill-treatment were handed trifling sentences even in the face of overwhelming evidence against them. Nevertheless, the trials were of major significance. Nearly a hundred of the most 'respectable families' were implicated, and more than a thousand witnesses were summoned.⁵⁷ The Circuit effectively put on trial the entire social system that had emerged on the frontier. As a consequence settlers were for the first time forced to defend their actions as a class.

It would be easy to dismiss the usefulness of the Circuit Courts. But it should not be forgotten that members of the Dutch elite took on the task of educating the larger settler community on British notions of the rule of law.⁵⁸ To Justice J.A. Truter, who in the 1820s became the leading member of the Dutch elite, Caledon's 'Hottentot code' showed 'to the farmer the limits of his power, to the Hottentot the extent of his obligation, and to the Landdrost the guidelines according to which he should judge between Hottentot and farmer.'⁵⁹

Statements of this nature could of course easily be dismissed as mere rhetoric. But the colonial state did on occasion go beyond rhetoric. In 1822 the landdrost of Graaff-Reinet successfully prosecuted Graaff-Reinet settler Louis Daniel Smit for killing Danzer, a 'Hottentot' servant in the employ of Petrus Minnaar. In December 1821, Smit, en route to Minnaar's place and on the pretext that Danzer had withheld knowledge from him about stolen cattle, beat the unfortunate servant with the utmost severity. Danzer died as a consequence of Smit's sadism. His weapons included a thong to which an iron ring had been attached and his gun which he appeared to turn into a club. Danzer was left for dead by the side of the road. When news of the killing reached the authorities at Graaff-Reinet, Smit was apprehended and placed in the local jail. He managed to escape, and hatched a plan to leave the Colony in the company of runaway slaves, 'Hottentot' servants

54. The most comprehensive study of this subject is E. Elbourne, *Blood Ground: Colonialism, Missions, and the Contest for Christianity in the Cape Colony and Britain, 1799-1853* (Montreal & Kingston, 2002).

55. Read claimed that Dundas 'begged' Van der Kemp to take in those Khoikhoi who were in arms: SOAS, CWM, Incoming Correspondence, Box 5, Folder 1, Jacket B, Read – Cradock, 23 Jan. 1812.

56. Cory, *Rise of South Africa*, vol. 1, 213-16.

57. Mr. Justice Cloete, cited in Cory, *Rise of South Africa*, vol. 1, 218-19.

58. Rayner, 'Wine and Slaves', 102.

59. Truter – Stockenström (Sr.), 13 March 1811, in A. Du Toit and H. Giliomee, *Afrikaner Political Thought: Analysis and Documents*, vol. 1 (Cape Town, 1983), 100; Rayner, 'Wine and Slaves', 117.

and the wife of Piet Roos, another settler. But Smit was taken prisoner in the Sneeuwberg, before he had opportunity to cross the Gariiep.

The Court of Justice found Smit guilty of 'wilful murder', and sentenced him to be hanged.⁶⁰ He was executed on 18 January 1822. 'It may be easily imagined,' Stockenström wrote, 'what an awful Impression so dreadful ... a spectacle made on the minds of every class of Inhabitants.' But the conduct of Smit's fellows was 'highly orderly and proper.' Though 'sunk in deep melancholy at the necessity of such dire Examples, [they] evinced the most profound respect for the Majesty of the Law.'⁶¹ The colonial state had indeed come a long way in taming the violence of the frontier.

The case against Smit has to be read with another, more well-known, case of the same year. In the settled and wealthy south-western district of Paarl, Willem Gebhard was made to stand trial for the killing of Joris, his father's slave. After a lengthy trial, the Court of Justice, with J.A. Truter at its head, sentenced Gebhard to death, a sentence which Governor Somerset sanctioned. Together with Smit's case, Gebhard's execution served as a salutary affirmation of the alliance that had been forged between the colonial state and the ruling Dutch elite.⁶²

Conclusion

'In the larger view,' Keegan has written of Caledon's 1809 and 1812 laws, 'the significance of the legislative interventions of the time was that they were ultimately designed to entrench and stabilise the authority of masters and the proletarian status of Khoi.'⁶³ Clearly, the Hottentot Code was of great benefit to colonial settlers and rulers. This paper has further attempted to show, however, that these legislative initiatives were the *conclusions* of colonial class struggles and compromises, rather than the consequences of predetermined metropolitan policy or of the insatiable demands of trekboers for cheap labour. The class struggles of the countryside were those between masters and servants. The colonial compromises were those forged between an invading imperial power, unwilling to commit vast resources to an expansive and thinly-settled colony, and local collaborators made up of the resident Dutch elite. If there was any consistency to imperial policy, it was to impose British notions of the rule of law. Thus the parallel executions of Smit and Gebhard on opposite ends of the Cape Colony were the culmination of British attempts to transform the nature of master-slave/servant relations (and hence the form of class rule) in their new possession. Smit's execution in particular was the logical conclusion of Caledon's 'Hottentot Code'. To members of the Dutch elite the point of the execution was clearly that it was meant to serve as an example. And if Stockenström's words are anything to go by, this particular judicial intervention clearly did just that.

60. CA CJ 816, Sentence in case of Landdrost of Graaff-Reinet contra Louis Daniel Nicolaas Smit, 5 Dec. 1822.

61. CA 1/GR 16/2, Stockenström – Bird, 22 Jan. 1822.

62. Rayner, 'Wine and Slaves', 79.

63. Keegan, *Colonial South Africa*, 56.