

The Onder Bokkeveld Ear Atrocity

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And his master shall bore his ear through with an aul; and he shall serve him forever.

Exodus 21: 6.

Introduction¹

The body lay face down on the ground next to the Zoutpan River. There was a hole in the back of its head. Blood covered-stones, some with hair stuck to them, could be seen nearby. Hartwyk Fleck did not bother to turn the body over. He could see the man was dead and he knew who he was. The night before his shepherd, Jonker, had failed to return with the sheep. In the morning Fleck and his wife, Elizabeth Jacoba Koopman, had gone out to look for him. About two hours distance down the river they heard the shepherd's two dogs barking and, guided by the sound, found Jonker himself – or rather, his body. The sheep were missing. The Flecks left the body where it lay, without further examination, and went to report the murder.²

Hartwyk Fleck was not a wealthy man. He had been born in Barmstad, Holstein, fifty-two years before and now dwelt in a hut, or 'pondok', on someone else's property on the arid fringes of the Cape Colony.³ The land he reared his sheep on belonged to Jan Harmse Steenkamp and formed part of the latter's farm 'Zoutpan' in the Onder Bokkeveld. 'Zoutpan' took its name from the Zoutpan River, a modest stream that trickled along the base of some hills in the south-eastern, most Karoo-like part of the Bokkeveld plateau. The farm fronted the river. On the other side of the stream from the farmhouse, its base in the river sand, rose a steep rock-face, some ten to twenty meters high. Fleck's hut was a short half hour away from Steenkamp's dwelling and it was there that he went to tell Steenkamp the disturbing news that murderous robbers were in the vicinity.

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1. I would like to thank Mrs. Olive Nieuwoudt of 'Kromrivier' in the Cedarberg and Sally Argent, historian of the Nieuwoudt family, for alerting me to the court case in the Cape Archives Depot which concerns the incident at the heart of this article. The case is to be found in Cape Archives Depot (hereafter CA), Court of Justice (hereafter CJ) 549. The documents are also to be found, translated into English, in the files of the Court of Appeal, CA, Government House (hereafter GH) 47/2/11. There are some errors, particularly in the dating of events, in the GH version. I have largely cited the English translation but checked it against the Dutch for points of accuracy in language and chronology.
 2. CA GH 47/2/11, Letter from Hartwyk Fleck and Elizabeth Fleck, 6 June 1812 and Interrogation of Hartwyk Fleck, 26 Feb 1813, 167 and 178.
 3. Mark Bilbe states that Fleck was born in Gluickstad in Hamburg and had come to the Cape as a sailor. Fleck's name is listed in the Death Register at Wupperthal, the Rhenish mission station established in the Cedarberg in 1830. Fleck died there, as a member of the community, on 28 July 1830. His wife was listed as being Betje Fleck, died 7 September 1832. They had three children, Elisabeth, Anna and Piet, listed in the mission records as being 'Bastaards'. Bilbe says that Fleck's wife, Betje, was a Khoisan woman. But the fact that her maiden name was Koopman suggests that she was more likely to have come from the 'gedoopte Bastaard' (baptised 'Bastaard') family of that name prominent in the district. Mark Bilbe, 'A Social History of the Wupperthal Mission in South Africa, 1830 to 1965' (D. Phil thesis, Cambridge, 2003), 67-8, note 136.

Steenkamp immediately sent a letter to the district's *veld* cornet, Johannes Louw. It was dated 17 May. The year was 1812.

I hereby request to send a commando as soon as possible the rogues killed Hartwyk Fleck's herdsman on 16 May and took 24 sheep with them and I have no person but my herdsman and I have but one man at home I cannot go from home to inspect the body. Farewell, Jan Harmse Steenkamp. P.S. The murder was committed at my place.⁴

Both Steenkamp and Fleck assumed that 'rogues', (or '*schelms*' in the original Dutch) had killed Jonker, and although these rogues were not, at first, named the immediate assumption was that the murderers were vagrant or vagabond Khoikhoi. The most likely suspects, in Jan Harmse Steenkamp's opinion, were a group of Khoikhoi that he had written to Veld Cornet Louw about in a letter dated 3 May 1812. In this letter Steenkamp explained that he had dispatched a commando consisting of two men to look for a group of '*schelmennes Hottentots*' which had been plaguing his neighbourhood for nine years. The rogues in question were Carolus Tiengieter, Klaas Platje (commonly known as Klaas Bray), Jacob Platje and Hendrik Wessel.⁵ They had recently killed a grey horse of Louw's mother-in-law in the Botterkloof and a red cow in the koppies of the Kortenaar. They had also killed a two year old red bull of Gert van Wyk at Lange Kuil near Krans Valley at the Doorn River and a white cow, one of the best that Steenkamp had ever seen, at the Elandsberg. Gerrit Koopman had also lost a red cow, big with calf, to the robbers. These were but some of their most recent depredations. A great deal more stock-theft could be ascribed to this particular gang, Steenkamp asserted, because his two-man commando – consisting of the 'Bastaard' Fortuin Coridon and the Khoikhoi Willem Pluym – had managed to capture one of the robbers, namely, Jacob Platje, brother to Klaas Platje.⁶

Jacob Platje was well known to Steenkamp who claimed to have captured him twice before, though on each occasion he had managed to escape. According to Steenkamp Jacob Platje had stolen from the farmer Christian Kap a year ago, slaughtering one of his calves and a ewe. Platje had also admitted that his group had stolen sheep and goats from Louw's mother-in-law during the rainy season and fourteen sheep from Steenkamp's father-in-law, Jan Harmse Nieuwoudt. They had also stolen seven sheep from Hartwyk Fleck and, in successive raids, stolen first nine then sixteen sheep and fifty-four goats from Steenkamp himself. So it went on, Steenkamp complained, year after year, with the districts' sheep and goats disappearing. He was almost powerless to prevent this theft because he was so short of manpower. His humble plea, therefore, was that Platje – whom he was sending to Louw as a captive – should be banished from the district so that

4. CAGH 47/2/11, 161.

5. The Flecks shared this assumption. On 6 June they wrote a letter to the authorities declaring that: 'I the undersigned and my wife do declare to be true that the Hottentots named Karolus and Hendrik Wessel and Klaas Platje have killed my herdsman called Jonker with lumps of clay ['klijsteen'] and that he died on the spot where they murdered him and no more wounds were visible but we did not turn him over.' CA, GH 47/2/11, 6 June 1812, 167.

6. CA Magisterial Records of Worcester District (hereafter 1/WOC) 12/4, Letters Received-Government Officials, 1808-1819, J.H. Steenkamp to J. Louw, 3 May 1812.

he could never again unite with Carolus Tinnegieter, Klaas Platje and Hendrik Wessel in a robber band. Indeed, Steenkamp hoped that the three Khoikhoi still at large might be apprehended and banished as well.⁷

Steenkamp's letter provides a fascinating glimpse into the world of the Onder Bokkeveld in 1812. It was, quite obviously, a world which harboured fugitives, robbers and vagabond Khoikhoi. Partly, this was because of the physical nature of the district, being remote, extensive, rugged and sparsely populated. The Onder Bokkeveld is the district at the northern end of the Bokkeveld Mountains, the Dutch word 'onder' signifying 'furthest' rather than 'under'. In the eighteenth and nineteenth centuries the entire range of the Cape Fold Mountain System from roughly Paarl to beyond the Knersvlakte in the north was known as the Bokkeveld, named after the great herds of migrating springbok which used to be found there. In the south, the present day Ceres Valley was known as the Warm Bokkeveld. The area above it, north up the Gydo Pass, was (and still is) known as the Koue Bokkeveld. From here, northwards, the Bokkeveld Mountains became known as the Cedarberg Mountains and rise to their highest points. (Sneekop is 2071 meters). At the northern end of the Cedarberg, beyond the Pakhuis Pass, the mountains gradually lose elevation and crumble down, in a confusion of castellated sandstone formations, to the Doorn River. To the south and east of the Pakhuis Pass, the north-eastern flanks of the Cedarberg, is a landscape of valleys and ridges known as the Biedou. Beyond the Doorn, to the north-east, the land rises up to a plateau and the Onder Bokkeveld proper begins.

The broken flanks of mountains provide labyrinthine tracts of ravines, thick bush and rock where fugitives might hide.⁸ The first European settlers had entered the region in the 1740s, after concerted Khoisan resistance had been crushed by the commando operations of 1739-1740, the so-called 'Bushman War' of those years. One of the sites where a group of Khoisan was massacred was known thereafter as 'Oologskloof' and the river that ran through it took the same name.⁹ The rough terrain had enabled independent Khoisan to survive here for longer than elsewhere in the south-western Cape and the rich rock-art of the region is testimony to its long occupancy by hunter-gatherer communities. To the triumphant colonists the most attractive feature of this remote and arid region on the east side of the great Cape Fold Mountain System was the Onder Bokkeveld Plateau.¹⁰

West of the plateau the mountains form an imposing escarpment beneath which the almost waterless plain of the Knersvlakte lies in a grey monotony of dust and scrub. The escarpment's shape here is in the form of a hook, or a reversed 'L', the lower point of which, its south-western extremity, comprises the Gifberg and Matsikamma Mountains. The long, northwards flowing arm

7. Ibid. Also J. Louw to Fischer, 5 May 1812.

8. For the activities of fugitives and droster gangs in this region see Nigel Penn, *Rogues, Rebels and Runaways: Eighteenth-Century Cape Characters* (Cape Town: David Philip, 1999), chapters 2 and 5.

9. N.G. Penn, 'The Frontier in the Western Cape, 1700-1740' in John Parkington and Martin Hall, eds., *Papers in the Prehistory of the Western Cape, South Africa* (British Archaeological Reports International Series 332, Oxford, 1987). For the most extensive account of the colonial conquest of this region in the eighteenth century see N.G. Penn, 'The Northern Cape Frontier Zone, 1700-c.1815' (PhD thesis, UCT, 1995), part 1.

10. For a discussion of the early colonial usage of the term 'Bokkeveld' and 'Onder Bokkeveld' see P.J. van der Merwe, *Trek: Studies Oor Die Mobiliteit Van Die Pioniersbevolking Aan Die Kaap* (Cape Town: Nasionale Pers, 1945), 122-4 and 190-194.

of the hook, or reversed 'L', is now known as the Bokkeveld escarpment. Its southern part is split by a number of ridges, mostly lying on a north-south axis and caused by centuries of erosion from two rivers, the Oorlogskloof and the Koebe, as they cut their way down the escarpment to join the Doorn. The U-bend of the escarpment's hook is formed by mountains known as the Koebee, named after the Koebee River. East of these mountains lies the plateau where the best, and earliest, colonial farms in the district were established. To early colonists it was known simply as the 'Bokveld', a relatively favoured winter rainfall district bounded by barren lands. Further east, the desirable farming country peters out into the dry, Hantam Karoo and the lowering escarpment of the Roggeveld. To the north, rainfall drops dramatically and the grasses of Bushmanland, a summer rainfall area, offer grazing only in wet years. When summer rainfall was good the farmers of the Onder Bokkeveld, a winter rainfall area, used the southern parts of Bushmanland as trekveld, referring to this district loosely as the 'Agterveld'. They would move their livestock northwards, as the winter grazing dried up, towards the end of October or the beginning of November.

This northwards seasonal migration was especially important to those who did not occupy the best farming land. The plateau's proximity to the Bokkeveld escarpment means that it gets more rainfall than the parched plains to the west. The escarpment itself can get up to 800mm of rain annually but a mere five or ten kilometers further east and the rainfall declines to 350mm per year. Further east and the rainfall becomes still scarcer and the country very soon assumes the characteristics of the semi-desert Karoo where sheep farming or hunting was the only viable economic activity for early settlers. At certain, select places in the Onder Bokkeveld it is, however, possible to grow wheat and other crops. This is because of the region's underlying geological structure and the great diversity of soil types. The escarpment itself is made of sandstone, upon which non-nutritious *fybos* grows. To the east of the escarpment is a narrow strip of tillite soils, known locally as *vaalgrond*. The natural vegetation of these clay soils was *renosterveld* but grazing and cultivation is possible. Just east of the present day town of Nieuwoudtville is a sill of dolerite which forms a range of koppies and imparts a high iron content to the ground. The nearby soil is red (*rooigrond*) and fertile. To the west of the koppies the soil reverts to tillite and, eventually, to the shales which are characteristic of the Karoo. Though soil-type and rainfall were crucial in determining where agriculture could take place, they were not the only factors influencing the establishment of early colonial farms. In this predominantly dry region a perennial source of water was a necessity. In a few select places this was provided, thanks to the presence of another geological feature of the region – dolerite dykes. These dykes, of impervious igneous rock, act as underground dams in the district's predominantly sedimentary foundations. They trap water and cause it to rise to the surface in the form of perennial springs. These were the most desirable spots in the landscape and were thus the first to be seized by colonists and registered as loan-farms.¹¹

11. My description of the geological, climatic and vegetation features of the district is based on the map *Nieuwoudtville: A Biodiversity Hotspot*, produced by the National Botanical Institute (2004) and John Manning and Peter Goldblatt, *Nieuwoudtville, Bokkeveld Plateau & Hantam: South African Wild Flower Guide 9* (Cape Town: Botanical Society, 2nd ed., 2002).

By the beginning of the nineteenth century there were some twenty to twenty-five farms and farm owners registered in the Onder Bokkeveld. Although it was possible to grow some wheat in the district, environmental and transportation difficulties ensured that the majority of farmers concentrated on livestock production. It was for this that the Onder Bokkeveld was renowned in the colony. Between them, the farmers owned about 17 000 sheep and 2 000 cattle. The district was also famous for its horse breeding and 1 000 horses were noted for the purposes of tax assessment in 1805.¹² Because of the Onder Bokkeveld's reputation as good livestock-rearing country, the government thought it would be a good area into which to introduce Spanish or Merino sheep.¹³ By 1812 167 rams and over 4 000 ewes had been distributed, free of charge, to seventeen of the district's foremost farmers.¹⁴ To the government's surprise, however, local farmers had to be forced to adopt the new breed, an indication, and a warning, of the inhabitants' deeply etched conservatism.¹⁵

Beyond the favoured farms where both agriculture and stock-farming could take place there were inferior places, where rainfall was less, water scarcer, the soil inferior and nourishing vegetation sparser. But even here the life of a stock farmer was possible – provided that transhumance was practiced.¹⁶ Well before the end of the eighteenth century, however, even the poorest farms had been claimed by the colonists, making it virtually impossible for any Khoikhoi to sustain an independent lifestyle. The colonists also did their utmost to curtail or prohibit the movement of Khoikhoi and their livestock about the countryside.¹⁷ Those who sought to remove themselves from the authority of colonial farmers were forced to live the life of vagabonds or robbers, eking out a precarious existence on the margins of settlement.

What emerges from the letters written in response to both Jonker's murder and the Doorn River *droster* gang, is that though the harsh environment of the Bokkeveld seemed to promise protection to fugitive Khoikhoi, and though such *droster* groups had been part of the landscape for over a century, it was getting harder and harder for such groups to survive. The Onder Bokkeveld may have been relatively sparsely populated by whites, but those who were there dominated the region's environmental resources and constituted a tightly knit farming

12. Van der Merwe, *Trek*, 191.

13. The government's interest in introducing wool producing sheep into the colony owed a great deal to W.S. Van Ryneveld, president of the Court of Justice until his death in August 1812. Van Ryneveld had written a report on the subject for the Batavian government of the Cape in 1804. The British government adopted many of Van Ryneveld's recommendations. See H.B. Thom, ed., *Willem Stephanus van Ryneveld se Aanmerkingen over de Verbetering van het Vee aan de Kaap de Goede Hoop 1804* (Cape Town: Van Riebeeck Society, 1942) and H.B. Thom, *Die Geskiedenis Van Die Skaapboerdery In Suid-Afrika* (Amsterdam: Swets and Zeitlinger, 1936), 267-296.

14. CA 1/WOC 12/50 Letters Received, 1808-1815, List of Inhabitants of Onder Bokkeveld who received Spanish rams and ewes, 20 May 1812.

15. In January 1810 the landdrost of Tulbagh received a letter from the government ordering him to tell the inhabitants of the Cold and Warm Bokkeveld that the adoption of Spanish sheep was not optional. CA 1/WOC 11/2 Inkomende Gouvernements Briewen, 1810-1814, 13 Jan 1810. Van Ryneveld had predicted that Cape stock-farmers would be prejudiced against Merinos and would have to be forced to adopt them 'tegen wil en dank'. Thom, *Van Ryneveld*, 70.

16. For a discussion of pastoralism and seasonal mobility in the region see N.G. Penn, 'Pastoralists and Pastoralism in the Northern Cape Frontier Zone during the Eighteenth Century' in M.Hall and A.B. Smith, eds., *Prehistoric Pastoralism in Southern Africa: The S.A. Archaeological Society Goodwin Series*, vol. 5, (Cape Town, 1986).

17. For a discussion of the destruction of Khoisan independence during the eighteenth century see Nigel Penn, 'Labour, land and livestock in the Western Cape during the eighteenth century: the Khoisan and the Colonists', in W. James and M. Simons, eds., *The Angry Divide: Social and Economic History of the Western Cape* (Cape Town: David Philip, 1989).

community. As Steenkamp's letter shows, the number, type and colour of each farmer's stock were known, so too were the names of their labourers. Many of the farming families were related to each other by ties of marriage, and these relationships too were well known. Steenkamp's ready use of local names to describe geographical locations suggests that a common conceptual mapping of the landscape existed in the minds of white farmers. It is also clear that there was a type of intelligence network concerning the whereabouts, character, and transgressions of notorious Khoikhoi *drosters* or *schelms*. What were such people doing roaming the district in the first place? Why were the Doorn River *drosters* and Khoikhoi like Carolus Tinnegieter, the Platje brothers and Hendrik Wessel not content to live and work on white farms?

Some of the deserters were from the Cape Regiment, the Khoikhoi Regiment based at Wynberg. Service in this regiment was becoming increasingly unpopular, especially as more man-power was needed to fight in the frontier wars of the eastern Cape. In October 1812 the landdrost of Tulbagh asked his deputy at Jan Disselsvlei for a list of all Khoikhoi men between the ages of sixteen and thirty-five who might be suitable for the Cape Regiment and, on 8 December, came a more specific request for ten young 'Hottentots' or 'Bastaards' for the regiment.¹⁸ It is, therefore, hardly surprising that the district was plagued by army deserters.¹⁹

Around 1812, however, most fugitives in the Onder Bokkeveld were Khoikhoi or 'Bastaard Hottentots' who had made the decision not to live or work on colonial farms any more because of ill-treatment in the work place. For decades, under the Dutch, the Khoikhoi inhabitants of the Cape interior had been compelled to work as farm labourers by a combination of brute force and economic necessity.²⁰ The British, who seized the Cape for the second time in 1806, abhorred the cruelty implicit in such a system but were reluctant to dislocate the rural economy by depriving farmers of Khoikhoi labour. The need for a stable, rural labour force was made even more pressing by the British government's decision, in 1807, to abolish the slave trade throughout the British Empire. From this date on there would be no new slaves imported into the Cape. These factors influenced the proclamation, in 1809, of the Caledon Code, a piece of legislation which acknowledged colonial realities by confirming the status of the Khoikhoi to be that of a class of compulsory labourers.²¹ All Khoikhoi were to have a fixed place of abode and be in employment. They also had to carry a pass, issued by their local authority or employer, when moving about, in order to prove that they were not mere vagabonds. In exchange for this loss of liberty the Khoikhoi were

18. CA, Magisterial Records of the Clanwilliam District (hereafter 1/CWM), ADD 1/1, 25 Oct 1812 and 8 Dec 1812.

19. A note on 8 December 1812 states that: 'The two deserters of the Train of Mounted Artillery, named Philip Rooijblom and Jan Botma, sent on 21 November, have again escaped.' Ibid.

20. For a general discussion of these processes see R. Elphick and V.C. Malherbe, 'The Khoisan to 1828', in R. Elphick and H. Giliomee eds., *The Shaping of South African Society, 1652-1840* (Cape Town: Maskew Miller Longman, 1989). For works more specific to the district see Nigel Penn, 'The Beast of the Bokkeveld: The Banishing of Carel Buijtendag, 1770-1780' and 'Droster Gangs of the Bokkeveld and Roggeveld, 1770-1800', in Nigel Penn, *Rogues, Rebels and Runaways: 'The Northern Cape Frontier Zone' and 'Labour, Land and Livestock'*.

21. The text of the Caledon Code is reproduced as an appendix in John Philip, *Researches in South Africa* (London, 1828), vol. 2. See also G.M. Theal, *Records of the Cape Colony*, vol. VII, 211-16.

now considered to be under the protection of a benevolent government which would enforce equitable labour contracts between master and servant, ensure that no cruelty occurred in the work place and limit the duration of the terms of such contracts to a year.²² The provision of Khoikhoi labour was further ensured by legislation passed in April 1812. This stipulated that children born to Khoikhoi parents who were in the service of colonial farmers should be apprenticed to these farmers for a period of ten years in order to compensate the farmer for the cost of feeding the infant. Two years after the proclamation of the Caledon Code, in May 1811, the government introduced the institution of colony-wide Circuit Courts: itinerant judicial courts designed to record and judge cases involving the ill-treatment of the indigenous inhabitants of the country districts.²³ These, it was hoped, would play their part in heightening the awareness of Khoikhoi labourers that the possibility existed for the legal redress of their grievances.

Whilst the primary intention of these legislative acts was to ensure that colonial farmers had a sufficient supply of Khoikhoi labour, the laws were philanthropic in that they required this labour force to be well treated.²⁴ Sympathetic observers were to hail the Caledon Code as the ‘Magna Charta of the Hottentots’ which ‘rescued the Hottentot from a system of hardship and cruelty practiced by the Boors which would in the course of a short time have extinguished that race.’²⁵ Critical, contemporary humanitarians, such as Dr. John Philip of the London Missionary Society, emphasized the coercive aspect of the Caledon Code, pointing out that it forced the Khoikhoi into servitude.²⁶ But the protective provisions of the Code, combined with the potential for justice promised by the institution of the Circuit Courts, did in fact enable defenders of the Khoikhoi, whether missionaries, government administrators or the Khoikhoi themselves, to fight for their rights.

This is not an aspect of these reforms to have received much historical attention, despite Theal’s claim that: ‘It is hardly too much to say that it [the Caledon Code] saved them from utter destruction.’²⁷ Theal himself did not produce evidence to support this claim preferring, instead, to discuss the findings of the Courts of Circuit in the eastern Cape (or, more particularly, the notorious ‘Black Circuit’ of 1812) in order to demonstrate that missionary allegations of settler inhumanity against the Khoikhoi had been greatly exaggerated.²⁸ Few modern historians would agree with the latter point. The finely detailed work of Susan Newton-King and V.C. Malherbe reveals that Khoikhoi labourers in the early nineteenth century eastern Cape were indeed, generally, severely mis-

22. See G.M. Theal, *Records Of The Cape Colony*, vol. X (Government Printer, Cape Town, 1902), 408-410 for a summary of the provisions of the Caledon Code.

23. *Ibid.*, 433-432.

24. For a discussion of these points see S. Newton-King, ‘The Labour Market of the Cape Colony, 1807-1828’, in S. Marks and A. Atmore, eds., *Economy and Society in Pre-Industrial South Africa* (London: Longman, 1980).

25. W.W. Bird, *The State of the Cape of Good Hope in 1822* (London, 1823), 6.

26. ‘The Hottentots are condemned to a perpetual state of servitude, nor have they the power, by any exertion, however great and praiseworthy, of liberating themselves from bondage.’ Philip, *Researches*, vol. 1, 151.

27. Theal, *Records*, vol. X, 410.

28. *Ibid.*, 434-438.

treated by their masters.²⁹ But nor do most historians agree with Theal's first point. J.S. Marais did concede that: 'There is some justification for Theal's view that Caledon's law of 1809 saved the Hottentots from "utter destruction"'.³⁰ But the general consensus is that British reforms between 1809 and 1828 (the date of Ordinance 50, a piece of legislation removing all legal disabilities endured by the Khoikhoi) did little to alleviate the position of the Khoikhoi and that was why it was necessary to pass Ordinance 50. Even this ordinance, it is argued, brought no real change to their social and economic status for, by 1828, their position as the colony's landless proletariat was already too deeply entrenched.³¹

It is not the intention of this essay to take issue with the above judgment on Ordinance 50. But it does seem apposite to re-examine Theal's contention that the Caledon Code saved the Khoikhoi. Even though Theal may have exaggerated the significance of the Code, and even though he provided little evidence to support his case, it seems clear that the Code, together with the Courts of Circuit, represented a turning point in the treatment of Cape Khoikhoi which led to an improvement in their situation. The best way to demonstrate the truth of this assertion would be to provide a detailed study of the implementation of the Code, and the workings of the Courts of Circuit, throughout the Cape Colony between 1809 and 1828. Such an approach, for reasons of space and time, are beyond the reach of this essay. A less satisfactory approach would be to limit the scope of such a study to a particular region at a particular time and, by concentrating on a particular case, hope that the sharper focus will illuminate the general issues, if not more widely then at least more brightly. It is the latter course that this essay will pursue.

The regional focus of attention will be the relatively obscure northern Cape frontier district of the Onder Bokkeveld, part of the sub-drostdy of Jan Disselsvlei which was, in turn, part of the magisterial district of Tulbagh. This frontier district never achieved the prominence of the more turbulent eastern frontier zone and did not generate a judicial inquiry of the same scale as the 'Black Circuit'. It was, nonetheless, an area where the labour force was predominantly Khoikhoi and where the implementation of the Caledon Code and concepts of legal justice transformed relations between masters and servants. Since this was an area in which there were virtually no missionaries to champion the cause of mistreated Khoikhoi, its experience of the implementation of the Caledon Code was, in some respects, probably more typical than that of Uitenhage or Graaff-Reinet. The fact that there was no equivalent to the Slagtersnek Rebellion in the northern Cape should not, however, lead one to assume that the colonists and Khoikhoi were unaffected by the increased pres-

29. S. Newton-King, *Masters and Servants on the Cape Eastern Frontier* (Cambridge: University of Cambridge Press, 1999); V.C. Malherbe, 'Diversification And Mobility of Khoikhoi Labour In the Eastern Districts of the Cape Colony Prior to the Labour Law of 1 November 1809', (M.A., University of Cape Town, 1978).

30. J.S. Marais, *The Cape Coloured People 1652-1937* (London: Longmans, 1939), 121-122.

31. See Jay Naidoo, 'Was the 50th Ordinance a Charter of Khoi Liberties?' in Jay Naidoo, *Tracking Down Historical Myths* (Johannesburg: AD Donker, 1989); Robert Ross, 'The Cape Economy and the Cape Gentry' in R. Ross, *Beyond the Pale: Essays on the History of Colonial South Africa* (Hanover: Wesleyan University Press, 1993) and 'Rather Mental Than Physical': Emancipations and the Cape Economy', in Nigel Worden and Clifton Crais, eds., *Breaking the Chains: Slavery and its Legacy in the Nineteenth-Century Cape Colony* (Johannesburg: University of the Witwatersrand Press, 1994) for the argument that the emancipation of the Khoikhoi was a non-event.

ence of government in the region following the proclamation of the Caledon Code.

The period under consideration is that between 1809 and 1815. These are the years when the provisions of the Caledon Code and Courts of Circuit were most vigorously implemented by the reform-minded governor, Sir John Cradock. After Cradock's departure in April 1814 the tenor of the reform process was somewhat altered by his successor, Lord Charles Somerset and, by 1815, the inhabitants of the colony had, on the whole (leaving aside the Slagtersnek rebels of the Tarka district), accommodated themselves to the shock of a government actively prepared to intervene in labour relations.

The incident which forms the focal point of this study was one which occurred in 1812 involving the troublesome group of Khoikhoi vagabonds identified by Steenkamp on 3 May of that year. It was, in many respects, an 'ordinary atrocity', characteristic of the relationships which existed between Khoikhoi and colonists in the northern Cape.³² It did not excite great interest outside of the Onder Bokkeveld, nor can the court case which it engendered be claimed as a landmark in the history of British justice at the Cape. The significance of the incident and the subsequent prosecution of its perpetrators is to be found in what it reveals to us about the determination of the Cape government, in the era of the Caledon Code, to protect the rights and persons of the Khoikhoi.

The Commando

On 10 May 1812, a week after reporting the presence of the *drosters* to Veld Cornet Johannes Louw and a week before the murder of Jonker, Steenkamp wrote another letter. He entrusted this letter to three Khoikhoi servants whom he had delegated to go on a commando – September, Fortuijn Coridon and Willem Pluim – and asked that they circulate it through the district. The letter was addressed to 'each good friend who reads the pass' and began with the injunction that the letter should not be read aloud so that the people, i.e. , the local Khoikhoi, might hear it. Its contents stated that the commandeered Khoikhoi were to be supplied with food and allowed to mingle with local farm labourers in order to obtain information about a group of robbers currently operating in the district. The robbers were named and described as being Carolus, tall and yellow with a mark on his eye; Hendrik Wensel, tall and slender with a mark on his neck and one on his eye, and Klaas Platje, short and brown. These robbers, Steenkamp explained, had killed eight oxen, as well as some sheep and goats, since January.³³

The source of Steenkamp's information was Jacob Platje, who had been captured at an earlier date by Fortuin Coridon and Willem Pluim. According to Platje the robbers had been roving between the Hantam, the Bokkeveld and the

32. The term 'ordinary atrocity' has been used by Philip Frankel in his book *An Ordinary Atrocity: Sharpeville and its Massacre* (Johannesburg: University of the Witwatersrand, 2001).

33. CA GH 47/2/11, Letter signed by J.H. Steenkamp, 'Zoutpan', 10 May 1812. (The Court copy is incorrectly dated 1814).

Zoutpan River but had now taken refuge in the Koebee. Their intention, once again according to Platje, was to collect reinforcements and then to plunder farms. Platje was taken to the office of the deputy-landdrost at Jan Disselsvlei and detained there for questioning. His story was an interesting one, illustrative, in its details, of the type of life a vagabond Khoikhoi in the early nineteenth century Bokkeveld might expect to lead.

Jacob Platje was about twenty years old and had been born in the Onder Roggeveld where he was in the service of Jan Ras. One day in 1812, after drinking too much brandy with some of his fellow Khoikhoi labourers, he quarreled with them and ran away. He went, as he said, to the Karoo, by which he probably meant the Tanqua or Onder Karoo, the inhospitable plain which lies between the Roggeveld and Cedarberg Mountains. Here, sometime in April 1812, he encountered the Khoikhoi Carolus Tinnegieter, Hendrik Wessel and Claas Braaj. The last named of these individuals was Platje's brother and also known as Claas Platje. Carolus had been in the service of Jan Steenkamp, as well as that of Johannes Louw. Claas had worked for Christiaan Kap whilst Hendrik had once worked for Abraham van Wyk. This group had sustained itself by stealing livestock. When Jacob joined them they had stolen meat with them – of which he partook – and they told him that he was eating the sixth oxen that they had slaughtered. The most experienced of these vagabonds was Carolus who according to Jacob, 'has always been roving about and has subsisted himself by plundering'.³⁴ It was probably because Carolus had once worked for Steenkamp that, as he told Jacob, they planned to attack the farm 'Zoutpan', kill Steenkamp and all of his people and steal their guns, powder and shot. They would then attempt to travel through the Namaqua country and join the notorious Khoikhoi murderer and robber Dirk Roman, who had a kraal somewhere in Bushmanland. Roman, together with *drosters* named Piet Kaffer and Klaas Titus, were currently wanted by the authorities for the murder of Thomas de Siller, *knegt* of Gideon Rossouw of the Hantam.³⁵

Carolus and his followers were not well armed. He and Claas each had a bow and arrows but the others had only spears and arrows. Jacob was also given some spears and arrows which were tipped with the venom of snakes and the poison extracted from the tree known as the *wolvergifboom*.³⁶ Carolus promised to make him a bow but at the time of his capture Jacob was still armed with only spears and arrows.

Jacob Platje was fortunate, in a way, that he was captured before the murder of Jonker occurred. He was caught by Fortuin Coridon, Witbooi Tromp and Willem Witbooi (nicknamed Steenbok) after only a week in the company of Carolus' gang. How the others managed to get away is not recorded but it was

34. CA GH 47/2/11, 196-199, Interrogation of Jacob Platje.

35. News of Siller's murder reached the Jan Disselsvlei *drostdy* by way of a letter from the veld cornet of the Hantam, Gideon Rossouw, on 14 Nov 1812. CA Magisterial Records of the Clanwilliam district (hereafter 1/CWM), ADD 1/1 (Diary Adjunct Landdrost Jan Disselsvlei Oct 1812-Dec 1815), 14 Nov 1812.

36. The *wolvergifboom*, *Hyaenanche globosa*, is a tree whose fruits and seeds, when crushed, are reputed to exterminate hyaenas. It is endemic to the region and the Gifberg, derives its name from the plants. See C.A. Smith, *Common Names of South African Plants* (Pretoria: Government Printer, 1966), 519.

they who, with good reason, were the most obvious suspects in Jonker's murder. They left behind some livestock and tallow. Jacob claimed that he saw them run away in the direction of Johannes Louw's farm in the Uijen Valley, but he said he never saw them again and that he only learnt about Jonker's fate at a later date.³⁷ By the time he learnt about the murder, in fact, Jacob had already managed to escape from custody at Jan Disselsvlei. He could not bear, as he put it, being upbraided by the people for having assisted in stealing cattle. He managed to make his way back to the vicinity of his previous master, Jan Ras, in the Onder Roggeveld. Here he subsisted for a while on surreptitious handouts of food supplied to him by Ras' shepherd. Eventually, however, he turned himself over to his master. Ras promised him that if he ever ran away again he and Jacob Nell would hunt him down and shoot him. There, for the time being, he stayed.³⁸

The pursuit of the rest of Carolus' gang meanwhile continued. Steenkamp's letter to Johannes Louw had had the desired effect and the veld cornet began to take the necessary measures to send out a commando. The Louw family was one of the most prominent in the Onder Bokkeveld. It owed some of its prestige in the neighbourhood to the fact that it owned some of the best farms in the district but it also helped that the Louw family was extensive. Johannes' father was Jacobus Gideon Louw, owner of the farm 'Oorlogskloof'. Johannes, born in 1783, was married to a distant relative, Christina Claudia Louw, the daughter of Jacobus Adriaan Louw and Maria Elizabeth Louw. Johannes' parents-in-law were Bokkeveld land owners and Johannes frequently stayed on his mother-in-law's farm 'Lokenburg', also known as 'Uijen Valley' after the valley in which it stands.³⁹ 'Uijen Valley' was seven hours journey to the south of 'Oorlogskloof' and Johannes often traveled between the two farms to keep in touch with both sets of relatives. Maria was locally known as the widow Jacobus Adriaan Louw, evidence that by 1812 her husband had died. An extended family of Louws was spread throughout the Bokkeveld and, compared to their neighbours, they were relatively wealthy.⁴⁰

Johannes Louw received Steenkamp's letter at 'Uijen Valley'. His immediate reaction was to send a commando consisting of 'able Hottentots and Bastards who had on former occasions been on commando'.⁴¹ There was never any intention that this commando should be led, or reinforced, by white men – 'Christians' as the Khoikhoi formally referred to them. Ever since the 1770s whites had been in the minority on most colonial commandos and, by the early nineteenth century, it was customary to entrust small-scale commandos entirely to dependable

37. CA GH 47/2/11, Interrogation of Jacob Platje, 196-199, 21 Feb 1813 and p. 162, Extract of a certain letter from the Deputy Landdrost of Tulbagh, H. van de Graaf, 26 Feb [sic] 1813 (date should read Jan). Also CA 1/CWM, ADD 1/1, 23 Jan 1813.

38. Ibid.

39. 'Uijenkraal' or 'Uijenvallei' was named after the many sorts of iris and ixia, bulbous root plants, which grow there. See Vernon Forbes, *Pioneer Travellers in South Africa* (Cape Town: Balkema, 1965), 133. See also Nigel Amschwand, *Historical Survey Group Report on the Farm Matjesfontein in the Bokkeveld* (Vernacular Architecture Society of South Africa, Vlaeberg, 2001), 3-4. When the deputy-landdrost visited 'Uijenvallei' in June 1813 the widow Louw informed him that her husband had been granted the farm 'De Kelderfontein' in 1786 for grazing and water. She was in dispute over this farm with Jan Mosterd. 1/CWM ADD1/1, 1 June 1813.

40. It is not easy to work out the family tree of the Onder Bokkeveld Louws but see C.C. De Villiers and C. Pama, *Geslagsregisters van die Ou Kaapse Families* (Cape Town, 1981), vol. 1, 502-3.

41. CA GH 47/2/11, Interrogation of Johannes Louw, 150-152, 4 Feb 1813.

Khoikhoi or ‘Bastaard’ servants. This was not only because commando duty was dangerous, time consuming and fatiguing. It was also argued that the Khoikhoi were much better trackers and that they alone could make their way through the rocky, bushy, broken country where fugitives chose to hide.

Louw, at twenty-eight years old, was a comparatively young man to be a veld cornet and the way in which he issued instructions reveals a certain lack of experience. He did not know, at the time, that his future would depend on the orders which he gave, nor that the content of his verbal and written instructions would come under intense official scrutiny. When asked, at a later date, to describe the exact chain of events, and the exact words used to dispatch the commando against Carolus’ gang, he was rather vague. When first interrogated on the matter his explanation was that he wrote out some instructions and gave them to a Khoikhoi by the name of September to take to the masters of the Khoikhoi who were to go on commando. He then gave September additional verbal instructions. No other person, said Louw, was present.

The written instructions, of which a copy survives, were as follows:

The Bastaards and Hottentots named September, Darius, Witbooij, Vertuijn, Willem Ruitter and the hottentot of Ras are ordered by me to pursue the rogues wherever they may go to the best of their power and everyone must permit them to pass freely without hinderance per order of the undersigned.

Johannes Louw, Veld Cornet, 23 May 1812.⁴²

A further note, by the same author and of the same date added: ‘The friends are requested by me to provide these people with victuals, when they are in want, in order that they may pursue the rogues, which I trust will be done for the benefit of us all.’⁴³

The verbal instructions which he gave to September were, according to Louw: ‘to pursue the Hottentots to the utmost of their power, and to apprehend them and if the Hottentots would not surrender themselves then to overpower them in the best manner possible. Further if the Hottentots would not surrender themselves and they could not overpower them to kill them.’⁴⁴

The reason why these statements were of such interest to the authorities is because the Khoikhoi who obeyed Louw’s orders to go out on commando were to commit an atrocity which, they claimed, had been authorized by their masters. Once this atrocity was brought to the attention of the forces of law and order at the Cape, they decided to act with unusual severity against the alleged instigators of the atrocity. It became very important to subject the words and deeds of all involved in the commando to probing scrutiny. We should do the same.

The commando authorized by Louw was ordered to assemble at Steenkamp’s farm, ‘Zoutpan’ in order to receive provisions. It consisted of seven

42. CA GH 47/2/11, Letter from Johannes Louw, 23 May 1814 [sic] (should read 1812), 66.

43. Ibid.

44. CA GH 47/2/11, Interrogation of Johannes Louw, 152, 4 Feb 1813.

members. The leader, who was appointed corporal, was September Fortuin, normally in the service of the widow Jacobus Adriaan Louw and experienced in commando duties. Two other men on commando worked for widow Louw, Darius Fortuin, September's brother, and Ruiter Philander. The fourth member, Fortuin Coridon, worked for Hartwyk Fleck but because Fleck was a *bywoner* on Steenkamp's property, Coridon was used to obeying Steenkamp. The other members were Willem Witbooij, who worked for Steenkamp, Witbooij Tromp, who worked for Christiaan Kap, and Hans Cupido, who worked for Marthinus Ras, a farmer living nearby to the widow Louw. Fortuin Coridon, Willem Witbooij and Witbooij Tromp had just been on commando and were the ones who had succeeded in capturing Jacob Platje.

According to September Fortuin, Darius Fortuin and Ruiter Philander, all labourers on the widow Louw's farm at 'Uijen Valley', Johannes Louw had already given them verbal instructions to kill the *drosters* if they found them. September Fortuin received these orders first, before going ahead to Steenkamp's, and the veld cornet repeated the instructions to Darius Fortuin and Ruiter Philander. In the words of Ruiter Philander, Steenkamp did not tell them what to do with the murderers if they caught them 'for we had already received orders from the veld cornet, but he told his own people what they must do.'⁴⁵

At Steenkamp's farm, according to the Khoikhoi, he too told them to kill the fugitives if they found them. He further instructed September, Willem Witbooij and Coridon to take some leather straps with them so that if they caught one of the murderers they might bind him and force him to lead the commando to his fellows. Steenkamp also told the above named Khoikhoi – or so they said – to cut the ears off those they had killed and to bring the ears back to him as proof that they had shot the murderers. When questioned upon these points at a later date Steenkamp denied having given such instructions. He asserted that he had merely asked September Fortuin if he did not want to take some straps with him in order to bind his captives. The corporal apparently replied: 'What shall I do with straps, the rogues have robbed already so many years and if I catch them I will shoot them one by one for if they are caught they will escape and return and do still more mischief.' Steenkamp added that 'I myself sent a hot-tent called Jacob Platje who had been caught before by three of the commando, namely September Fortuin, Willem Tromp and Willem Witbooij, to the veld cornet Johannes Louw, who on going there escaped, returned and to this day gives himself up to robbery.'⁴⁶ This seemingly plausible account has to be balanced against further evidence that the Khoikhoi commando members thought they had official sanction to kill any captives they might take.

At that time, staying at Steenkamp's farm, there happened to be his brother-in law, George Sebastian Nieuwoudt. Nieuwoudt was a young man, twenty-four years of age. His father, Jan Harmse Nieuwoudt, had been the previous veld cornet of the Onder Bokkeveld. George normally resided at one of his father's farms along the Doorn River.⁴⁷ Steenkamp, aged forty-eight, was married to

45. CA GH 47/2/11, Interrogation of Ruiter Philander, 83-86, 21 Dec 1812.

Nieuwoudt's sister, Regina Barbara Nieuwoudt, who was thirteen years older than her brother. George was much closer in age to his nieces and nephews than he was to his sister and brother-in-law. By 1812 there were six Steenkamp children at 'Zoutpan' and the eldest, Maria Margaretha, was a nubile girl of eighteen. As the commando assembled outside the farmhouse the Khoikhoi were aware that Steenkamp had received written instructions from Veld Cornet Louw and they wished to know what they were. September, the corporal, asked Steenkamp if he would read the letter to them. It was twilight and Steenkamp, who could not read without his spectacles, and who did not have them with him, passed the letter over to George Nieuwoudt to read.⁴⁸

The letter which Nieuwoudt read was the same one that Louw had written, dated 23 May. But Nieuwoudt did not confine himself to reading the words in front of him. Taking his cue from the mood of his brother-in-law, and possibly the mood of the men in front of him, he stated that the letter said that if they caught the *schelms* they were to kill them. That, at least, is how Darius Fortuin and Fortuin Coridon remembered it. When Nieuwoudt was questioned about this at a later stage his first response was to explain that what he read was what the letter stated, namely, that 'when they found the Hottentots who had murdered the Hottentot of Hartwyk Fleck, and they would not surrender, then to shoot them.' He read this to them twice, asserted Nieuwoudt, and explained it to them 'as it was so stated in the veld cornet's order.'⁴⁹

Nieuwoudt's heart must have sunk when, at this point in the examination, the prosecutor actually produced the letter (carefully preserved by September Fortuin) and asked him to read it. 'How could he ... read from that order,' demanded the prosecutor, 'that the commando was to shoot the wandering and roving Hottentots in the event of their not surrendering themselves while in the order not one word about the shooting was mentioned?' 'It was twilight when I read the order and therefore I thought that shooting was inserted. I am also near sighted,' was Nieuwoudt's rather weak reply. He must have realized it was so for a moment later he broke down and confessed. 'I conceive that I have done wrong and committed a great error by reading what was not in the order but I did it because the Hottentots who they went in search of were generally known to be murderers.'⁵⁰ The evening before the commando set off, however, Nieuwoudt's humiliation lay in the future and the Khoikhoi commando members must have felt thrice authorized – by Louw, Steenkamp and Nieuwoudt – to kill their quarry should they find it.

Next morning the commando was led by one of Steenkamp's herders, Jan Ruiter, to the scene of Jonker's murder. The body was still lying in the same place. No one had dared to bury it (the bodies of those killed in suspicious circumstances were supposed to be examined by officials before burial) and there

46. CA GH 47/2/11, Interrogation of Steenkamp, 130-134, 2 Jan 1813.

47. Ibid., Interrogation of G.S. Nieuwoudt, 170-176, 20 Feb 1813.

48. Ibid., Third Interrogation of Steenkamp, 192, 21 Feb 1813.

49. Ibid., Interrogation of G.S. Nieuwoudt, 170-176, 20 Feb 1813.

50. Ibid.

is no suggestion that anyone thought of burying it now. Even though Jonker had been known to some of the men they did not even turn him over. There must have been decay. The Khoikhoi searched the vicinity for tracks left by the killers and did indeed find a trail which they were able to follow.⁵¹ It would take a long time before the commando caught up with the fugitives but it is testimony to the superb tracking skills of the Khoikhoi that, over a month later, they eventually did so. During this time they returned once to 'Zoutpan' for more provisions and were urged on by Steenkamp to persevere.⁵²

The farm 'Zoutpan' was an isolated point of human settlement in a vast, bleak landscape. Steenkamp's nearest white neighbours were the Louws at 'Uijen Valley', about a day's ride away to the north-east. The quickest way to ride between them was along the high, hard, exposed plain of the plateau, which lies in a north-west/south-east axis, and continues far beyond 'Zoutpan'. From the vantage point of this plateau, with its grey shale soils and drab bushes, one can see the distant Roggeveld Mountains in the east. To the south-west a jumble of rocky heights, now known as the Soutpan Mountains, conceals the Botterkloof Pass which leads down to the Valley of the Doorn. Beyond and behind this rise the great peaks of the Cedarberg with the Tafelberg the most distinctive feature on the horizon.

The trail led to the Elandsberge, a low range of hills to the east of 'Zoutpan' and forming part of the escarpment of the Onder Roggeveld. The commando had found nothing but faint footprints for weeks. Usually they would commence a thorough search of an area by splitting into two groups of three, leaving their provisions with Hans Cupido who, at fifty, was the eldest of the group. Finally, in the Elandsberge, Willem Witbooi, Ruiters Philander and Fortuin Coridon tracked down one of the fugitives. They recognized him to be Klaas Braaij. He carried a bow and arrow but had no chance against three mounted men armed with muskets. They called out to him to surrender and he did so. Darius Fortuin was in favour of killing him immediately but Fortuin Coridon reminded him of Steenkamp's orders – to make the first one captured reveal the whereabouts of the others. They tied his hands behind his back with a leather strap and took him to the place where the rest of the commando gathered.⁵³

Klaas was persuaded – the Khoikhoi commando members did not say how – to tell his captors where Carolus might be found. Hendrik, he said, had left them without saying where he was going. The group split into three again. Hans stayed behind whilst the brothers, September and Darius Fortuin went with Witbooi Tromp and Klaas to where Carolus was said to be. Willem Witbooi, Ruiters Philander and Fortuin Coridon went in another direction in order to widen the search. Tromp and the Fortuin brothers, with the bound Klaas in tow, stealthily approached the place their captive indicated. There they saw Carolus, at a distance, engaged in hunting something with a bow and arrow. Oblivious to their presence, the hunter became the hunted. They concealed themselves behind some

51. *Ibid.*, Interrogation of Darius Fortuin, 117, 21 Dec 1812.

52. *Ibid.*, Interrogation of Fortuin Coridon, 76, 21 Dec 1812.

53. *Ibid.*, Interrogation of Darius Fortuin, 68-71, 21 Dec 1812.

bushes as the preoccupied Carolus came nearer. He was hunting a hare. It darted into a cleft in the rocks and Carolus, with his back to the watchers, positioned himself over the trapped animal and shot it with an arrow.⁵⁴

At this moment Tromp and the Fortuin brothers ran out from behind their cover shouting ‘He! He!’ to attract his attention. Carolus had just put down his bow and arrows in order to retrieve the hare. He turned round and saw the men, armed with muskets, running towards him. They called on him to surrender. He would have recognized Tromp, and perhaps the Fortuin brothers, but he did not surrender. Without uttering a word he reached down for his bow and arrows. Darius Fortuin fired from about twenty-five paces away. The shot hit Carolus in the face and he dropped dead.⁵⁵

Klaas, his arms still pinioned behind him, was now led to stand next to the body of Carolus. September Fortuin stood back, about six paces from Klaas, and aimed his musket at him. According to Witbooi Tromp Klaas knew he was about to be killed. He did not struggle or cry out but merely turned his head away. September Fortuin fired a shot into his left side and Klaas fell dead next to Carolus.⁵⁶

There is a mythic significance in the fact that Carolus was engaged in killing a hare when surprised by the commando. In Khoisan folklore there was a widely dispersed story, amongst both pastoralists and hunter-gatherers, that it was the hare who brought death into the world. Mathias Guenther, who has identified some seventy variants of tale of the Moon and the Hare, provides the ‘stripped-down, generic, and composite form’ of the story:

The Moon enjoins Hare to go to the village of people to take to them Moon’s message to humankind: that henceforth humans, when they died, would not die forever but would, upon their deaths, rise again. In this they would be like the Moon himself, who dies at day’s rise, only to rise again the following night. Upon arriving at the village of people Hare distorted the message, telling humans that when they died they would die forever. Hare’s distorted message cost humans their immortality and it brought them also the fear of death. Angered at Hare’s lying, Moon split his mouth, creating the split hare’s lip. Humans have hated the hare ever since and will kill it when they see it in the veld.⁵⁷

There was also, amongst certain Khoisan groups, a taboo against eating the hare’s flesh. When the Swedish deserter, Wikar, traveled amongst the Little Namaqua and San of the Orange River in 1779 he recorded that: ‘ They consider it a great crime to eat a hare, and should anyone, driven by starvation, do so, he loses his manhood; all his life he is reproached with it and he dare no longer join

54. Ibid.

55. Ibid., Interrogation of Witbooi Tromp, 90-98, 21 Dec 1812.

56. Ibid.

57. Mathias Guenther, *Tricksters and Trancers: Bushman Religion and Society* (Bloomington & Indianapolis: Indiana University Press, 1999), 129.

in their discussions. They hate this little animal bitterly, and if they can kill it with stones or lay hold of it, it has to die.⁵⁸ For the /Xam of Bushmanland one hundred years later it was permissible to eat parts of a hare but not the thighs, since they were most similar in appearance to human thighs.⁵⁹

Though we cannot say with certainty to which Khoisan group Carolus belonged, or which version of the story of the Moon and the Hare he regarded as being most correct, it was most likely that the Khoikhoi of the Onder Bokkeveld were culturally closest to the Little Namaqua. It is also most likely that he had set aside his taboos and had killed the hare in order to eat it. But, whatever the beliefs or motives of Carolus and Klaas, they remained subject to the laws of the sublunary world. As Dia!kwain, a Bushmanland /Xam put it in 1875: 'If the hare had believed the Moon we, who are people, would have come to be like the Moon: we should not die, altogether. The Moon cursed us on account of hare's doings, and we die, altogether.'⁶⁰

The sound of two shots fired shortly after each other brought Fortuin Coridon, Willem Witbooi and Ruiters Philander to the scene. It was sunset. Nobody seems to have debated whether or not it was wrong to have killed the men. Instead, Fortuin Coridon now declared his intention to cut off an ear from each corpse in order to take them to Steenkamp as a convincing proof that they had killed the murderers. Darius Fortuin, who had known Klaas Braaij, tried to prevent this mutilation from taking place. 'Let it alone,' he said. 'If the Christians will not believe let them come and look for themselves.'⁶¹ He was told, by both Fortuin Coridon and Willem Witbooi, that Steenkamp had ordered it so. Coridon then cut an ear from each of the men and threaded the ears together on a leather strap to take to Steenkamp.

The commando did not spend any further time looking for Hendrik Wessel but set out the next day for 'Zoutpan'. Perhaps they dined on hare flesh the night before. Steenkamp and his wife, together with Fleck's wife, were occupied in sitting before the door of the farm house when the commando returned, riding over the ridge of the hill, firing their guns in a victory salute. The Khoikhoi rode up to the group and Fortuin Coridon threw the ears at Steenkamp's feet declaring: 'See there master, this is a proof that we have killed them.' According to Steenkamp his wife then got up and went inside whilst he answered neutrally, 'Yes, I can now see you have killed them.' But according to Ruiters Philander Steenkamp's reply was the more approbatory, 'It is well,' whereupon he told them to take the ears to Hartwyk Fleck in order to show him that Jonker's murderers were dead.⁶²

Fortuin Coridon and Ruiters Philander took the ears over to Fleck's hut, less than a thousand paces from Steenkamp's house. Fleck was not at home but in the veld with his livestock. Since Fleck's wife, Elizabeth, wanted nothing to do with the ears Coridon tied the ears, with their strap, to the doorpost of the straw cur-

58. E.E. Mossop, ed., *The Journal of Hendrik Jacob Wikar (1779)* (Cape Town: Van Riebeeck Society, 1935), 139.

59. Neil Bennun, *The Broken String: The Last Words of an Extinct People* (Viking, London, 2004), 239-243.

60. Quoted by Guenther, *Tricksters and Trancers*, 126.

61. CA GH 47/2/11, Interrogation of Darius Fortuin, September Fortuin, Fortuin Coridon, Witbooi Tromp, 68-114, 19 Dec 1812 and 5 Jan 1813, 149.

62. *Ibid.*, Interrogation of Fortuin Coridon, 76-80, 21 Dec 1812; Interrogation of Ruiters Philander, 87, 21 Dec 1812 and Interrogation of Steenkamp, 130-134, 2 Jan 1813.

ing-house, where Fleck would be sure to see them on his return. Coridon related that, 'I afterwards heard from the herdsman of Hartwyk Fleck named Jan Ruyter that his master the following day gave him the ears to carry them into the field, to throw them away.'⁶³

Before this happened, however, George Nieuwoudt came by. He had heard that the commando had returned and went to visit Steenkamp that evening to learn the news. His route took him past Fleck's pondok where Fleck's daughter told him that Fortuin Coridon had bought two ears back from commando and hung them up on the curing-house doorpost. Nieuwoudt immediately went to inspect these grisly trophies for himself. On encountering Coridon a short while later he asked him why he had cut off the ears and received the following answer: 'I cut off their ears as a convincing proof that they were dead,' and added that he planned to go tomorrow to cut open their bodies, 'to see in what state the insides of a person's body was.'⁶⁴ This latter detail may have been one of those embellishments in which Nieuwoudt liked to indulge. But it might also have been an accurate recollection of the bloodstained bravado of a man, conscious of having transgressed a societal norm, seeking to shock a non-participant with his callousness.

The commando members spent the night at 'Zoutpan' in a building known as the 'Kliphuis' before returning to their various masters the next day. Hartwyk Fleck, having returned and disposed of the ears, consulted with Steenkamp over what steps to take next. According to Steenkamp he suggested to Fleck that somebody ought to go and inspect the bodies of the Khoikhoi who had been killed and report the matter to the veld cornet. Fleck's reply was that it was hardly necessary to go and view the bodies since the fact that their ears had been cut off was convincing proof that they really were dead.⁶⁵ Steenkamp seems to have agreed with this point but he did claim that he sent a report on the matter to veld cornet Louw.⁶⁶ Louw was later to deny ever receiving such a report. He claimed he learnt of the commando's return by word of mouth and immediately rode to his mother-in-law's farm to debrief the Fortuin brothers.⁶⁷

Darius Fortuin, according to Louw, told him that the commando had shot the two *drosters* because they would not surrender. He did not ask, and was not told, why they had not surrendered. There was no mention made of severed ears. Louw decided not to go to the Elandsberge to inspect the bodies because so much time had elapsed that he doubted whether there would have been much left to see. Instead, eventually, he sent a letter to J. H. Fischer, the deputy-landdrost of Tulbagh. It was dated 21 June 1812.

Sir, I have sent a small commando after the roguish Hottentots who have murdered Hartwyk Fleck's shepherd and taken away 24 sheep, the commando traced the rogues from the spot where the murder was committed and would have apprehended them but the rogues

63. Ibid., Interrogation of Fortuin Coridon, 80, 21 Dec 1812.

64. Ibid., Interrogation of G.S. Nieuwoudt, 176-7, 20 Feb 1813.

65. Ibid., Interrogation of Hartwyk Fleck, 178-181, 26 Feb 1813.

66. Ibid., Interrogation of Steenkamp, 134, 2 Jan 1813.

67. Ibid., Interrogation of Louw, 155-159, 4 Feb 1813.

would not surrender themselves, the commando have killed two of the rogues and two have escaped but they have not been heard of to this day neither have they done any mischief they must have gone to another country. Your most humble servant, Joh Louw.⁶⁸

As far as Louw was concerned, and no doubt these feelings were shared by most colonists and colonial Khoikhoi in the Onder Bokkeveld, the incident was closed. Justice, or what passed for it on the northern Cape frontier, had been done. The matter would have mouldered into archival obscurity, the only official record of events being contained within Louw's less than revealing letters to the authorities. But this did not happen. News of the atrocity reached the Cape and, to the acute discomfort of those involved, the recent commando became the subject of a judicial investigation. The cause of this unwelcome official interest in the district's approach to law and order was the disturbing behaviour of Fortuin Coridon.

A Pastoral Interlude

Shortly after the commando had returned to 'Zoutpan' Fortuin Coridon left Hartwyk Fleck's service and entered that of Steenkamp. Coridon had already been a frequent presence about the farm since Fleck was Steenkamp's *bywoner*, and Coridon was used to regarding Steenkamp as his master. The relationship was now semi-formalised with Steenkamp telling veld cornet Louw that Coridon now worked for him. Strictly speaking Steenkamp should have taken Coridon to the district's landdrost at Tulbagh, or the deputy-landdrost at Jan Disselsvlei, and pronounced the terms of contract in the presence of his new employee and the official. Such niceties, obviously, were deemed unnecessary by Steenkamp.⁶⁹ Coridon had obviously impressed him by his tenacity on commando and his preparedness to execute orders that more squeamish men might have balked at. In the harsh world of the Bokkeveld a tough, loyal and obedient servant was worth having – provided that such a servant knew his place.

In springtime the Onder Bokkeveld is carpeted with colour as the unique flora of the region bursts into flower. Plants put out new growth. It is lambing season. Three months after the commando's return, on 26 September 1812, this seasonal quickening of life communicated itself to some of the human inhabitants of 'Zoutpan'. It was a Sunday morning and Steenkamp's daughter, Maria Margaretha (fondly known as Mietje) went to the old dam to wash a shirt for her brother Jacob. The dam lay a short distance upstream and was created by the simple method of placing rocks across the stream so as to cause an obstacle to the water's flow, thus creating a shallow reservoir. There was a new dam adjacent to it. Water could be led from here to the flat, sandy soil in front of the farmhouse where some vegetable and fruit trees were grown. At the dams, on one side of the river, was the rock face. In places, low stone walls had been built along this to form livestock kraals. The animals' flanks would brush against faint

68. The original of this letter is in CA 1/WOC 12/50 (Letters Received), Johannes Louw to Landdrost of Tulbagh, 21 June 1812.

69. CA GH 47/2/11, Interrogation of Steenkamp, 134, 2 Jan 1813.

traces of hunter-gatherer rock art. On the other side of the river were low banks of clay and bushes.⁷⁰

As Mietje made her way to the water she was observed by Coridon. The Khoikhoi servant had been busy at the new dam collecting clay in order to make an oven for the Steenkamps. He approached the seventeen year old girl with a lump of yellow clay in his hands, asking her if she did not think it to be just right for the job. Yes, she said, it is.⁷¹

At this point the historian is obliged to choose between three conflicting reports as to what happened next. According to Jan Steenkamp at eleven o'clock in the morning he had gone behind his house to ease himself. Whilst thus occupied he had suddenly heard screams coming from the dams. Hitching up his trousers he ran about a hundred paces to the dam and saw Coridon, lying on top of Mietje, rucking up her petticoats and trying to force her knees apart. On seeing Steenkamp Coridon immediately disengaged himself and retreated a judicious fifty paces. 'What are you doing with my daughter?' the furious Steenkamp demanded. Coridon's reply was that he had been digging clay and was showing the clay to Mietje. According to Steenkamp's own account he (Steenkamp) told Mietje to run to the house and fetch his gun, 'that I may shoot the hottentot, that his intestines may fly about his ears.'⁷² On hearing these words Coridon ran away, scaling the rock face so that he was safely out of reach of Steenkamp but able to observe developments beneath him. The frustrated Steenkamp broke a tough switch from the bushes and gave Mietje 'one or two lashes' with it. He reminded his daughter that he had frequently ordered her not to go out of his sight. Her reply was that she had not expected Coridon to be at the dams; nor had she expected that he would have behaved so rudely towards her.⁷³

Fortuin Coridon's version of events at the dam that spring morning was that he was innocently showing Mietje the clay when Steenkamp appeared and demanded to know what they were doing. 'Nothing at all Father,' replied Mietje, 'I came to wash my clothes.' This answer did not satisfy Steenkamp who wanted to know what they were doing there alone. The explanation for this, said Coridon, was that he had been at the dam first, digging clay, when Mietje had arrived to do some washing. Steenkamp then asked why, if she was doing washing, she was at the dam with no water in it. Coridon's reply to this was that she had come to inspect the clay. What, asked Steenkamp finally, was he doing with his daughter alone? Did he think such conduct was becoming? Coridon could only reply that he did not think that such conduct was becoming, but that he did not know 'that Miss would come here, neither did Miss know that I was here.'⁷⁴

Steenkamp then ordered Coridon to come to him but, given his master's mood, the Khoikhoi did not think it wise to obey this command. 'Will you believe,' shouted Steenkamp, 'that if I had my gun I would shoot you dead as you stand there and have you thrown in the kloof!' Coridon found this all too

70. My thanks to Mr. Boltman, the present owner of 'Zoutpan', for allowing me to visit the farm.

71. CA GH 47/2/11, Interrogation of Fortuin Coridon and J.H. Steenkamp, 119-125, 23 Dec 1813 [sic] (should be 1812).

72. Ibid., 121-122.

73. Ibid., 123.

74. Ibid., 119-120.

easy to believe and, as he clambered further away up the rock face, Steenkamp called after him: 'Run where you will, I will shoot you dead, you must die!' From a safe distance he saw Steenkamp beating Mietje. He retreated even further into the hills behind the rock face when he saw Steenkamp return with a gun and commence tracking his footprints. Fortunately, because of the hardness and stoniness of the ground, he could not follow his tracks beyond the base of the hills and, for the time being Steenkamp gave up the pursuit.⁷⁵

Steenkamp lost no time in telling his wife and brother-in-law what had happened. He took George Nieuwoudt to the dam to point out footprints in the clay which, he said, clearly indicated that a struggle had taken place. That night the outraged father went out with his gun to seek for Coridon at Hartwyk Fleck's place. Coridon's Khoikhoi wife, Sarah, resided there and Steenkamp hoped that he might surprise her with her. But Coridon had anticipated this eventuality and spent the night hiding somewhere outdoors. Next morning one of Fleck's herdsmen informed Coridon that Steenkamp was after him because Mietje had confessed that he had taken her by the hand and pulled her to the new dam. Confronted by this evidence of Steenkamp's implacable hostility, Coridon fled from the district, determined to lodge a complaint and to seek protection from the Landdrost of Tulbagh.⁷⁶

Justice and Sir John Cradock

Coridon should have headed for Jan Disselsvlei (present day Clanwilliam) because the Onder Bokkeveld was under the jurisdiction of this sub-*drosdty*. It had been established in 1808, close to the junction of the Jan Dissels River and the Olifants River, as the most northerly of the government's administrative centres in the north-western Cape. It was manned by a deputy-landdrost, who took his instructions from his immediate superior, the landdrost of Tulbagh (a magistracy established in 1803). The first deputy-landdrost, Daniel Johannes Van Ryneveld (one of the ten children of W.S Van Ryneveld), complained that it took eight days or more for letters to reach him from Tulbagh.⁷⁷ As a building the Jan Disselsvlei drosdty was far from prepossessing and Van Ryneveld's successors were obliged to write many letters of complaint drawing attention to the fact that the roof and walls were in a state of collapse.⁷⁸ From this run-down edifice O.M. Berg, the man who had become deputy-landdrost in August 1812, was expected to administer a vast area encompassing the Olifants River, Bokkeveld, Namaqualand, Bushmanland, Hantam, Roggeveld and Nieuweveld regions.⁷⁹ Occasionally, his predecessor, Deputy-Landdrost J.H. Fischer, had undertaken a circuit of inspection through parts of his area of jurisdiction but, on the whole, O.M. Bergh sat in his office waiting for instructions from Tulbagh

75. Ibid., 120-121.

76. Ibid., 121-125.

77. CA, 1/WOC 12/50, Van Rijneveld to Landdrost of Tulbagh, 21 Nov 1809.

78. See for instance CA, 1/CWM ADD 1/1, 4 Jan 1813 and CA, 1/WOC 12/50 4 Jan 1813.

79. CA, 1/WOC 12/50, 3 Aug 1812.

or complainants from amongst the masters and servants of his district. On 29 January 1814 came the news that Jan Disselsvlei *drosdty* was henceforth to be known as Clanwilliam, in honour of Governor Cradock's father-in-law, and that His Majesty's coat of arms was to appear over the *drosdty*.⁸⁰

Though the sub-*drosdty* of Jan Disselsvlei had been established in order to increase government control over the colony's northern frontier districts in general, from 1809 onwards, but more especially, from 1812, a large part of the duties of the deputy-landdrost consisted in supervising and enforcing the provisions of the Caledon Code. The impetus for this focus of attention was provided by instructions emanating from the reform-minded governor, Sir John Cradock. Cradock was a Welshman, a military officer who had commanded the British Army in Portugal between 1808 and 1809. He took office as Governor of the Cape on 6 September 1811.⁸¹ Though he is best known for his vigorous prosecution of war against the Xhosa on the Cape's eastern frontier, he should also be remembered as a reformer. Although it was his predecessor, Caledon, and not he who had instituted the Courts of Circuit, Cradock should be given a great deal of credit for encouraging them.

When Cradock arrived at the Cape the judges of the first Court of Circuit were busy undertaking their inspection of the country districts. They reported back in February 1812 and the new governor now found himself much better informed about the administration of justice in the Cape interior than any of his predecessors had been. At about the same time the allegations which London Missionary Society missionaries Van der Kemp and Read had been making about the colonists' cruelty towards the Khoikhoi of the eastern districts reached the desk of the Secretary of State in England. That official forwarded the information to Cradock, urging him to action.⁸² A further Court of Circuit was dispatched in September 1812 to investigate these charges. This became known as the 'Black Circuit', an episode which caused great consternation amongst the colonists since over fifty of them were summoned to appear before the court on charges ranging from murder and violence to the withholding of wages.⁸³ Although successful prosecution was achieved in only a handful of cases, Cradock's government had shown its willingness to take allegations of cruelty against the Khoikhoi very seriously.

As a direct consequence of the report of the first Commission of Circuit a government circular was sent to the landdrosts of the country districts on 17 April 1812. In the copy which reached the landdrost of Tulbagh Bird, Cradock's secretary, wrote that His Excellency the Governor was of the opinion that it would be 'of the greatest public utility if the inhabitants generally had more access to the local magistrates.' It was particularly important that the 'inferior classes of society' be given the opportunity to 'lay before their magistrate their grievances should such occur.' The landdrost was therefore urged to visit each

80. CA, I/CWM ADD1/1, 29 and 30 Jan 1814.

81. There is a lively description of Cradock by Ben Maclellan in *A Proper Degree of Terror*. (Johannesburg: 1986), 76-77.

82. Theal, *Records*, vol. X, 433-434.

83. Records concerning the 'Black Circuit' are to be found in Theal, *Records of the Cape Colony from October 1812 to April 1814*, vol. IX, (Cape Town: Government Printer, 1901), 54-128.

Field Cornetcy in his district once a year and to give notice to the inhabitants when he was going to arrive and how long he was going to be there in order that they could lay their complaints before him. He was to pay particular attention to the proceedings of the Field Cornets and ‘to examine into the contracts of Hire of Hottentots.’ An annual report concerning these visitations was to be submitted to the governor. The letter concluded thus: ‘The extent of your District having rendered it advisable to appoint a deputy Landdrost at Jan Dissels Valley His Excellency will approve of his executing this duty in those Field Cornetcies which you have committed to his charge reporting his proceedings to you, the copy of which you will transmit with your own; but this notwithstanding His Excellency recommends your personal visit to these divisions as often as you can conveniently do so.’⁸⁴

A further circular, from Cradock to Landdrost Van der Graaf, followed three days later on 20 April 1812. It spelt out, even more clearly, the governor’s vision of justice. It was ‘to follow the instructions I myself have received from His Majesty’s Government; which are to extend to all classes of persons “equal justice” and “equal protection”.’ Cradock’s further pronouncements deserve to be quoted in full as they contain the promise that a new era was to be inaugurated at the Cape:

We are to bear in view, that in the dispensation of Justice, no distinction is to be admitted – whether the Complaint arise with the Man of wealth, or the poor Man, the Master, or the slave, the Christian or the Hottentot; the same patient and equal attention is to be paid to the representation, and the most careful inquiry is to ensue that unbiased justice follow, I will not entertain the doubt.

I am desirous to impress, that it is not to the greater crimes, I so much point your attention, (for they but seldom occur, and they, from the common sense of danger, mostly afford their own remedy) as it is to the lesser description of offences, which, from their obscurity and supposed insignificance, escape observation and punishment. To these I anxiously request your unceasing vigilance and prevention.

It is the uncontrolled severity of the Powerful over the Weak, so difficult to describe – it is nameless Tyranny of the strong over the defenceless and the thousand means that the spirit of oppression can employ, and which I cannot recount, that fill me with more solicitude, for such persecutions evade the direct Interposition of the Law, and are alone to be remedied by the energy of an active and enlightened Magistrate, intent to advance the progress of true religion and Christianity.⁸⁵

84. CA 1/WOC 11/2, Bird to Van der Graaf, 17 April 1812.

85. *Ibid.*, Cradock to Van der Graaf, 20 April 1812.

These benevolent instructions were no doubt communicated to Fischer, at Jan Disselsvlei, by Van der Graaf. That they bore fruit may be seen from a perusal of the *Dag Register*, or Diary, of the deputy-landdrost of Jan Disselsvlei, kept between October 1812 and December 1815. There is no earlier record of a Diary for the sub-*drostdy* and it is likely that one began to be kept as a direct consequence of Cradock's concerns. Some idea of the provision of justice in the district may be obtained by a consideration of certain incidents which came to Fischer's attention during the last three months of 1812. In October 1812 he was obliged to arbitrate in a dispute between the female Khoikhoi Grietje and her master, Gerrit van Wyk. The former complained of mistreatment at the hands of the latter. Her complaints were judged to be groundless. In November of the same year the 'Bastaard-Hottentot' Jan Joubert contracted himself to work for Hendrik Beukes for a year for the wages of six ewes, a hat and a tinderbox. Later in the same month the 'Bastaard' David de Wee complained that the 'Bastaard' David Willemse owed him his wages. The deputy-landdrost found in De Wee's favour. On 1 December the Khoikhoi Klaas Swartbooij reported that the farmer Christoffel Dreijer had stolen an ox from him. Dreijer was ordered to recompense him. On 21 December the farmer Gideon van Zyl reported how one of his slaves, Teck, and certain Khoikhoi labourers had stolen livestock from both him and various other people, including Khoikhoi, in Namaqualand. Teck was handed over for trial. On 28 December two Khoikhoi who had run away from Gerrit van Wyk because of ill-treatment requested to work instead for Floris Steenkamp under a proper labour contract. This was to be permitted, pending investigation into whether Van Wyk had had a proper contract.⁸⁶

These, and many other similar cases, indicate that an increasing number of masters and servants in the Jan Disselsvlei district were taking their disputes to the local government official instead of trying to sort them out themselves. Most encouragingly, as far as the authorities in Cape Town were concerned, was the fact that Khoikhoi and 'Bastaard-Hottentot' labourers, 'the inferior classes of society', were using the opportunity afforded by the law to complain about ill treatment received at the hands of the colonists. Though not every complaint was received sympathetically by the deputy-landdrost it is clear that some servants did receive satisfaction. Working conditions no doubt remained harsh and wages were low. The high incidence of cases of desertion, robbery and mistreatment of labourers brought to the attention of the deputy-landdrost attests to this. But the Caledon Code and Cradock's instructions were undoubtedly having a positive impact on the treatment of labourers in the Jan Disselsvlei district.

Coridon, however, did not go to the deputy-landdrost at Jan Disselsvlei. He went to Tulbagh. He arrived there on 20 October after a journey of twenty-four days.⁸⁷ Even though it was closer, he had not chosen to go to Jan Disselsvlei, probably because it was also closer to his boss. Perhaps Coridon feared that Fischer, knowing Steenkamp, Nieuwoudt and Louw, would not act upon the

86. CA, I/CWM ADD 1/1. Subsequent copies of the *Dag Boek* of the Deputy Landdrost of Clanwilliam are contained in the Magisterial Records of the Worcester District.

87. CA, CJ 549, 5.

information that he, Coridon, was about to impart. For Coridon had decided, during the course of his long, southwards trek, to complain not just about Steenkamp's resolve to kill him but also to reveal the truth about the commando which he had been on five months before. He must have judged that his best chance of staying alive and defending himself against a charge of attempted rape was to accuse Steenkamp – and by extension, Nieuwoudt and Louw – of even worse crimes.

Given Cradock's earlier instructions, Van der Graaf, the landdrost of Tulbagh, took Coridon's disclosures very seriously and informed the fiscal of the Cape, Daniel Denyssen, about matters. The fiscal, in turn, ordered the appearance in court of the Khoikhoi commando members as well as Steenkamp and Louw. By 24 December 1812 he had heard enough to ask the Chief Justice of the Cape for permission to issue a summons for the arrest of Steenkamp and Louw.⁸⁸ In due course, Steenkamp's wife and daughter, George Nieuwoudt, the Flecks and their servants were also brought in for questioning.⁸⁹ Nieuwoudt must have suspected that he was in trouble for he volunteered, on 8 December 1812, to join a commando from his district on active service on the eastern frontier.⁹⁰ He did not get far. On 20 February 1813 the deputy fiscal, D.F. Bevernagie, applied for, and received, permission to place Nieuwoudt in custody too.⁹¹ The *droster* Jacob Platje had been re-arrested in the Roggeveld in January 1813 and he, together with the Khoikhoi commando members September Fortuin, Darius Fortuin and Fortuin Coridon joined Steenkamp, Louw and Nieuwoudt on trial.⁹² The Cape judicial system was going to a great deal of trouble to investigate the unlawful killing of two Khoikhoi *drosters*.

This vigorous investigation was closely linked to Cradock's determination to ameliorate the condition of the Khoikhoi by implementing the reformist promise of the Caledon Code and the Courts of Circuit. The governor himself took a personal interest in the proceedings, findings and judgements of the courts of law of the colony, namely, the Court of Justice and the Courts of Circuit, and members of the judiciary would have been aware of Cradock's expectations of even-handed justice. He was particularly concerned about the ludicrously light sentences which local courts handed down to whites who were found guilty of mistreating their slaves or the indigenous inhabitants. A letter, along with some enclosures, which he sent to Lord Bathurst, the Colonial Secretary, on 15 April 1814 reveals his unhappiness about the state of justice at the Cape. He informed Bathurst of the judgements in five recent judicial proceedings which had particularly astonished him. The colonist J.S. Cloete had been sentenced to banishment from the colony, and to having a sword brandished over his head, for having killed a Khoikhoi woman whilst she stood defencelessly holding her baby in her

88. CA 1/WOC 10/4 Dag Verhaal, Tulbagh 1812, 1 Nov 1812; GH 47/2/11, Memorial of Fiscal, 24 Dec 1812, 18.

89. CA, 1/CWM ADD 1/1, 1 Jan 1813 and 17 Jan 1813.

90. CA, 1/WOC 12/50, List of those going on commando to Eastern frontier, 8 Dec 1812.

91. CA, GH, 31.

92. CA, 1/CWM ADD/1, 23 Jan 1813.

arms. Jacob van Reenen tortured his slave to death and received three months imprisonment!!! (The exclamation marks are Cradock's). Cornelis van Tonder was sentenced to the brandishing of a sword over his head and banishment from the colony for the murder of his wife. 'I cannot altogether divest myself of the opinion', commented Cradock, 'that the Court was influenced, however unperceived by themselves, by the reluctance to condemn a white person to death.'⁹³

Cradock was also amazed at the insistence of Roman-Dutch law that the accused had to confess to the crime in order to be sentenced (this is where, in the past, torture had been useful), but that non-confessors were acquitted. He found fault with the system of introducing the evidence of witnesses in written form, rather than as oral testimony, and was pleased to be able to report that he had opened the sessions of the Court of Justice to the free admission of the public. Further reforms in the legal system 'can only flow from His Majesty's Government,' said Cradock, 'and cannot but avow I am anxious for the full accomplishment of every amelioration that will benefit so rising and prosperous a Colony.'⁹⁴

It may be seen from the above that Cradock was monitoring the colony's judicial system most closely at this time. He attached great hopes to the Chief Justice at the Cape, J.A Truter, a man he held in the highest esteem. Truter had held office as Secretary of the Court of Justice during the first British occupation of the Cape and as fiscal under the Batavian government. He became Chief Justice in August 1812 and impressed Cradock for his 'lively zeal' and the 'pure and impartial administration of justice [which] would do honour to the character of an English judge.' Cradock was heavily dependent on Truter's advice on a range of subjects, from taxation to land tenure, and it was on Cradock's recommendation that Truter was granted a knighthood in 1820 – the first Cape colonist to receive such an honour.⁹⁵

Truter presided over a body, the Court of Justice, that had been reconstituted by the new British government in 1806 to ensure that its members were loyal to the new order. They were either anglophile (Truter's daughter was married to the first secretary of the Admiralty, John Barrow) or Orangist.⁹⁶ They were anti-republican in their sympathies and, like the governor, freemasons.⁹⁷ Truter and the Court of Justice could be relied on, therefore, to be sensitive to Cradock's concerns and to implement the government's judicial reforms. The only problems were, as we shall see, that legal proceedings at the Cape could be dragged out for an awfully long time, and that the fundamentally conservative nature of the Council of Policy meant that that body, including Truter, was extremely reluctant to impose non-customary sentences.

93. Theal, *Records*, vol. X, 3.

94. *Ibid.*, 5.

95. For Truter see C. Graham Botha's essay 'Sir John Andries Truter, 1763-1845' in C. Graham Botha, *History of Law, Medicine and Place Names in the Cape of Good Hope* (Cape Town: Struik, 1962). The quotation comes from page 35.

96. Theal, *Records*, vol. X, 388.

97. *Ibid.*, 106-7.

The Trial

Fortuin Coridon had certainly succeeded in causing a great deal of trouble for his master and a number of other people in the Onder Bokkeveld. If he had thought, however, that in the furore following his revelations the allegations of his attempted rape of Mietje would be forgotten, he was mistaken. The Court began its inquiries with this matter. Was Coridon guilty of attempted rape? The key witness was Mietje.

By the time she came to tell her tale Mietje had been thoroughly coached by her father into giving answers that conformed to his version of events. But if Steenkamp had had his way his daughter would not have had to give evidence at all. When he, his wife, Mietje, as well as Hartwyk Fleck and his wife, together with all their Khoikhoi labourers, were ordered to the Cape for questioning in January 1813, Steenkamp tried to keep Mietje at home. He told the deputy-landdrost at Jan Disselsvlei that Mietje had been taken unwell en route and had been sent home. Fischer's response was that if Mietje did not keep her appointment with the fiscal then a wagon would be hired to convey her to the Cape and the expenses charged to Steenkamp. This threat had the desired effect and on 21 February 1813 Mietje, along with her mother and father, faced judicial interrogation.⁹⁸

Steenkamp's anxiety to prevent the cross-examination of his daughter may have stemmed from a paternalistic desire to protect her. But it might also have been the case that Mietje was not the victim of attempted rape and that Coridon's version of events was closer to the truth. Steenkamp quite obviously did not like the idea of his daughter being alone with a Khoikhoi man in a clay pit, particularly one who had proved to be capable of mutilating corpses. There may also have been something about his daughter's behaviour that suggested to him that she was not entirely innocent and that she had merited a thrashing. Fortunately for Steenkamp, Mietje proved to be a star witness.

She told the Court that, after showing her the clay, Coridon 'took hold of my hand and asked me to cohabit with him.' She asked him how he dared to ask her such a thing and threatened to tell her father. 'Before you do so,' he answered, 'I will have run away.' He then dragged her out of the old dam, behind a stone, and pulled up her petticoats. Her screams brought her father to the scene before Coridon 'could accomplish his design.' Coridon then got up (a statement which she subsequently corrected: the Hottentot Fortuin did not get up as he was not laying [sic] on her body) and ran away to stand on the dam wall. When her father asked her what was going on she told him that 'the Hottentot had seized me but had done me no injury, upon which my father broke a tough switch from the bushes and gave me one or two lashes because I had gone alone to the dam without one of my sisters.'⁹⁹

98. CA, I/CWM ADD1/1, 10 Jan 1813.

99. CA GH 47/2/11, Interrogation of Maria Margaretha Steenkamp, 21 Feb 1813, 201-204.

Regina Nieuwhoudt, Steenkamp's wife, could add little to the testimony of her husband and daughter. The Court was worried, however, by certain points made by Coridon. If he had thrown Mietje down on the ground why had her clothes not become dirty? The Court asked Regina Nieuwoudt if her daughter's clothes were dirty after her ordeal. 'Yes,' she answered. But then, 'I was so frightened that I did not pay much attention to her clothes.' After this unconvincing performance she quickly got her husband to tell the Court that she was too sick to stand before it and to be confronted by Coridon. Mietje herself asserted that her clothes were not dirty because Coridon had not thrown her down on the yellow clay but on the dry ground.¹⁰⁰

Another point of Coridon's was that the Khoikhoi servant Willem Witbooi could testify on his behalf that Mietje had said to him that she had been beaten for nothing. Witbooi confirmed this before the Court. Mietje, however, denied having said a single word to Witbooi. As for the footprints in the clay, which Steenkamp had pointed out to George Nieuwoudt, and which purportedly showed evidence of a struggle between virtue and vice, Coridon dismissed them as belonging to Mietje and Steenkamp himself. Besides which, he added, Nieuwoudt was the brother-in-law of Steenkamp.¹⁰¹

Ultimately, the fiscal, acting as prosecutor, decided that the charge of attempted rape was unproved. Steenkamp had made a bad impression on the Court for, quite apart from the allegations that he had instructed the commando to take no prisoners and to sever the ears of the dead, he remained resolutely unrepentant about wanting to kill Coridon 'in such a manner that his intestines should be scattered about his ears.' He did not deny wanting to kill him and refused to admit to having done wrong. 'How can I be a father,' he asked, 'and see such an assault offered to my weak child without going to her assistance? I am convinced not to have done wrong, for a parent seeing such must go mad with rage.'¹⁰² Whilst these sentiments may have been applauded in the Onder Bokkeveld the Fiscal was of the opinion that 'this excuse, which if proved, does not allow him to seek revenge in a country where justice is administered and can by no means be justified but moreover it is unproved.'¹⁰³

Ruysch, Steenkamp's attorney, realizing what impression his client was making on the Court, sought to excuse his behaviour by asking: 'Can anything be more horrible for a Father than to witness such an attempt and by one of his servants to have carnal conversation with such a person to which the inhabitants of this colony are so averse?'¹⁰⁴ Steenkamp was not, however, on trial for threatening to kill Coridon. The reason why he, Louw and Nieuwoudt had been arrested in the first place was Coridon's allegation that they had authorized the callous killing and mutilation of Carolus and Klaas. It was this allegation that the Court of Justice was most concerned to examine and it was towards this that it now turned its attention.

100. Ibid., Interrogation of Regina Barbara Nieuwoudt, 21 Feb 1813, 205-216.

101. Ibid., 212-216 and 125.

102. Ibid., Interrogation of J.H. Steenkamp, 2 Jan 1813, 135.

103. Ibid., 92.

104. Ibid., Francois Wilhelm Mauritius Ruysch for J.H. Steenkamp, 2 Sept 1813, 316. Rev. John Campbell remarked in 1814 that 'Nothing disgraces a Boor more than to have illicit connection with a Hottentot.' Theal, *Records*, vol. IX, 312.

Legal procedure at that time at the Cape allowed those who were charged with a criminal act, and who pleaded innocence, to appoint an attorney to represent them. This was known as an Ordinary Process and was permissible when there was not overwhelming proof of their guilt. The accused could also appeal against the sentence. An Extraordinary Process was where guilt had been confessed or where it was proved by the evidence. No appeal was allowed against the judgment and the accused could only have a counsel to defend him if the Court thought it necessary.¹⁰⁵ George Sebastian Nieuwoudt made it easy for the prosecution by confessing that he had committed falsity in misreading Louw's letter of instructions to the commando. He was not, therefore, permitted to have his case admitted in an Ordinary Process but he was allowed to 'state his interest by way of a memorial of suggestion' which the Court would consider. The Court also allowed him defence counsel.¹⁰⁶

The prosecution argued that, by telling the commando that the letter authorized them to kill the vagabonds, Nieuwoudt had to bear part of the responsibility for the death of Klaas Braaij and Carolus. This was notwithstanding the fact that the Fortuin brothers claimed to have killed their victims in response to the verbal orders given to them by Veld Cornet Louw. Nieuwoudt's first excuse for having falsified the orders was that the Khoikhoi who the commando was going in search of were 'generally known to be murderers'. He later added that he had been told, 'by a Hottentot who I cannot now recollect,' that three days before the commando went out Carolus had attempted to kill him. Realizing that this *ex post facto* justification sounded rather unconvincing he quickly added: 'And now I recollect myself it was three days before at the Doorn River when I was with my cattle a Hottentot shot at me with an arrow at forty paces distant'. Unsurprisingly, the prosecution was not impressed by this sudden recollection.¹⁰⁷

It is likely that Nieuwoudt had accurately conveyed the spirit of Louw and Steenkamp's verbal instructions to the assembled commando. He may have thought that by confessing to misreading the instructions he would lessen the charges against his brother-in-law. The best that the attorney appointed to his defence could say about him was:

That he is not only to be considered as ignorant and unexperienced which is to be attributed to his age, education and from his occupation namely that of herdsman by his brother-in-law Steenkamp but also silly whereas it was his intention to mitigate the grievances alleged against his brother-in-law Steenkamp: little did he think that by declaring he did not read the order verbally but principally would have involved him in an extraordinary criminal suit.¹⁰⁸

105. See C. Graham Botha, 'Criminal Procedure At The Cape During The 17th And 18th Centuries', in Botha, *Law, Medicine and Place Names*, 132.

106. CA GH 47/2/11, Extract of Resolution taken by the Chief Justice and members of the Court of Justice at the Cape of Good Hope, 1 June 1813, 243.

107. *Ibid.*, Interrogation of G.S. Nieuwoudt, 20 Feb 1813, 170-177; 55-59.

108. *Ibid.*, Memorial of Suggestion from G. Buyskes and F. Ruysch for G.S. Nieuwoudt, 2 Sept 1813, 352.

Nieuwoudt was sentenced to be delivered to the place of public execution and to be severely scourged on his bare back. He was then to be banished from the colony for five years and not to be allowed to return within this period on pain of severer punishment. He was to be retained on Robben Island until the opportunity arose to send him away.¹⁰⁹ According to his attorney, F.W.M. Ruysch, on hearing his sentence Nieuwoudt's 'rational feelings [were] sensibly affected' to the extent that he was 'quite incapable of alleging anything in his defence.'¹¹⁰

The newly appointed deputy-landdrost of Tulbagh, O.M. Bergh, did his best by writing a character reference for George, and the entire Nieuwoudt family, which he sent to Advocate G. Buyskes on 17 September 1813. He wrote that all who knew the family considered it to be 'respectable', 'good and moral' and 'mild and benevolent towards their servants, particularly towards the Hottentots whose friend and protector they are. You must naturally conceive,' continued Bergh, 'how I and those who know these people must lament to hear that the detained Nieuwoudt has involved himself in such an unpleasant predicament.'¹¹¹ This testimonial had no immediate effect, however, and George Nieuwoudt remained in detention awaiting the outcome of Steenkamp and Louw's trial.

Steenkamp and Louw were initially sentenced, along with Nieuwoudt and the Khoikhoi commando members found guilty of having killed or mutilated the *drosters*, on 24 March 1813. Louw was stripped of his office of veld cornet and forbidden from 'ever serving his country in any honourable employment again'. He was, further, to be confined at his own expense on Robben Island for a year. Steenkamp, like Louw, was to be banished from the colony for five years. But he was also banned from the district of Tulbagh for life. He too was required to await transportation to exile on Robben Island.¹¹² Both Steenkamp and Louw, however, were granted leave to appeal on 4 May 1813 because of the 'very peculiar circumstances of this case'.¹¹³ Unlike Nieuwoudt they had not confessed to any wrong doing and were allowed to defend themselves through an Ordinary Process and defend themselves through a memorial of suggestion and the assistance of an attorney. The fiscal recommended against this option, believing that such a step would needlessly prolong procedures in what appeared to him to be a straightforward case with the guilt of Steenkamp and Louw quite clear. Nonetheless, he humbly submitted his considerations to the 'more enlightened judgment' of the Worshipful Court.¹¹⁴

The Court, in its wisdom, decided on 1 June 1813 to allow Louw and Steenkamp, as well as September Fortuin, Darius Fortuin, Fortuin Coridon and Jacob Platje to proceed in an Ordinary Process and to engage an attorney to defend themselves. The Khoikhoi were allowed to proceed *In Deo* and without making use of stamps, advocate J.H. Neethling being appointed to assist them.

109. *Ibid.*, 61.

110. *Ibid.*, Memorial of G.S. Nieuwoudt, 13 May 1813, 254.

111. *Ibid.*, Letter from O.M. Bergh to Advocate G. Buyskes, 17 Sept 1813, 349-351.

112. *Ibid.*, 24 March 1814 [sic] (should be 1813), 5-13.

113. *Ibid.*, 14.

114. *Ibid.*, Dennssen to Court of Justice, 31 May 1813, 245-249.

The decision to disallow Nieuwoudt to be admitted in an Ordinary Process was confirmed.¹¹⁵

The case against Steenkamp was that he had given orders to the commando to kill the Khoikhoi fugitives; that he had given orders to the Khoikhoi to cut off the ears of any Khoikhoi the commando killed as a convincing proof that they were dead and that he had attempted to kill Coridon. The prosecution's case rested entirely on the testimony of Khoikhoi servants. The case of the defence, conversely, was that the testimony of Khoikhoi who were, firstly, servants and, secondly, hostile, was unacceptable as evidence.¹¹⁶ It is of relevance that, by 1813, this line of defence was not considered to be sufficient grounds for dismissing the case. The acceptability of their testimony was partly due to the fact that the Court believed most of the Khoikhoi in the case to have been brought up in the Christian religion and that their depositions could therefore be sworn to, i.e., they made a solemn oath before the Christian God that what they said was true.¹¹⁷ Significantly, after rigorous cross-examination of the Khoikhoi commando members, their version of events was believed whilst Steenkamp's was not.

Fortuin Coridon, Willem Witbooi and September Fortuin all maintained that Steenkamp had told them to kill the vagabond Khoikhoi if they caught them, but that if they caught only one that they should bind him and make him reveal the whereabouts of the others. They further added that Steenkamp told them to bring him the ears of those they killed. The other Khoikhoi confirmed that 'Steenkamp's people' had told them about the requirement of bringing back the ears in order to conform to his instructions. This was slightly at odds with the testimony of Fortuin Coridon, Willem Witbooi and September Fortuin for they maintained that the orders had been given to them in the hearing of the whole commando.

Steenkamp denied having given the orders attributed to him and claimed that he offered straps to the commando in order to encourage the taking of prisoners – an offer that was rejected by Corporal September Fortuin. He added that the *drosters* 'were at all events malefactors who had already sojourned nine years, had plundered and at last begun to murder', a remark that suggests that he was not overly concerned with preserving their lives.¹¹⁸ When asked whether the commando was present when he offered the corporal straps his reply was 'I think they were present but who pays attention to everything', another answer calculated to make a poor impression.¹¹⁹ Though not all of the Khoikhoi had heard Steenkamp issuing orders, some of them had. Furthermore, some of them could recall Steenkamp's brother-in-law, Nieuwoudt, reading orders from Louw, commanding them to kill.

In Steenkamp's defence his attorney could only argue that the killing and mutilation of the Khoikhoi was possibly viewed by his client as being less atrocious since it had been inflicted upon guilty people: 'We ought further never to

115. Ibid., Extract Resolutions taken by the Chief Justice and members of the Court of Justice at the Cape of Good Hope, 1 June 1813, 242.

116. Ibid., Attorney Ruysch's defence of J. Louw and J.H. Steenkamp, 2 Sept 1813, 286 and 309.

117. Ibid., Denyssen against Hottentots September Fortuin, et al., 24 June 1813, 269.

118. Ibid., Further Interrogation of Steenkamp, 5 Jan 1813, 138.

119. Ibid.

lose sight that the inhabitants are less civilized where the Defendant lives and which is the cause that they consider such and other acts less wrong and evil than they who by daily instruction in the performance of our moral duties are more attentive to the nature and propriety thereof and consequently are more acquainted with its exercise.’¹²⁰

We have no record of Steenkamp’s response to being described as ‘less civilized’ but we may infer that he certainly saw himself as being in an altogether different category of humanity from the Khoikhoi. He did not deny wanting to kill Fortuin Coridon and, as we have seen, considered himself entitled to do so. He made the further mistake of maintaining before the prosecutor ‘that the Hottentots belonging to Cham’s tribe were unworthy of the protection shown to them by the government’.¹²¹ In the context of the times, and in that particular place, this was an insensitive thing to say for the government was going to great lengths to demonstrate, to both the colonists and the Khoikhoi, that the latter were under the protection of the government. Steenkamp, by his behaviour and pronouncements, quite obviously believed that he was entitled to take justice into his own hands where Khoikhoi were concerned and Fiscal Denyssen, therefore, felt justified in drawing attention to ‘the cruel character’ of this Defendant.’¹²²

Ruysch, Steenkamp’s attorney, tried to downplay Steenkamp’s views about the nature of the Khoikhoi with the following dismissive remarks:

It seems that the Right Honourable Prosecutor views this Defendant in an unfavourable light and did not spare any trouble to paint him to the Judge in the most odious colours. What *salva reverentia* have we to do with his nonsense about Cham and his posterity, nonsense which old wives and children talk about as well in enlightened Europe as here to amuse themselves in the long winter evenings, nonsense irrelevant to the matter in question but we should abuse the precious time of your Worships if we dwell longer on this nonsense.

It was highly unlikely, however, that Steenkamp thought the story of a curse having been placed on Ham’s descendants to be nonsense and such beliefs were far from irrelevant in explaining the treatment meted out to the Khoikhoi by the ‘less civilized’ inhabitants of the colony.

Steenkamp noted that Fleck’s wife, Elizabeth Koopman, as well as his own wife, had heard the conversation between him and September Fortuin concerning straps. The corporal acknowledged that the women had been present but did not agree with their statements concerning the content of the conversation. Mrs. Fleck and Mrs. Steenkamp stated that Steenkamp had offered the straps merely to facilitate the taking of prisoners, but that the corporal had declined the offer. When George Nieuwhoudt was asked whether he had been present at this

120. *Ibid.*, Attorney Ruysch’s defence of J.H. Steenkamp, 2 Sept 1813, 313.

121. *Ibid.*, 9 Nov 1813, 331-332.

122. *Ibid.*

conversation he first said 'Yes' but then changed his reply to 'I have told a falsity, I heard nothing about taking straps with them.' The unfortunate Nieuwoudt was not a very good liar and had not been very well coached in his answers by his relatives.¹²³

His sister, Regina Nieuwoudt, was slightly more accomplished at avoiding the truth. When asked whether she knew the contents of Louw's letter, the one her brother had read out, she said 'Yes ... at the time I knew it but at present I am unable to state the same according to truth ... I was at the time in a bad state of health.' She confessed to having read the letter herself and had some recollection of its contents dealing with 'apprehending and shooting to the best of their ability.' Upon actually being shown the letter she excused her previous answer as the result of her confusion.¹²⁴

None of these faltering attempts to convince the authorities that Steenkamp had not issued such murderous and savage orders explained why the Khoikhoi commando members were not punished or reported on their return by Steenkamp or Louw. As September Fortuin said: 'What interests should I have to kill those Hottentots who have done me no harm? I am no Master of the Land.' When questioned further as to whether he had not killed the vagabonds without orders and for his own motives, he replied with telling logic: 'No, and if I had done so without the order of Steenkamp why did he not send me to the Field cornet whereas I immediately after the return of the commando informed Steenkamp what we had done with the Hottentots.'¹²⁵

This raised the question as to whether Steenkamp had informed Louw of the outcome of the commando and what it was exactly he had said. Steenkamp claimed that he had sent a report to Louw on the commando's return with Corporal September. Louw denied ever having received such a letter. Steenkamp, in fact, gave the message to Hans Cupido and not to September Fortuin. Both Khoikhoi men affirmed this and it is unclear why Steenkamp should have been mistaken about the identity of his messenger. Cupido first rode with the message to his master, Marthinus Ras, but could not proceed further because the river was too full to cross. A week later, however, Louw himself rode by and Cupido delivered the letter to him. The veld cornet, according to Cupido, said that he had no time for this but took the letter and rode away.¹²⁶

Since Louw denied ever having received the letter the Court decided that it had better call Marthinus Ras as witness. Ras, unfortunately, was at death's door, as local veld cornet Carel Aaron van der Merwe and his witnesses explained on 20 March 1813: 'We the undersigned declare that the Field Cornet has asked the Old Burgher Marthinus Ras in our presence whether he recollects anything relative to the report made to Louw upon which he answered no that he can neither read nor write on account of his advanced age he does not recollect anything

123. *Ibid.*, Interrogation of Elizabeth Jacoba Koopman, 26 Feb 1813, 185; Interrogation of Regina Barbara Nieuwoudt, 23 Feb 1813, 205-211 and Interrogation of G.S. Nieuwoudt, 20 Feb 1813, 170-177.

124. *Ibid.*, Interrogation of Regina Barbara Nieuwoudt, 23 Feb 1813, 208-209.

125. *Ibid.*, Second examination of September Fortuin, 27 Feb 1813, 217-219.

126. *Ibid.*, Second examination of J. Louw in presence of September Fortuin, 30 April 1813, 233.

about it neither does he know whether it was done in his house.’ A day later another letter from the same source explained that ‘Ras fainted twice the day before and is so weak he can barely walk.’ It was, therefore, to be Louw’s word against that of the Khoikhoi.¹²⁷

Louw was charged ‘for having given a verbal order to a commando consisting solely of Hottentots to pursue wandering Hottentots and to kill them and for further malversations in his office as Field Cornet.’¹²⁸ He rigorously denied these charges but was confronted by the uniform statements of September Fortuin, Darius Fortuin and Ruiters Philander that he had given verbal instructions to kill the vagabonds. Louw’s defence, like Steenkamp’s, was that this evidence was based on the testimony of ‘Hottentots who were themselves involved in a criminal suit.’ Ruysch, Louw’s advocate, found this ‘reproachable’ and quoted an ancient principal of Roman Dutch law, that ‘conspirators, informers, servants, slaves and subordinates must not be admitted as witnesses.’¹²⁹ Times had obviously moved on and the testimony of the Khoikhoi was accepted. As was the case with Steenkamp, the fiscal could not believe that Khoikhoi commando members would kill members of their own nation who had done them no harm, unless they had been ordered to do so. September Fortuin claimed that he had even said to Louw, at the time of receiving the orders: ‘Shall we black people kill those Hottentots alone without a Christian? That will never do for afterwards our Superiors will prosecute us and we shall be unable to defend ourselves.’¹³⁰

Louw’s written orders, which existed and could therefore be perused by the fiscal, seemed to that functionary to be rather too open to misinterpretation. The fiscal asked Louw to comment on the words ‘has my orders to pursue the rogues wherever they may go to the best of their ability’ and put it to him that they did not authorize the commando to ‘treat the so named roguish Hottentots as they judged best.’ Louw’s reply was that he had neglected to insert, ‘through ignorance’, that they were to be shot only if they did not surrender. He added: ‘I placed too much confidence on those Hottentots because they had been on commando before and never committed such like before for there never went one out before to apprehend rogues but they always regularly brought their prisoners to me.’¹³¹

Such misplaced confidence only served to confirm the fiscal in his opinion that Louw was, at the very least, guilty of ‘malversations in his office’. He was asked, in February 1813, whether he had immediately informed the landdrost of his district that he had sent out a commando. The answer to this was no, but the reasons for failing to do so came as a surprise to the fiscal. When Louw first received Steenkamp’s report about the murder of Jonker he was at his mother-in-law’s farm ‘Uijenkraal’. It now transpired that the deputy-landdrost of Tulbagh, J.H Fischer, also happened to be there at the same time. Louw showed Fischer

127. *Ibid.*, O.M. Bergh to Denyssen, 26 March 1813 and enclosures from Veld Cornet Carel van der Merwe of 20th and 21st March 1813, 221-223.

128. *Ibid.*, 6 May 1813, 36.

129. *Ibid.*, Ruysch for Louw, 2 Sept 1813, 286.

130. *Ibid.*, Second examination of Louw in presence of September Fortuin, 30 April 1813.

131. *Ibid.*, Interrogation of Johannes Louw, 4 Feb 1813, 153-154.

Steenkamp's letter and asked him whether it would be appropriate to send out a commando manned entirely of 'Bastaards' and 'Hottentots' and, if so, what orders to give them. According to Louw, Fischer replied that it was permissible to send out such a commando and also permissible to shoot the '*schelms*' if they did not surrender. Louw did not send written notice to the Landdrost of Tulbagh because he considered his verbal notice to Fischer to be sufficient.¹³²

There was something strange about this belated inclusion of Fischer in the sources of authority bearing responsibility for the commando of autumn 1812. If Louw was telling the truth then Fischer, as the senior official present, had to bear some blame for not taking a more active part in issuing the commando with unambiguous instructions and in ensuring that its dispatch was officially recorded at the Tulbagh drostdy. Why had Louw said nothing about this until now? Had he initially tried to protect Fischer from censure? Was he now trying to lessen his own responsibility by implicating a superior? Fischer himself was strangely silent on the subject whilst Louw claimed that he could not remember who else was present at the meeting between himself and the deputy-landdrost, apart from his mother-in-law. The fiscal found it remarkable that the first letter about the commando that Louw had sent to Fischer was that dated 21 June 1812, after the commando had returned, which implied that Fischer knew nothing about the commando until that moment. Louw's response to this was that he had sent the letter 'notwithstanding that Fischer heard it at my mother-in-law's place'.¹³³

Presumably Fischer himself was questioned about his role in the affair but there is no trace of this in the records. Instead, a witness was found who gave evidence that seemed to incriminate Fischer even further whilst, simultaneously, making Louw's previous account of events even more suspect. On 26 July 1813 Dirk Okhuizen was interrogated by the Court of Justice. He related that on 11 May 1812 he had ridden from the Hantam to the Bokkeveld to fetch a load of wheat. He stopped at Johan Louw's farm where he encountered Deputy-Landdrost Fischer who was busy distributing Spanish rams. A conversation about the commando took place and Fischer told Louw to be vigilant. It is not clear whether Okhuizen meant 'Oorlogskloof' (i.e., Louw's father's farm) or 'Uijenkraal' (i.e., Louw's mother-in-law's farm) when he referred to Louw's farm but the latter is more likely. For some reason, according to Okhuizen, he was now asked to write the instructions for the commando at the request of Louw and in the presence of Fischer. Okhuizen said that to the best of his recollection the orders were 'that the commando must use its utmost endeavours to apprehend the murderers, but in case of resistance, or in case they might not surrender themselves voluntarily then to kill them, and not to return without bringing the said murderers either alive or dead.' According to Okhuizen Fischer approved of the orders and gave them to Louw, who signed them. They were then given to the 'Bastaard' September who was the only other person present.¹³⁴

132. Ibid., 155-156.

133. Ibid.

134. Ibid., Interrogation of D.C. Okhuizen, 26 July 1813, 301-306.

This explanation raises a number of questions. Why had Louw been unable to remember the presence of Okhuizen or September when first interrogated? Why was it Okhuizen, instead of one of the officials (presumably chosen because, amongst other attributes, they possessed epistolary skills), who wrote the letter? Were Okhuizen and Fischer trying to protect Louw by giving him qualified support? Louw's advocate, Wilhelm Ruysch, was quick to point out that the written orders, written by Okhuizen and approved by Fischer, superceeded any verbal orders and that Louw was therefore not to be held responsible. If this was indeed the case, Fischer should have been on trial himself. Interestingly, Fischer was replaced in his office, as deputy-landdrost of Tulbagh, on 7 August 1812 by Olof Martinis Bergh. Far from being demoted, however, Fischer had already been appointed as landdrost of Graaff-Reinet on 10 July 1812, a clear promotion.¹³⁵

Fearful, perhaps, of embarrassing Fischer further the fiscal decided to focus on the verbal instructions that Louw had given to the Khoikhoi commando members. Since the Khoikhoi could not read, they were dependent on verbal instructions and the first person to issue such instructions to them was Louw. The prosecution could also attack Louw for his negligence after the commando had returned. Firstly, there was his letter of 21 June 1812, which stated that the Khoikhoi rovers had been shot because they had not surrendered, whereas the truth was somewhat different. Secondly, there was Louw's failure to go and inspect the bodies of the slain men. When questioned on this omission in February 1813 Louw said that he had not gone because Darius had told him that the shooting took place in a rocky kloof, 'full six hours distance from my place', and that he doubted there would be anything left to see since so much time had already elapsed. 'Is he not convinced that he has been guilty of great neglect in not having regularly inspected the bodies?' insisted the fiscal. 'It is possible, but I cannot say so,' was the most Louw would concede.¹³⁶

Inspection of the bodies of people who had died suddenly or by violence was, in fact, one of the primary functions of a veld cornet and without his permission no Khoikhoi or slave could be buried. He not only had to notify the landdrost of his district about any crime which had been committed, he also had to inspect the scene of the crime. If the crime scene was more than six hours journey from the *drosdty*, he had to take two witnesses along with him and he had to take great care that the *corpus delicti* remained in the same state until instructed to proceed by his superiors.¹³⁷ Louw had been neglectful in all of these requirements. But when he was asked again, at a second interrogation in April 1813, 'whether he must not acknowledge to be guilty of willful neglect in his official capacity as a Field Cornet by not having inspected the bodies of the killed Hottentots and by not having reported the circumstances?' he answered: 'No because formerly the Field Commandants and Field Cornets in such cases did not make an inspection and I did not immediately receive a report thereof.'

135. Theal, *Records*, vol. X, 445.

136. CA, GH 47/2/11, Interrogation of J. Louw, 4 Feb 1813.

137. C. Graham Botha, 'The Early Inferior Courts of Justice at the Cape', in Botha, *Law, Medicine And Place Names*, 111.

‘What do you mean that the Field Cornets in such cases held no inspection?’ asked the incredulous fiscal.

‘It happened in former instances that rogues and robbers were pursued and when they would not allow themselves to be apprehended they were killed ... I allude to the Bosjesmen.’¹³⁸

Here Louw was conflating the issue of killing Khoisan troublemakers out of hand with the issue of failing to hold an *in situ* inquest on the bodies. Customary practice, he was arguing, was for commandos to kill without the encumbrance of legal niceties or too many questions. It was precisely such practices that the new government at the Cape wished to stop and that is why it was prosecuting the perpetrators of the Onder Bokkeveld atrocities with such rigor. Ruysch, Louw’s advocate, was simply wrong when he argued, in his client’s defence, that a veld cornet was required to inspect the bodies of colonists only and not the Khoikhoi.¹³⁹ Ignorance of the law was even less of an excuse in a lawyer than in a defendant. Louw’s justification for his actions displays the aggrieved feelings of one who has done one’s best only to be unfairly punished: ‘I consider that I always acted properly whereas I cleared my district of rogues and now I have done so and shot the rogues, because they would not surrender themselves and everything is quiet [you say] I have not acted right.’¹⁴⁰

As far as the fiscal was concerned Louw had as good as acknowledged omissions in committed acts – in not inspecting the bodies of the slain Khoikhoi and in falsely reporting in a letter that the Khoikhoi had been shot because they would not surrender. Even though he had not confessed to the crime of giving verbal orders to September Fortuin, Darius Fortuin and Ruiters Philander to kill the Khoikhoi all three of these men, in Louw’s presence, asserted that he had done so. The fiscal especially noted that, ‘Ruiters Philander, who did not shoot, is to be trusted as a witness even though his deposition was not sworn to because he was not brought up in the Christian religion.’¹⁴¹

In the end, there was little that could be said in Louw’s defence. When asked to provide him with a character reference O.M. Bergh, the deputy-landdrost, stated that although he was not well acquainted with Louw ‘he is known to me as an active and quiet Burgher worthy of the esteem of his fellow burghers,’ and, along with Steenkamp, ‘neither known to be prosecutors nor abusers of Hottentots or servants.’¹⁴² In an earlier letter, in January 1813, Bergh had referred to Louw as having distinguished himself for his exceptional vigilance and as being one of the veld cornets upon whom he could most rely.¹⁴³ Perhaps the most convincing argument for Louw was made not by his defence advocate but by the advocate appointed to represent the Khoikhoi commando members, Johannes Neethling. His argument was, essentially, that local officials ought to be allowed a degree of latitude in their attempts to deal with the depre-

138. CA, GH 47/2/11, Second Examination of J. Louw, 30 April 1813, 237-238.

139. Ibid., Ruysch for J. Louw, 2 Sept 1813, 292-300.

140. Ibid., Interrogation of J. Louw, 4 Feb 1813, 155-160.

141. Ibid., Denysen against Hottentots Fortuin, *et al.*, 24 June 1813, 269.

142. Ibid., O.M. Bergh to Buyskes, 17 Sept 1813, 349-50.

143. CA, I/WOC 12/50, Bergh to Van der Graaf, 4 Jan 1813.

dations of ‘cruel Hottentots’, such people as murderers, vagabonds and robbers who had renounced all social bonds and become outlaws. If officials should be allowed to exterminate the enemies of the state – and here he cited the ancient law of the German Empire which teaches that ‘vagabonds may be killed unpunished although they make no defence or although it is not done in self defence because it is for the public good’ – and if this was true of Europe, ‘how much more will it be permitted to the Cape farmers against such cruel wanderers and highwaymen who exceeded in cruelty the beasts of the field.’¹⁴⁴

Neethling went on to argue that if officials and farmers could act like this then ‘how much more have the commanded people who were sent in search of them a right to kill those wandering murderers and to clean society of such monsters who when apprehended so often make their escapes and proved by fresh and repeated murders and robberies that those who have spared them have been the cause of death of the last victims.’¹⁴⁵ These emotive appeals to historical precedent fell on deaf ears, because the principle of British justice at the Cape was now one of equality before the law, for Khoikhoi vagabonds as well as Christian farmers. Dennysen, the prosecutor, was quick to point out that he did not agree with those parts of Neethling’s argument which tended ‘to put the reins of Judicial authority in the hands of fickle inhabitants of this colony, yes, what is more to give them the right to treat the subjects of this government as Enemies if they by an unfortunate fear imagined themselves that they were enemies.’¹⁴⁶ But there were other grounds for leniency towards Neethling’s clients.

The ‘commanded people’, whose conduct Neethling was trying to defend, were those Khoikhoi who had actually been accused of killing Carolus and Klaas – namely September and Darius Fortuin – or accused of mutilating their corpses – namely Fortuin Coridon. Those other Khoikhoi, who had been part of the commando but who had not been involved in the killing or mutilation, were not put on trial. A further individual who was supposed to be represented by Neethling was the erstwhile member of Carolus and Klaas’s gang, Jacob Platje. Neethling, however, declared that Platje was not worthy of his defense and Platje’s fate therefore rested on what weight the Court of Justice gave to the prosecution’s case against him.¹⁴⁷

Neethling asserted that the law teaches that ‘those who have obliged the commands of superiors in doing evil ought to be acquitted wholly in trifling cases [and] in weightier ought to be punished more leniently.’¹⁴⁸ Here Dennysen agreed with him, believing that September and Darius Fortuin and Fortuin Coridon had all done nothing but ‘complied with the order given by the Field Cornet of the district ... and by J. H. Steenkamp.’ Although they ought not to have complied with these ‘extravagant orders’ they were greatly to be excused ‘as they themselves are ignorant persons who from their birth look upon Christians as more enlightened persons than themselves and place full confi-

144. CA, GH 47/11/2, Neethling for September Fortuin, *et al.*, 24 June 1813, 258-268.

145. *Ibid.*

146. *Ibid.*, Neethling against Hottentots Fortuin, *et al.*, 272.

147. *Ibid.*, Neethling for September Fortuin, *et al.*, 258.

148. *Ibid.*, 268.

dence in the legality of the order and especially those which they receive from their superiors.¹⁴⁹

Dennyssen, in fact, asked for a much lighter sentence for the Khoikhoi than was ultimately given to them by the Court of Justice. He suggested that the guilty Khoikhoi should be ‘severely flogged by the kaffers of justice in presence of gentlemen commissioners and further to be confined in prison for three successive and following months.’¹⁵⁰ The Court, however, viewed the matter more seriously, at least in the case of September Fortuin and Fortuin Coridon. Whilst a severe flogging was approved for both of them September Fortuin was sentenced to an additional two years labour at the Public Works on Robben Island, or elsewhere, and Fortuin Coridon to one year’s labour in the same circumstances. Darius Fortuin was allowed to go free, the detention he had already experienced being considered a sufficient punishment.¹⁵¹ It no doubt counted in his favour that he had shot a man who was reaching for a bow and that he had disapproved of the subsequent mutilation of the bodies.

Jacob Platje, meanwhile, had been rearrested at his master’s farm in the Roggeveld by Veld Cornet J. Nel and sent to the deputy-landdrost at Jan Disselsvlei in January 1813. After interrogation there he was escorted by armed guards, namely, the baptized ‘bastaard’ David Koopman and the ‘kaffer’ Harlequin to the Cape for further questioning.¹⁵² According to the fiscal, Platje was guilty of having acknowledged to have partaken of stolen beef, even though he had not himself stolen the livestock or been involved in the murder of Jonker.¹⁵³ Deputy-Landdrost O.M. Bergh claimed that Jacob Platje had confessed to wanting to join Carolus Tinnegieter, Klaas Platje (his brother) and Hendrik Wessel in attacking Steenkamp and then joining Dirk Roman’s gang in Bushmanland.¹⁵⁴ But since neither of these eventualities happened, and Jacob was captured before Jonker’s murder, it was hard to convict him on these charges. News had, in fact, reached the sub-*drost*dy at Jan Disselsvlei in December 1812 that Dirk Roman had been shot dead by one of his accomplices, Piet Kaffir, somewhere over the Orange River. Piet Kaffir and Klaas Titus had been arrested on their return to the colony in December, thanks to a tip off from the San of Bushmanland. Although Piet and Klaas implicated a further three Khoikhoi servants from the Hantam district in De Siller’s murder, Jacob Platje’s name was not mentioned.¹⁵⁵ Fiscal Dennyssen nonetheless called for Platje to be sentenced to three year’s hard labour on Robben Island. Fortunately for Platje, the Court of Justice rejected the prosecutor’s claims against him and he was free to return to the Roggeveld.¹⁵⁶

Though Dennyssen may have been disappointed in the sentences meted

149. *Ibid.*, Dennyssen’s Summary, 6 May 1813, 60.

150. *Ibid.*, 63.

151. *Ibid.*, Sentences, 24 March 1814, 5-13.

152. CA, 1/CWM ADD1/1, 9 Dec 1812, 23 Jan and 26 Jan 1813; GH 47/2/11, Extract letter from O.M. Bergh to H. van der Graaf, 26 Feb 1813 [sic] (should be Jan), 162-164.

153. CA GH 47/2/11, Dennyssen’s Summary, 6 May 1813, 60.

154. *Ibid.*, Bergh to Van der Graaf, 26 Jan 1813, 162-164.

155. CA, 1/CWM ADD 1/1, 21 and 30 Nov 1812, 7 Dec 1812.

156. CA GH 47/2/11, 13 and 63.

out to those Khoikhoi he had been prosecuting, it was he who most clearly expressed the principal that the government was trying to uphold in this case. Far from endorsing the dangerous idea that the inhabitants of the colony could treat Khoikhoi as they saw fit, said Dennyssen, he was of the opinion that ‘all the Hottentots who dwell as subjects within the limits of the Colony ought to be considered as subjects not as enemies of this Government, unless they have made themselves guilty of public robbery and being fugitives are banished by judicial sentence post *causae cognitionem*.’¹⁵⁷

Given these sentiments, and the sentences handed down to those Khoikhoi who were judged to have executed their masters’ orders too zealously, it is surprising that Nieuwoudt, Louw and Steenkamp were not dealt with more harshly or, for that matter, more swiftly. Over a year was to elapse between the granting of permission to appeal and the final sentencing. The delay was no doubt attributable to the great increase in the number of cases before the Court of Justice, generated by the business of the Circuit Courts. Some delay may also have been occasioned by the departure of Sir John Cradock and the appointment of a new governor. As it happened, the new governor of the Cape, Lieutenant-General Lord Charles Somerset (who had taken office on 6 April 1814) eventually saw fit to remit further punishment and release Nieuwoudt and Louw. What circumstances had led to this extraordinary act of clemency and the seeming reversal of the policies of Cradock?

It might be supposed that Somerset was attempting to curry favour with the colony’s farmers; or else exercising the despotic character which his enemies believed him, rightly, to possess by over-ruling the judgment of the Court of Justice. But it was not Somerset who had initiated the release of the prisoners. He was to express his support for the work of the Court of Circuit, stating that it ‘has in no point of view been more essentially useful than in checking the wanton and atrocious conduct of the ignorant and half savage Boers of the Frontier towards their Slaves and the Hottentots in their service, which was previously thereto a subject of just animadversion.’¹⁵⁸ In fact, the initiative for clemency had not come from the Governor but from the Chief Justice.

On 10 March 1815 Truter had written to Somerset to plead Nieuwoudt’s cause. He described the case as being a melancholy one and presented Nieuwoudt as having allowed himself, without any apparent personal motive or interest, to have been prevailed upon by his brother-in-law, Steenkamp, a man ‘of a ferocious temper’, to misread an order to a commando of Khoikhoi ‘merely to serve the vengeful views of Steenkamp’. Truter explained further that Nieuwoudt had a good character and that his parents belonged to ‘the best moral class of country people’, though his father was aged and infirm. Nieuwoudt had been in confinement for nearly a year, since his case was connected with that of Steenkamp and Louw, which was still on appeal. The Chief Justice asked the Governor if he might not consider the confinement which Nieuwoudt had already experienced

157. *Ibid.*, Dennyssen against Hottentot Fortuin, *et al.*, 24 June 1813, 273.

158. Somerset to Bathurst, 11 Dec 1815, in Theal, *Records*, vol. XI, 2.

‘to be a sufficient correction under existing circumstances, without injuring in the least the cause of Justice.’¹⁵⁹ Somerset did indeed agree to this and a letter from the Colonial Office to the Court of Justice, dated 14 March 1815, authorized Nieuwoudt’s release.¹⁶⁰

The petition from Truter makes Somerset’s behaviour more excusable. The new governor could not easily ignore the advice of the administration’s most experienced and loyal official. On 19 January 1815 Truter had had the honour of addressing the first assembly of the Court of Justice in the new Court House. The new Court House had been built, symbolically, out of the renovated and transformed old Company Slave Lodge and, as Cradock had wished, the alterations allowed for the opening of Court proceedings to the public. The British government was giving material expression to its intention of making justice transparent and benevolent. Truter used the occasion to extol the virtues of impartial justice and the liberality of the new government in both supporting the administration of such justice and creating a building ‘to give to the administration of justice in this Colony all that external luster which can tend to place its dignity and freedom in the most exalted point of view.’¹⁶¹

Here was a man who thoroughly endorsed the British vision of justice. But he was also a man who was sensitive to local custom and inclined to regard the sins of his countrymen more leniently than Cradock had done. It should be mentioned that Truter himself had come under public scrutiny in the latter part of 1814 for the alleged mistreatment of his servants, in this case one of his female slaves, Marie. The allegations were instigated by the aggrieved family of S. van Reenen, the man who Truter, when he was still fiscal, had prosecuted for his inhuman and fatal mistreatment of the slave August. Though the Court of Justice found that there were no grounds for the charge of ‘cruel ill treatment’ in the course of the infliction of a ‘domestic correction’ on Marie, the case had come to the attention of Earl Bathurst and caused Truter immense embarrassment. Somerset was obliged to write to Bathurst in April 1815 to assert that ‘the character of Mr. Truter for integrity and benevolence stands inferior to no man’s, and I can safely appeal to my Predecessors in office for confirmation of this Sentiment’.¹⁶²

As locals, Truter and the Court evidently had some sympathy for Nieuwoudt, a naïve man under the influence of his domineering brother-in-law. It was clearly easier to display this sympathy under Somerset than Cradock. There is a suggestion that Cradock must have feared such a development, if not in this case, then in others. Theal gives us a poignant glimpse of Cradock in the moment of his supersession: ‘Sir John Cradock wished to retain the government until some cases then before the court of appeal were concluded, that he might transfer the administration in perfect order, but Lord Charles was unwilling to

159. CA Colonial Office (hereafter CO), 71 (Court of Justice), Truter to Somerset, 10 March 1815, 119.

160. CA, CO 4837 (Letters Despatched Sept 1814 – June 1815), Bird to Court of Justice, 14 March 1815, 284.

161. Botha, ‘Truter’, 34. For Truter’s speech on this occasion see Andre du Toit and Hermann Giliomee, eds., *Afrikaner Political Thought: Analysis & Documents*, vol. 1, 1780-1850 (Cape Town: David Philip, 1983), 100.

162. See Truter to Bathurst, 28 March 1815; Truter to Somerset 28 March 1815; Somerset to Bathurst 4 April 1815 and Extract of Resolutions of Court of Justice, 11 Aug 1814 in Theal, *Records*, vol. X, 282-295.

163. Theal, *Records*, vol. X, 448.

wait, and on the morning of the 6th [April, 1814] he took the oaths of office.¹⁶³

The impression that Somerset was more lenient in such matters is confirmed by his treatment of Louw. Pending their appeal, Steenkamp and Louw had probably been free to live at home. On 13 January 1815 they were escorted from Clanwilliam to prison in Cape Town.¹⁶⁴ On 17 May 1815 Louw and Steenkamp's appeal was finally judged to be unsuccessful and their names appear together in the Prisoners' Lists pending transfer to Robben Island.¹⁶⁵ On 23 May, however, the governor's private secretary wrote to inform the Court of Justice that 'in consideration of the favourable testimonies brought forward respecting J. Louw under sentence of confinement for one year at Robben Island, His Excellency is pleased to remit further punishment of that person and to direct that he may be released.'¹⁶⁶ He was released on 26 May whereas Steenkamp was transferred to Robben Island on 1 June 1815.¹⁶⁷

It is not known who wrote the 'favourable testimonies' for Louw, for the letters were forwarded to the Court of Justice and are not preserved in their files. It is true that Deputy-Landdrost O.M. Bergh had written a few lines in his favour in January and September 1813 but it is unlikely to have been these that convinced the governor to remit his sentence.¹⁶⁸ Louw's wife, Christina, had given birth to a son in February 1815 and perhaps this softened Somerset's heart.¹⁶⁹ On the face of it, however, there seemed little reason to excuse Louw but excused he was. We must assume that he returned to the Onder Bokkeveld to continue his farming activities. He sired another four children between 1820 and 1825 but did not resume his office as veld cornet. His successor, who had been acting in this capacity since at least September 1813, was George Nieuwoudt's brother, Hermias Cornelis, with whose 'fidelity and zeal' O.M. Bergh was 'fully satisfied'.¹⁷⁰

If anyone petitioned the governor on Steenkamp's behalf their letters are not preserved and they were, in any event, unsuccessful. Between interrogations and detentions Steenkamp had been able to return to 'Zoutpan' where he became involved in a dispute with his trusted Khoikhoi servant, Willem Plum, in February 1814. Plum lodged a complaint with the Deputy-Landdrost of what was now Clanwilliam on 13 February, accusing Steenkamp of mistreating him. Steenkamp appeared before O.M. Bergh in order to defend himself against these accusations on 17 February. He claimed that he had never once beaten Plum but that the latter had once become so drunk from drinking honey beer that he had lost a substantial number of goats that were under his supervision. Fearing the consequences of his neglect he had run away and had since been living along the Doorn River, sustaining himself by robbery. Steenkamp asserted that Plum had stolen two sheep from J. van Wyk. The knowledge that Van Wyk was hard

164. CA, 1/WOC 12/51, 13 Jan 1815.

165. CA CJ 3192A (Prisoners Lists), No. 7, 11 May 1815.

166. CA, CO 4837, Bird to Court of Justice, 23 May 1815, 388.

167. CA, CJ 3192A, No. 7, 11 May 1815.

168. CA, 47/11/2, Bergh to Buyskes, 17 Sept 1813, 349-351. There is a mention by Bird in a letter to the fiscal on 24 May 1815 of a 'letter to the Court of Justice on subject of Louw,' but this has not been found. CA CO 4837, 392.

169. Pama and De Villiers, *Ou Kaapse Families*.

170. H.C Nieuwoudt was confirmed as veld cornet on 1 Jan 1815. See CA, 1/WOC 12/51. O.M. Bergh wrote in praise of Hermias's abilities as an acting veld cornet on 17 Sept 1813. CA GH 47/11/2, Bergh to Buyskes, 17 Sept 1813, 349.

on his heels had led Pluim, out of fear, to complain at the drostdy. Van Wyk supported this version of events and Pluim was punished and ordered to return to Steenkamp to serve out his contract.¹⁷¹

Steenkamp's victory was short-lived. Just over a year later he learnt that his appeal had failed and that there was to be no intercession by Somerset. It must have been particularly galling, as he waited on Robben Island for a ship to take him into banishment, to reflect that Jacob Platje, the Khoikhoi robber whom he had handed over to the authorities with the heartfelt plea to exile him from the district, had been found not guilty and released. It was Steenkamp himself who now facing banishment from the colony for five years and from the Onder Bokkeveld for life.

It has not been possible to discover exactly where Steenkamp was banished to but, in all probability, it was New South Wales. Somerset had written to Bathurst on 8 June 1815 (one week after Steenkamp's arrival on Robben Island) to ask for permission to forward to New South Wales such convicts 'as shall be or may have been condemned by the Colonial Court of Justice to banishment for Life for aggravated Crimes. At present', Somerset continued, 'persons under such circumstances are sent to Robben Island ... there being no means of disposing of them, and they are employed in quarrying, but there is neither sufficient work for them at that Station, nor is it altogether secure, frequent instances occurring of the escape of such individuals to the Continent'. Bathurst granted permission to this request on 27 September 1815.¹⁷² From now on convict ships en route to Australia were permitted to receive Cape convicts under sentence of banishment for life and convey them to New South Wales. Steenkamp was not under sentence of banishment for life but it would have been most convenient and tempting to effect his banishment by utilising the new opportunities for transportation to New South Wales.¹⁷³ What can be stated with certainty is that Steenkamp's wife, Regina Barbara, gave birth to her seventh child, a girl, in December 1815 but that there were no further children from this marriage – a fact which suggests that the couple's conjugal relations were interrupted after 1815.¹⁷⁴

It is not clear what happened to Steenkamp's *bywoner*, Hartwyk Fleck. The most likely scenario is that after Steenkamp's banishment he commenced a roving life until his arrival at the Wupperthal mission station in 1830, for his death notice in that institution notes that he had previously lived a nomadic life.¹⁷⁵ It is possible that it was another of Cradock's reforms – the quitrent system – that had helped to propel him into a wandering lifestyle. This act of land

171. CA, 1/CWM ADD 1/1, 13 and 19 Feb 1814.

172. Somerset to Bathurst, 8 June 1815 and Bathurst to Somerset, 27 Sept 1815, in Theal, *Records*, vol. X, 305-6 and 350.

173. Although some prisoners from the Cape were sent as convicts to Australia I have not been able to find Steenkamp's name in either the New South Wales or Van Dieman's Land records. Steenkamp family legend (in many instances demonstrably false) has it that he was so content on Robben Island that he elected to remain there. (See the Steenkamp website www.steenkamp.netfirms.com) I am grateful to Nigel Amschwand for this reference. For Cape convicts in Australia see V.C. Malherbe, 'Khoikhoi and the Question of Transportation from the Cape Colony', *S.A. Historical Journal*, vol. 17, 1985 and 'South African Bushmen to Australia? Some Soldier convicts Investigated', *Journal of Australian Colonial History*, vol. 3, no.1, April 2001. Also L.C. Duly, "'Hottentots to Hobart and Sydney'", the Cape Supreme Court's use of Transportation 1828-38', in *Australian Journal of Politics and History*, vol. XXV, 1, 1979.

174. Pama and De Villiers, *Ou Kaapse Families*.

175. See note 2 above.

reform, passed in August 1813, put pressure on farmers to have their loan farms converted into perpetual quitrent. What this meant, in effect, was that no parts of a loan farm could be alienated until the farm had been properly surveyed – a costly procedure. The size of the farm could not exceed 3 000 morgen and the rental could now be increased to as much as two hundred and fifty rix dollars a year, compared to the old cost of twenty-four rix dollars a year.¹⁷⁶ Good land was, consequently, even dearer than before. Those on it, whether poor whites like Fleck or Khoikhoi servants, would have to work harder than before to justify their occupancy in the eyes of the title holder. The result was an exodus of the poor and marginal onto unsurveyed and unallocated land. In the Onder Bokkeveld district the first half of the nineteenth century thus saw a movement of Khoikhoi, ‘Bastaards’ and poor whites into the trekveld of Bushmanland and the rough slopes of the Cedarberg. In the latter place, ‘coloured’ land holders would prove to be remarkably tenacious in securing and maintaining access to land. In Bushmanland, however, the influx of population had disastrous effects on the environment, the wild life and the indigenous San.¹⁷⁷

Conclusion

The banishment of Steenkamp and the punishment of his accomplices in the murder and mutilation of two vagrant Khoikhoi did not create much of an impact outside of the Onder Bokkeveld. Until now the case has been rather lost amidst the mass of evidence generated by the Circuit Courts in general and the Black Circuit in particular. Missionary, military and administrative attention at the time was focused on the Cape’s eastern frontier rather than the obscure aridity of the northern frontier. It was, after all, on the eastern frontier that the administration of British justice provoked a rebellion. In 1815 a burgher of the Tarka district refused to appear before the Court to answer a charge of mistreating a Khoikhoi, and was shot dead, by Khoikhoi troops, whilst resisting arrest. The consequent uproar – the Slagtersnek Rebellion – was easily suppressed by the British. This did not prevent the Rebellion from being given, largely retrospectively, a disproportionate historiographical significance.¹⁷⁸ The Rebellion seemed to emphasise that the eastern frontier was where the influence of the Circuit Courts and the Caledon Code was most needed and most felt.

The less dramatic evidence of the effects of the implementation of British justice and labour reforms on the lives of the farmers and Khoikhoi of the northern Cape frontier zone has been largely ignored. Hopefully, the case of the Onder Bokkeveld ear mutilation atrocity has demonstrated that, between 1809 and 1815, the British government at the Cape was both vigorous and, for the most part,

176. Theal, *Records*, vol. X, 439.

177. The impact of the quitrent system on land usage in the northern Cape districts awaits its historian. But Dawn D’Arcy Nel has written about land holding by descendants of Khoikhoi in the Clanwilliam district in the first half of the nineteenth century in ‘Land, Land Ownership and Land Occupancy in the Cape Colony during the Nineteenth Century with specific reference to the Clanwilliam District’ (B.A. Honours, University of Cape Town, 1997).

178. See Leonard Thompson, *The Political Mythology Of Apartheid* (New Haven: Yale University Press, 1985), 105-143 for ‘The Strange Career of Slagtersnek’.

successful in protecting the Khoikhoi labourers of the northern Cape frontier districts from (in the words of Cradock) the 'uncontrolled severity of the powerful over the weak' and the 'tyranny of the powerful over the defenceless'. Though such Khoikhoi remained fundamentally unfree, in the sense that they were bound by the obligation to have a fixed place of abode and a labour contract, they were now aware that the government had both the desire and the ability to uphold justice and protect them from arbitrary or excessive punishment. The readiness of Khoikhoi supplicants to seek help at both the Tulbagh and Clanwilliam *drosdties* suggests that the government was seen as being a protector. It is also an indication that the Khoikhoi realized that there was a possibility of legal redress in disputes with their masters over the terms of their labour contracts. The fact that the colonists of this district did not rebel against the administration and were, on the whole, prepared to obey the local officials and appear before the magistracies and the courts is also significant. It suggests that they had accepted, albeit reluctantly, the right of the government to regulate their treatment of their labourers.

None of this is meant to imply that the Onder Bokkeveld ceased to be a wild region, devoid of injustice and brutality. Labour relations continued to be punctuated by violence and labourers continued to desert their masters. The neighbouring Koue Bokkeveld district was the site of a slave rebellion in 1824, a rebellion that originated out of an experience of oppression and that also involved a handful of Khoikhoi labourers.¹⁷⁹ Even the passage of Ordinance 50 in 1828, a piece of legislation designed to remove the inequalities which the Khoikhoi suffered under the Caledon Code, could not guarantee the complete cessation of ill-treatment in the labour place. But, from the moment that the government decided to prosecute the perpetrators of the unlawful killing and mutilation of two vagrant Khoikhoi murder suspects, it demonstrated that the frontier farmers, with their rough justice and unbridled commando system, were no longer the masters of the land.

179. See Robert Ross, *Cape of Torments: Slavery and Resistance in South Africa* (London: Routledge & Kegan Paul, 1983), 105-116 on the Koue Bokkeveld Rebellion.