

Chapter 31

A brief history of South Africa

‘Whoever wishes to foresee the future must consult the past; for human events ever resemble those of preceding times. This arises from the fact that they are produced by men who ever have been, and ever shall be, animated by the same passions, and thus they necessarily have the same results.’

NICCOLÒ DI BERNARDO DEI MACHIAVELLI (1469–1527)

ITALIAN RENAISSANCE HISTORIAN, POLITICIAN, DIPLOMAT, PHILOSOPHER, HUMANIST AND WRITER

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WHY THIS CHAPTER IS IMPORTANT

Our country has a rich history that began millions of years before the first European explorers and colonists arrived. As people competed for land and resources, so too did cultures conflict, often violently. The reasons for our borders, our provinces, the way our laws operate, our legal system, our courts, our laws and our Constitution, can all be found in our history. It is only when one knows and understands our past that one can appreciate why things are the way they are today.

A BRIEF HISTORY OF SOUTH AFRICA

1 Pre-history

The earliest history of the land we call South Africa dates back many millions of years. The first inhabitants were called hominids. Near Sterkfontein, remains have been found of the early hominids (*Australopithecus africanus*) who lived there over three million years ago. Hominids were gradually replaced around a million years ago by *homo erectus*, who spread

across Africa, Europe and Asia. *Homo erectus* were replaced about 100 000 years ago by *homo sapiens*, the ancestors of modern mankind. Fossils found near the mouth of the Klasies River in Eastern Cape Province indicate that *homo sapiens* lived in South Africa as early as 90 000 years ago.¹

The oldest Khoi and San rock paintings in southern Africa have been dated to as early as 40 000 years ago. They were skilled hunters and gatherers of food. They had no permanent home, but moved about according to the seasons.

2 The San

Twenty thousand years ago, South Africa was still in the grip of the world's most recent Ice Age. The land was occupied by people known as San. They survived in difficult environments by gathering edible plants, berries, and shellfish; by hunting game; and by fishing. Women gathered most of the food. Men hunted, made tools and weapons from wood and stone, produced clothing from animal hides, and made a variety of musical instruments.

The primary social unit among the San was the nuclear family. Families joined together to form groups of about twenty to fifty people. Men and women had equal status in these groups, although the male head of the main family usually took a leading role in making decisions. Groups moved over the countryside looking for food. Because they made such limited demands on their environment, San provided a living for themselves for thousands of years. Population numbers remained small and settlement was generally sparse.

3 The Khoikhoi

About 2 200 years ago, San groups in what is now northern Botswana started to domesticate livestock and to farm. As they moved south, they became known as hunter-herders. Two thousand years ago, these herders reached the southern tip of Africa and were known as Khoikhoi.

This community lived along the southwest coast of the Cape, and the drier areas to the west, including present-day Northern Cape Province, Botswana, Namibia, and southern Angola. Their descendants, called Hottentots by early Dutch settlers, are now more accurately termed Khoikhoi, 'men of men', or Khoi in their own language. The word 'Hottentots' is now considered derogatory. It means 'stutterer' in the Dutch language, although the Dutch used the word '*stotteraar*' more to describe the clicking sounds used in the Khoisan languages.

Because the southern Cape was fertile and well supplied with fresh water, many Khoikhoi settled along the coast between the Orange River and the Great Fish River. Gradually, hunting and gathering gave way to herding. With the better food supplies from their herds, Khoikhoi lived in large communities of several hundred people. The larger size of Khoikhoi communities, as compared with those of the San, lead to more hierarchical political structures. A Khoikhoi group was generally presided over by a *khoeqe* (rich man). The *khoeqe* was not an autocrat, but only exercised power in consultation with other male elders.

The trading of livestock introduced concepts of personal wealth and property ownership. The Khoikhoi traded extensively with other peoples in southern Africa. They acquired copper from the north and iron from Bantu-speaking Africans in the east and made these metals

1 South African History Online <https://www.sahistory.org.za/article/general-south-african-history-timeline-pre-1500>, accessed 22 February 2022.

into tools, weapons, and ornaments. They bartered sheep and cattle products with the San for game and hides.

From around 200 AD, farming communities south of the Limpopo River started to use iron. Early Iron Age people settled in present-day KwaZulu-Natal, and for the next 200 years settlements increased in the Transkei region.

At about this time, Bantu-speaking peoples also began arriving in what is now known as South Africa. Originally from the Niger Delta area in west Africa, they had started to make their way south and eastwards in about 1 000 BC, reaching present-day KwaZulu-Natal Province by 500 AD. They had domestic animals, and farmed wheat and other crops. They were also skilled iron workers, and lived in settled villages. The Bantu arrived in South Africa in small waves, rather than in one cohesive migration. Bantu-speakers and Khoisan mixed, as shown in rock paintings, the incorporation of the click consonant of earlier Khoisan languages in Xhosa and isiZulu, and Khoisan artifacts found at the sites of early Bantu settlements.

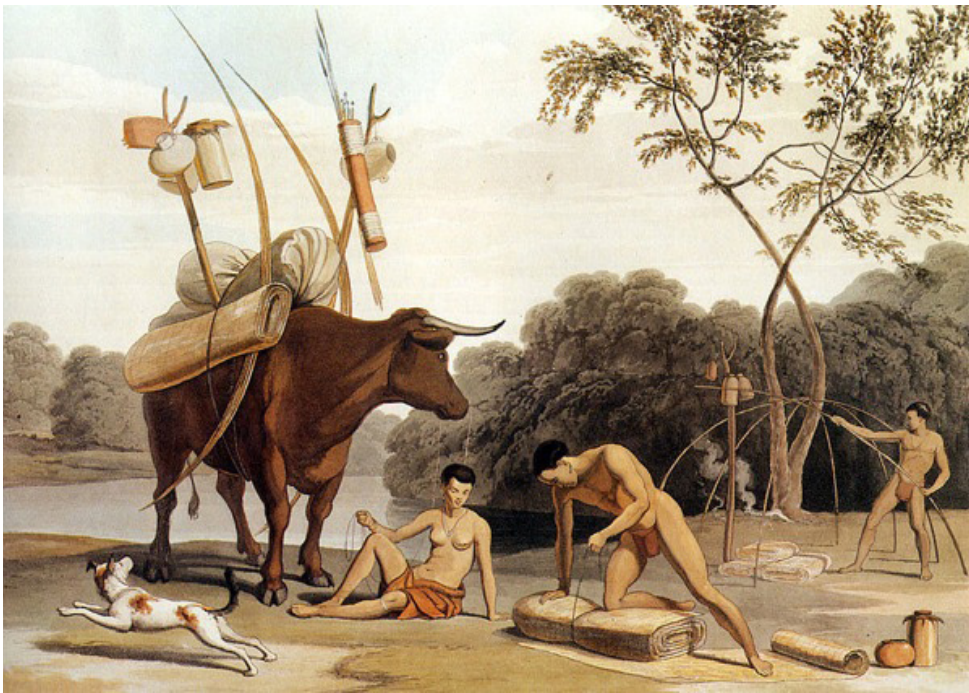


Figure 31.1 Khoikoi²

By 600 AD, the beginning of the Late Iron Age in southern Africa led to more settlement on the central Highveld. From 800 AD to 1400, the Limpopo River area was settled by Nguni-speaking people in South Africa (later split to form Xhosa, Zulu, Swazi and Ndebele groups). From 1300 to 1500, the Highveld was populated by Sotho-speaking people, which later split

2 Sameul Daniell – Kora-Khokhoi preparing to move – 1805. Source: *Suid-Afrikaanse Geskiedenis in Beeld* (1989) by Anthony Preston. Bion Books: Printed in South Africa. From website http://en.wikipedia.org/wiki/File:Sameul_Daniell_-_Kora-Khokhoi_preparing_to_move_-_1805.jpg, accessed 10 January 2017. This image is in the public domain because its copyright has expired.

to form South Sotho (Basuto and Sesotho), the West Sotho (Tswana), and the North Sotho (Sepedi). Nguni communities settled along the south-east coast and in the Drakensberg interior.³

4 The Portuguese explorers

The written history of South Africa began with the arrival of the first European explorers, who wanted to find a sea route to India and Asia.

In 1487, Bartolomeu Dias sailed from Portugal around a rocky, windy Cape, naming it Cabo da Boa Esperança or the Cape of Good Hope.

Ten years later in 1497, Vasco Da Gama saw the Natal coast on Christmas Day and named it Terra do Natal, which is Portuguese for 'Land of Birth' (referring to Christmas). The next year, he crossed the Indian Ocean and reached India, establishing the Portuguese monopoly of this important sea trade route.⁴



Figure 31.2 The route followed by da Gama's voyage from 1497–1499⁵

3 South African History Online <https://www.sahistory.org.za/article/prehistory-cape-town-area>, accessed 16 December 2021.

4 South African History Online <https://www.sahistory.org.za/article/vasco-da-gamas-voyage-discovery-1497>, accessed 16 December 2021.

5 Ibid.

The Portuguese had no interest in colonising the Cape. They had experienced horrible weather there and attempts to trade with the local Khoikhoi had ended in conflict. It was only in the late 16th century that the Cape became a regular stopover for the scurvy-ridden crews of the Dutch and English ships.⁶

5 The Dutch Republic (1581–1795)

The Republic of the United Netherlands at this time was a strong colonial power, with outposts around the world, from New Amsterdam (New York) to Batavia in the East Indies (Jakarta in Indonesia). One of the most influential Dutch trading companies of the time was the Dutch East India Company (Verre Oostindische Compagne) also known as the VOC.⁷

In 1602, the VOC received a charter from their government which allowed them a trading monopoly and the right to acquire and govern Dutch possessions in the East for the next 21 years. The charter was extended in 1623 and 1647.

In 1615, the English deported criminals to the Cape, but those who were not drowned or killed by Khoikhoi were soon removed from the Cape and the scheme was abandoned. In 1620, English Captains Andrew Shillinge and Humphrey Fitzherbert formally annexed the shores of Table Bay in the name of King James 1, but the English King refused to confirm the annexation.⁸

In 1652, a VOC employee, Johan Anthonisz 'Jan' van Riebeeck, was sent to start up a Dutch shipping station at the Cape of Good Hope.

Here he introduced the Roman-Dutch law of the Netherlands. He was accompanied by 82 men and 8 women. They had been instructed to establish a strong base to provide the Company's ships with fresh meat and vegetables on the long sea journey from Europe to Asia, as well as build a hospital for ill sailors.¹⁰ He used Autsumao, chief of the Goringhaikonas, as interpreter in cattle-bartering transactions with the Khoikhoi.

A small number of Dutch were released from their contracts and were allowed to start farms to supply the settlement. The farmers, known as 'free burghers', increased in number and began to expand their farms into the territory of the Khoikhoi, often stealing livestock.



Figure 31.3 Jan van Riebeeck⁹

6 South African History Online <https://www.sahistory.org.za/article/vasco-da-gamas-voyage-discovery-1497>, accessed 16 December 2021.

7 Thompson, L, *A History of South Africa*, 3rd edition, London: Yale University Press 2001.

8 South African History Online <https://www.sahistory.org.za/article/arrival-jan-van-riebeeck-cape-6-april-1652>, accessed 16 December 2021.

9 Website of http://en.wikipedia.org/wiki/Jan_van_Riebeeck, accessed 16 December 2011. This image is in the public domain because its copyright has expired.

10 South African History Online <https://www.sahistory.org.za/article/arrival-jan-van-riebeeck-cape-6-april-1652>, accessed 16 December 2021.

Van Riebeeck was not a model employee. He had been previously employed by the VOC and fired for private trading, an offence involving dishonesty. He is reported to have detested the Cape, and disliked the people he was with. Although forbidden by the VOC to enslave the local population, he practised slavery by purchasing many slaves, mostly from Madagascar and Indonesia. Slaves often married Dutch settlers, and their descendants became known as the Cape Coloureds and the Cape Malays. At the end of Van Riebeeck's ten years at the Cape, almost a quarter of the population he governed were imported slaves.¹¹

He made glowing reports to his employers about his accomplishments; however, these were contradicted by many people who stowed away on ships to leave the settlement. They described miserable conditions of hunger and hardship. Eventually he was removed from his post, demoted and ordered to return to Batavia. There he was employed as a civil servant, and lived out his life on, among other income, the proceeds of the sale of his farm at the Cape.¹²

Despite many setbacks, the settlement at the Cape survived. The number of ships which anchored at the Cape to stock up on milk, meat and vegetables grew steadily. The bay was made more attractive and safer by the construction of a pier. Workshops were constructed to repair ships and a hospital was built for the ill.¹³

Because the demand for agricultural land grew continuously, the settlement steadily spread from Table Bay towards the north and north-east. The Khoikhoi strongly resisted the expansion of the Cape settlers. In 1659, a Khoikhoi uprising resulted in complete defeat.¹⁴ The Khoikhoi were chased out of their traditional lands, and affected by diseases introduced by the settlers. Many were killed by the settlers' superior weapons.¹⁵ With the rapid development of the port, the need for labour increased dramatically. Firstly, slaves and politically banned people were imported from Java and Sumatra (Indonesia), but soon Dutch settlers arrived and immigrants from all over Europe followed. In 1688, a large group of French Huguenots who were fleeing religious persecution at home, settled at the Cape.¹⁶

In 1754, a census of the Cape revealed that its non-indigenous population comprised 510 colonists and 6 279 slaves.

Cape settlers expanded their territory towards the north and the east. These settling movements were led by white farmers (Trekboers) looking for grazing land for their cattle. The price they had to pay for their lifestyle was constant armed conflict with native peoples. The Khoikhoi successfully resisted the conquest of their residential and grazing land. Then the Xhosa fought against the Trekboers. Xhosa groups had been living far inland at the time of white settlement of the Cape. Since around 1770, they had been confronted with the Trekboers who approached from the west. The competition for grazing land led to frequent skirmishes, particularly in the east of the colony, to the boundary of the Great Fish River. In 1779, the first of the ferocious Xhosa wars broke out.¹⁷

11 South African History Online <https://www.sahistory.org.za/article/arrival-jan-van-riebeeck-cape-6-april-1652>, accessed 16 December 2021.

12 Welsh, F, *A History of South Africa*, London: Harper Collins 1998.

13 South African History Online <https://www.sahistory.org.za/article/arrival-jan-van-riebeeck-cape-6-april-1652>, accessed 16 December 2021.

14 Ibid.

15 Thompson, 2001.

16 South African History Online <https://www.sahistory.org.za/article/arrival-jan-van-riebeeck-cape-6-april-1652>, accessed 16 December 2021.

17 South African History Online <https://www.sahistory.org.za/article/eastern-cape-wars-dispossession-1779-1878>, accessed 16 December 2021; Ross, R and Anderson, D, *Status and Respectability in the Cape Colony, 1750-1870: A Tragedy of Manners*, Cambridge: Cambridge University Press, 1999.



Figure 31.4 Table Bay in 1683¹⁸

In the towns, people demanded their independence from the colonial administration. The power struggle between the townspeople and the colonial administration ended with the landing of British ships at the Cape and the annexation of the colony in 1795.

6 The British era (1795–1910)

As the 18th century ended, Dutch mercantile power began to fade, and the British moved in to fill the vacuum. They seized the Cape to prevent it from falling into rival French hands. Roman-Dutch law was applied at the Cape during the First British Occupation (1795–1803).

In July 1800, the Cape government ordered the publication of a weekly newspaper called the *Cape Town Gazette and African Advertiser*. As the first *Government Gazette* was issued, the government forbade freedom of the press, with a heavy fine threatening anyone who attempted to publish anything at all. The British authority also forbade torture in the Cape Colony.

The British returned the colony to the Dutch government in 1803 when peace had been concluded with the French. From then to 1806, the Batavian (Dutch) Republic administered the colony and continued to apply Roman-Dutch law. In 1806, however, with the beginning of the Napoleonic Wars, the British again took the Cape in order to protect the sea route to their Asian empire. Finally, in 1814 the former Batavian Republic – the Kingdom of Holland – agreed to abandon its claim to the Cape in return for a grant of two million British pounds.

18 Aernout Smit (1642–1710), Table Bay, painted in 1683 and currently held in the William Fehr Collection, Castle of Good Hope, Cape Town. Accessed from https://commons.wikimedia.org/wiki/File:Aernout_Smit_Table_Bay,_1683_William_Fehr_Collection_Cape_Town.jpg on 10 January 2017. This image is in the public domain because its copyright has expired.

The British tried to keep the costs of their occupation low and the settlement small. Local officials continued the policy of relying on imported slave labour rather than encouraging European immigration. They also introduced racially discriminatory legislation to force Khoikhoi and other so-called 'free blacks' to work for as little as possible.¹⁹

In 1807, Parliament in London ordered an end to British participation in the slave trade everywhere in the world. This decision threatened the basis of the Cape's labour supply. But whereas the importation of slaves was made illegal, ownership of slaves remained legal. British missionaries condemned the cruel labour practices often adopted by Trekboers against their slave and Khoikhoi workers.

British officials established a circuit court to monitor conditions in the western Cape. This court offended many Boer sensibilities by giving equal weight to the evidence of black people and white people, known in those days as 'servants' and 'masters'.²⁰

In 1820, about 5 000 middle-class British traders and businesspeople settled on the eastern frontier between the feuding Xhosa and Trekboers. By 1823, almost half of the settlers had retreated to the towns, mostly Grahamstown and Port Elizabeth. While doing nothing to resolve the border dispute, this influx of settlers solidified the British presence in the area. There were now two language groups and two cultures. A pattern soon emerged whereby English speakers were highly urbanised, and dominated politics, trade, finance, mining, and manufacturing, while the largely uneducated Boers were left to their farms.

In 1823, the Cape government introduced the so-called 'ameliorative' laws. These tried to improve the relationships between slave owners and slaves by setting out the punishments that slave owners were allowed to give, regulating working hours and the provision of food and clothes for slaves. The legislation prohibited public flogging, particularly of female slaves.

In 1826, the Cape Colony adopted legislation called the First Charter of Justice to change the legal system. The Supreme Court of the Colony of Good Hope was established in Cape Town in 1828, to replace the *Raad van Justitie*. Importantly, the court was to exercise its jurisdiction 'according to the laws now in force'. In other words, a decision was made to retain the Roman-Dutch law as the law of the Cape, administered by English-trained judges.²¹

The Charter of Justice provided for a unitary Supreme Court consisting of a chief justice and two other judges. The court was given powers to make rules for the practice and pleading of civil matters.²² The forms of procedure taken over from England had to be amended for use at the Cape.²³ The rules made provision for two types of proceedings: by motion (mostly by written applications and concerning disputes of law) and by summons. Proceedings commencing with a summons were meant for disputes of fact to be resolved by trial in which evidence was heard from witnesses. The rules allowed for pre-trial pleadings in which the plaintiff had to set out the nature, extent, and grounds of the cause of action, as well as any legal conclusions arising from the facts stated; the defendant had to set out in a Plea his responses to each of the material facts alleged: admit, deny, or has no knowledge of each allegation.²⁴

19 Thompson, 2001.

20 Welsh, F, *South Africa: A Narrative History*, New York: Kodansha America 1999.

21 Zimmermann, R and Visser, D P, (eds), *Southern Cross Civil Law and Common Law in South Africa*, New York: Oxford University Press 1996.

22 Erasmus, H J, The History of the Rule-making Power of the Supreme Court of South Africa, (1991) 108 *SALJ* 476-484.

23 Erasmus, H J, Historical Foundations of the South African Law of Civil Procedure, (1991) 108 *SALJ* 265-276.

24 Zimmermann and Visser, 1996.

The English influences on our legal system accordingly included the adversarial character of the system, the role of the parties in conducting litigation, and the public nature of legal proceedings. The English procedures resulted in more than just a change of rules of procedure; the role and status of judges and legal representatives also changed. The judge took a passive role in proceedings, as compared to previously where the judge was an active participant who interviewed potential witnesses, examined them in court, and cross-examined witnesses called by the other party. Another important change was the adoption of the English style of judgment with the possibility of dissenting opinions from different judges. Proceedings on appeal also changed, and appeal courts no longer re-examined witnesses. Perhaps most importantly, the doctrine of precedent adopted by Cape courts applied previous English law decisions.²⁵

When circuits round the Cape Colony became too arduous, divisions of the Court were established in Griqualand West (the Eastern Cape and the Northern Cape).

At this time there was immense upheaval and suffering amongst the African peoples of the region. This period is known as the *difaqane* ('forced migration' in Sotho), and the *mfecane* ('crushing' in isiZulu). One of the most significant causes was the rise of the powerful Zulu kingdom. The driving force behind this shift was Shaka Zulu, son of the chief of the small Zulu clan. He built large armies by placing smaller armies under the control of his own officers rather than the hereditary chiefs. Those who stood in his way were either enslaved or killed. Even for his *impis* (warrior regiments) failure in battle meant death. Through his legendary cruelty, Shaka created the most powerful kingdom in the whole of southern Africa.²⁶

In 1828, Shaka was murdered by his half-brothers Dingaan and Umthlangana. An irreversible process of restructuring came to an end with his death. Thousands of people had become refugees, and fights between settlers and refugees broke out everywhere. At the end of this period, the small and widespread chief-led clans had disappeared and were replaced by bigger communities which had come together for safety and self-defence.²⁸

After several border wars, British settlers found that they could not make a living from small farms, and they competed with the Dutch farmers for the limited arable land available. In 1833, the British Parliament decided that slavery would no longer be permitted in any part of the empire. After a four-year period of 'apprenticeship', all slaves would become free persons who would be able to sell their labour. Slave-owners would receive no more than one-third of the value of their slaves in official compensation for the loss of this property.²⁹

Dutch speakers denounced these actions as striking at the heart of their labour and land needs, and many decided to abandon their farms and to seek new lands beyond the reach



Figure 31.5 Shaka²⁷

25 Zimmermann and Visser, 1996

26 South African History Online <https://www.sahistory.org.za/article/matabele-wars-1836-1896>, accessed 16 December 2021.

27 The only known drawing of Shaka - standing with a long throwing assegai and heavy shield in 1824, four years before his death. Accessed from <http://en.wikipedia.org/wiki/Shaka> on 10 January 2017.

28 Thompson, 2001.

29 Ross, R and Anderson, D, *Status and Respectability in the Cape Colony, 1750-1870: A Tragedy of Manners*, Cambridge: Cambridge University Press, 1999.

of British rule.³⁰ Protests were made by people such as Piet Retief, who believed that giving slaves their freedom placed them 'on an equal footing with Christians, and was contrary to the laws of God and the natural distinction of race and religion.'

For largely economic reasons, fear of conflict with the Xhosa, and dissatisfaction with British administration of the Cape, beginning in 1836, Boer families together with large numbers of Khoikhoi and black servants gathered up their belongings and travelled by ox-wagons up into the Highveld interior. The exodus was not organised in a single movement at the time, but it was later termed the Great Trek and its participants were called Voortrekkers or pioneers.³¹

The Voortrekkers found large tracts of grazing lands that appeared uninhabited. They believed they had entered their promised land, with space enough for their cattle to graze and their culture of independence to flourish. They did not realise that what they had found was the result of the *difaqane*, rather than the normal state of affairs.

The Great Trek's first halt was at Thaba Nchu, near present-day Bloemfontein, where they wrote a constitution and passed laws to govern themselves. Following disagreements among their leadership, the various Voortrekker groups split apart. While some headed north, most crossed the Drakensberg into Natal, with the idea of establishing a republic there.³²

When the Voortrekkers came in 1836 to the area now known as Natal, fierce battles with the Zulus happened daily. Durban was also often threatened by attacks. The Zulus regarded Natal as their own territory and only tolerated the white settlers because the port was useful to them as a trading post. The Voortrekkers and their leader, Piet Retief, reached an agreement with Dingaan, the king of the Zulus, for large areas in central and south Natal to be ceded to the Boers. However, the negotiations were an ambush, and over 500 Voortrekkers were killed and almost all their cattle stolen.³³

After the Voortrekkers endured a number of catastrophic assaults, they assembled at the Ncome River for a decisive battle. On 16 December 1838, 464 Boers under the command of Andries Pretorius defeated more than 10 000 Zulu warriors, killing over 3 000, with no Voortrekker casualties. The river ran red with Zulu blood. The deeply religious Boers did not believe that the military victory was because of their technically superior weapons, but interpreted it as a sign from God.³⁴

After the defeat of the Zulus in the Battle of Blood River, there was peace for a while, but soon the British and the Voortrekkers started to fight for supremacy over land. In 1839, the Voortrekkers established the Republic of Natalia, later the basis of Natal Province. By 1842, there were about 6 000 people occupying vast areas of farmland and living under a political system in which only white males had the right to vote.³⁵

30 Welsh, 1999.

31 *Reader's Digest Illustrated History of South Africa*, Cape Town: Reader's Digest Association of South Africa 1994, 110–113.

32 Welsh, 1999.

33 Ibid.

34 Ibid.

35 Elbourne, E, *Blood Ground: Colonialism, Missions, and the Contest for Christianity in the Cape Colony and Britain, 1799–1853*, Montreal: McGill-Queen's University Press 2002.

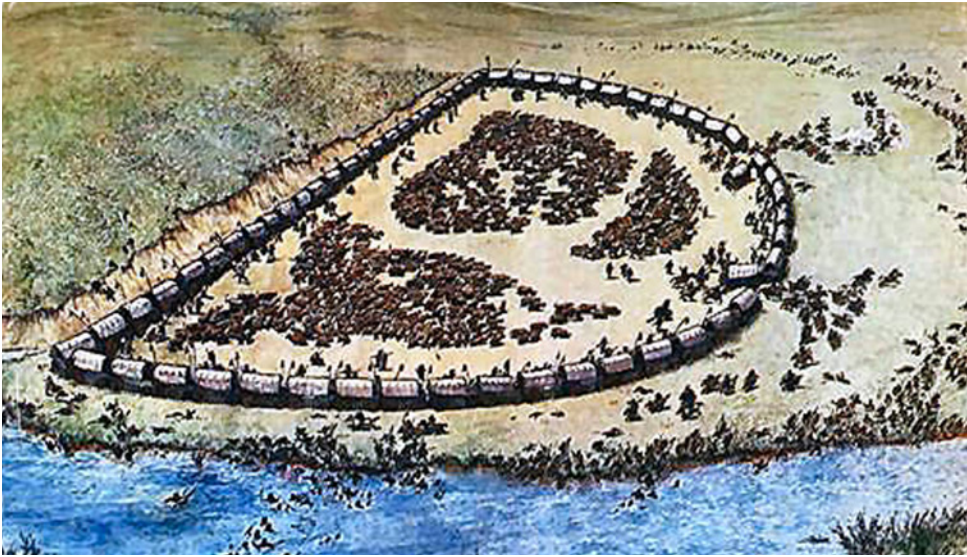


Figure 31.6 The Battle of Blood River³⁶

The British, however, felt that their security and authority were threatened. They did not want the Dutch speakers to have independent access to the sea and thereby be able to negotiate political and economic agreements with other European powers. Ultimately, the bitter conflicts were won by the British. In 1844, Natal was annexed and became a Crown Colony. The Voortrekkers retreated inland, more aggrieved with the British.

The Voortrekkers established the Orange Free State (Oranje Vrystaat) and the South African Republic (Zuid Afrikaansche Republiek, a union of four Boer republics founded by the Voortrekkers) to the north of the Vaal River. Politically, the two states were republics, with constitutions modeled in part on that of the United States of America, each with a president, an elected legislature, and a franchise restricted to white males. Africans could not vote, or own land, or carry guns because the laws of both republics, unlike those of the British colonies, did not recognise racial equality before the law.³⁷

From 1860, the British started to farm large sugar plantations in Natal, but had to import people from India to resolve the labour shortage. Over 150 000 indentured and passenger Indians were brought to Natal in what was to become the largest Indian community outside of India. As early as 1893, when Mahatma Gandhi arrived in Durban, the Indian community was far larger than the white community in Natal.

By the end of the 1860s, there were approximately 50 000 white people settled in the two Voortrekker republics, practically all of them living in rural areas, although small capitals had been established at Bloemfontein in the Orange Free State and at Pretoria in the South

36 Source: <http://www.google.com.au/imgres?q=battle+at+blood+river&hl=en&biw=1280&bih=650&gbv=2&tbm=isch&tbnid=aq5JxJefECil3M:&imgrefurl=http://www.south-africa-tours-and-travel.com/battle-of-blood-river.html&docid=-lkzRVUpabr0jM&imgurl=http://www.south-africa-tours-and-travel.com/images/sketch-of-the-battle-of-blood-river-battleofbloodriver.jpg&w=550&h=331&ei=jdbqTrfCLMygtweNv6y7Cw&zooom=1&iact=hc&vpx=175&vpy=161&dur=688&hovh=174&hovw=290&tx=165&ty=108&sig=116632359737968084229&page=1&tbnh=141&tbnw=204&start=0&ndsp=16&ved=1t:429,r:0,s:0>, accessed 10 January 2017.

37 Thompson, 2001.

African Republic. The Orange Free State instituted a High Court in 1854³⁸ and the Natal Supreme Court was established in 1857. Also in that year, the Cape Supreme Court started to report cases by publishing them in the *Watermeyer's Reports*. In 1866, the first of the *Buchanan's Reports* was published, and in 1870 the *Menzies Reports*. Free State law reporting started in 1874.³⁹

In 1869, diamonds were discovered near Kimberley. The diamonds were found on land belonging to the Griqua, but to which both the Transvaal and Orange Free State laid claim. Britain quickly stepped in and resolved the issue by annexing the area for itself. Britain seized the diamond fields of Kimberley in 1870. Then, in 1877, the British formally annexed the Boer state known as the Transvaal.

The first High Court of Justice was set up in the South African Republic in 1877.⁴⁰

In that same year the British formally annexed the Boer state known as the Transvaal, and in 1879, the British laid claims on the whole of Zululand. KwaZulu was then annexed by Natal.

Long-standing Boer resentment turned into full-blown rebellion in the Transvaal, and the First Anglo-Boer War, known as the 'War of Independence', broke out in 1880. It ended quickly with a Boer victory at Battle of Majuba Hill in early 1881. The republic regained its independence as the 'South African Republic' (Zuid-Afrikaansche Republiek) or ZAR. Paul Kruger, one of the leaders of the uprising, became President of the ZAR in 1883. Meanwhile, the British, who viewed their defeat at Majuba as completely unacceptable, went ahead with their desire to create a federation of the southern African colonies and republics. They saw this as the best way to come to terms with the fact of a white Afrikaner majority, as well as to promote their larger strategic interests in the area.⁴¹

The discovery of gold on the Witwatersrand in 1886 greatly increased tensions. The vast mineral wealth became irresistible for British imperialists.⁴²

In 1895, an attempt was made to spark an uprising on the Witwatersrand and install a British administration. It failed. It was obvious to Kruger that the attempted uprising had at least the tacit approval of the Cape Colony government, and that his republic was in danger. He reacted by forming an alliance with the Orange Free State.⁴³

Tensions were increased by Kruger's attempt to lessen long-term dependence on Cape merchants by developing a rail link to Portuguese East Africa. Economic tensions lay at the base of a political issue: the right of English speakers to have the vote. With the rise of the gold industry and the growth of Johannesburg, the South African Republic had been inundated by so many English-speaking immigrants or *uitlanders* that by the end of the 1890s they constituted a majority of the white male population. The state's constitution limited the vote to males who had lived in the South African Republic for at least seven years. Kruger feared that expanding the franchise would only enable mine owners to manipulate their workers and to win political power.⁴⁴

38 Barratt, A and Snyman, P, Researching South African Law, <https://www.llrx.com/2002/10/features-researching-south-african-law/>, accessed 16 December 2021.

39 Ibid.

40 Welsh, 1999.

41 Mabin, A, *Recession and its aftermath: The Cape Colony in the eighteen eighties*, Johannesburg: University of the Witwatersrand, African Studies Institute 1983; Theal, G M, *History of the Boers in South Africa; Or, the Wanderings and Wars of the Emigrant Farmers from Their Leaving the Cape Colony to the Acknowledgment of Their Independence by Great Britain*, London: Swan Sonnenschein, Lowry, 1887.

42 Rosenthal, E, *Gold! Gold! Gold! The Johannesburg Gold Rush*, London: Collier-Macmillan, 1970.

43 Welsh, 1999.

44 Thompson, 2001.



Figure 31.7 Discovery of gold⁴⁵

Joseph Chamberlain, British Secretary of State for the colonies, in September 1899 issued an ultimatum requiring that Kruger allow the 60 000 British residents of the South African Republic to vote. At the same time, Chamberlain sent troop reinforcements from Britain to the Cape. When the British refused to withdraw their troops in October 1899, Kruger declared war on Britain.

The Second Anglo-Boer War, also known as the South African War (1899–1902), was fought by the British to establish their authority in South Africa and by the Afrikaners to defend their autonomy. It lasted three years and caused enormous suffering. Ninety thousand Afrikaners fought against a British army of 450 000 men, most from Britain but including large numbers of volunteers from Australia, New Zealand, and Canada. By June 1900, Pretoria, the last of the major Boer towns, had surrendered. Resistance by the last of the Boer fighters known as *bittereinders* (those loyal to the bitter end) continued for two more years.

The guerilla war started by the Boers was responded to by the British under General Lord Kitchener with brutal scorched-earth tactics. The Boer commandos were hunted systematically; their fields and harvests destroyed. The women and children, who were left destitute and homeless, were kept under poor conditions in large concentration camps. In total, more than 27 000 women and children died from famine and disease.

Peace was finally concluded at Vereeniging on 31 May 1902. Alfred Milner, who drew up the terms, intended that Afrikaner power should be broken forever. He required that the Boers hand over all their arms and agree to the incorporation of their territories into the British empire as the Orange River Colony and the Transvaal.⁴⁶

The British imposed harsh taxes and reduced wages. They encouraged the immigration of thousands of Chinese to undercut any resistance. In the Bambatha Rebellion of 1906, 4 000 Zulus lost their lives after protesting onerous tax legislation.

45 Gold was initially discovered slightly to the east of present-day Johannesburg, in Barberton. This is a photo of the farm where gold was first discovered in 1886. Photograph taken in 1886. Accessed from <http://en.wikipedia.org/wiki/File:Langlaagte.jpg> on 10 January 2017. This image is in the public domain because its copyright has expired.

46 Thompson, 2001.



Figure 31.8 Anglo-Boer War (South African War)⁴⁷

The Afrikaners became poor farmers in a country where big mining ventures and foreign capital rendered them irrelevant. They were angered by Britain's unsuccessful attempts to anglicise them, and to impose English as the official language in schools and the workplace. Partly as a backlash to this, Afrikaans came to be seen as the people's language or *volkstaal* and a symbol of Afrikaner nationhood, and several nationalist organisations sprang up.

The British meanwhile moved ahead with their plans for a union.⁴⁸

7 The Union of South Africa (1910)

Negotiations held in 1908 and in 1909 produced a constitution that embodied three fundamental principles: South Africa would adopt the Westminster style of government and would become a unitary state in which political power would be won by a simple majority and in which parliament would be sovereign; the question of voting rights for black people would be left up to each of the four self-governing colonies to decide for itself (the Cape and Natal based their franchise on a property qualification; the Orange River Colony and the Transvaal denied all black people the vote); and both English and Dutch would be official languages. The constitution also provided for future incorporation of the British-governed territories of Southern Rhodesia (Zimbabwe), Bechuanaland (Botswana), Basutoland (Lesotho), and Swaziland into the Union.⁴⁹

47 Boers in combat. *Illustrated London News*, 1881. From website http://en.wikipedia.org/wiki/File:Boers_1881.gif, accessed 10 January 2017. This image is in the public domain because its copyright has expired.

48 Christopher, A J, *The Atlas of Changing South Africa*, United Kingdom: Taylor Francis Limited 2000.

49 Beinart, W, *Twentieth-Century South Africa*, 2nd edition Oxford: Oxford University Press 2001.

In 1910, a political compromise was reached when the Cape and Natal colonies, and the Transvaal and Orange Free State former republics, combined to form four provinces in a national union. Each province's capital was allocated a different function of national government. Each province would continue to apply its own common law, but laws passed by the Union Parliament would apply to all provinces. To this day there are differences in our common law based on the former provincial boundaries.

Following the Union of South Africa in 1910, a new Supreme Court of South Africa was formed, with provincial and local divisions in all four provinces. A new Appellate Division in Bloemfontein heard appeals from the other divisions of the Supreme Court and set precedents that were binding countrywide.

English and Dutch were made the official languages. Despite a major campaign by black and coloured people, the voter franchise remained as it was in the pre-Union republics and colonies, and only white people could be elected to Parliament.

The first government of the new Union was headed by General Louis Botha, with General Jan Christiaan Smuts as his deputy. Their South African National Party, later known as the South African Party (SAP), followed a generally pro-British, white-unity line.⁵⁰ More radical Boers split away under the leadership of General James Barry Munnik Hertzog, forming the National Party (NP) in 1914. The NP championed Afrikaner interests, advocating separate development for the two white groups and independence from Britain.

There was no place in the new Union for black people, despite their constituting over 75% of the population. They were denied voting rights in the Transvaal and Orange Free State areas, and in the Cape Colony they were granted the vote only if they met a property ownership qualification.⁵¹

Several pieces of legislation marked the establishment of the Union of South Africa as a state in which racial discrimination received official sanction. The Native Labour Regulation Act⁵² made it a criminal offence for black workers, but not for white workers, to break a labour contract. The Dutch Reformed Churches Union Act⁵³ prohibited black people from becoming full members of the church. The Mines and Works Act⁵⁴ legitimised the long-term mining practice by which white people monopolised skilled jobs by effectively restricting black people to semi-skilled and unskilled labour in the mines. Most important, the Natives Land Act⁵⁵ separated South Africa into areas in which either black or white people could own freehold land: black people, constituting two-thirds of the population, were restricted to 7.5% of the land; white people, making up one-fifth of the population, were given 92.5%. The Act also stated that black people could live outside their own lands only if employed as labourers by white people. In particular, it made illegal the common practice of having black labourers work as sharecroppers on farms in the Transvaal and the Orange Free State.

Black and coloured opposition began to mount, and leading figures such as John Jabavu, Walter Rubusana, and Abdullah Abdurahman laid the foundations for new non-tribal black political groups. In 1912 an attorney, Pixley ka Isaka Seme, called together representatives of the various African tribes to form a unified national organisation to represent the interests of black people, and to ensure that they had an effective voice in the new Union. This was

50 Thompson, 2001.

51 Beinart, 2001.

52 Native Labour Regulation Act 15 of 1911.

53 Dutch Reformed Churches Union Act 23 of 1911.

54 Mines and Works Act 12 of 1911.

55 Natives Land Act 27 of 1913.

the beginning of the South African Native National Congress, known from 1923 on as the African National Congress (ANC).

Parallel to this, Mohandas Karamchand Gandhi had been working with the Indian populations of Natal and the Transvaal to fight against the ever-increasing encroachment on their rights.

The international recession which followed World War I put pressures on mine-owners who tried to reduce costs by recruiting lower-paid black semi-skilled workers. White mine-workers saw this as a threat and in 1922 rose in the armed Rand Rebellion, supported by the new Communist Party of South Africa under the slogan 'Workers of the World, unite and fight for a white South Africa'. Smuts suppressed the rising violently, leading to opposition from both Afrikaner nationalists and white English-speaking trade unionists.^{56 57}



Figure 31.9 Mohandas Gandhi⁵⁷

In 1924, the NP, under Hertzog, came to power in a coalition government with the Labour Party, and Afrikaner nationalism gained greater hold. Dutch was replaced by Afrikaans, which had previously been regarded only as a low-class dialect of Dutch, as an official language of the Union. The dominant issue of the 1929 election was the *swart gevaar* or 'the black menace'.

In the mid-1930s, Hertzog joined the NP with the more moderate SAP of Jan Smuts to form the United Party. The coalition fell apart at the start World War II when Smuts became Prime Minister and controversially led South Africa into war on the side of the British and the Allies.⁵⁸

The Afrikaner Broederbond, a secret Afrikaner brotherhood that had been formed in 1918 to protect Afrikaner culture, soon became a highly influential force behind both the NP and other organisations designed to promote the *volk* (the Afrikaner people).⁵⁹

Due to the booming wartime economy, black labour became increasingly important to the mining and manufacturing industries, and the black urban population nearly doubled. Enormous squatter camps grew up on the outskirts of Johannesburg and, to a lesser extent, outside the other major cities. Conditions in the townships were appalling, but poverty was not widespread among the black population; wartime surveys found that 40% of white schoolchildren were malnourished.

Smuts became a Field Marshall in the British Army in 1941, and served in the Imperial War Cabinet under Winston Churchill. One of his greatest international accomplishments was the establishment of the League of Nations. He was later instrumental in the formation of the United Nations, and wrote the preamble to the UN Charter.

56 Thompson, 2001.

57 Source: Oxford University Press.

58 Beinart, 2001.

59 Welsh, 1999.

After World War II, Smuts established the Fagan Commission which advocated the abandonment of all segregation in South Africa. However, Smuts lost the 1948 general election before he could implement the commission's recommendations.⁶⁰

8 Apartheid South Africa

After the National Party victory in the 1948 election, the government tightened the system of enforced racial classification and separation of people based on their racial classification. The National Party was led by Daniel François Malan, who stood for drastic measures against the 'black menace'. Their policy was known as apartheid and generally involved the separation of different race groups.

Apartheid was based on a belief that only total separation of the races would prevent a move toward equality and the eventual overwhelming of white society by black society. Black people were viewed as only temporary dwellers in the cities and were forced periodically to return to the countryside to meet the labour needs of farmers, mostly Afrikaners. In addition, the policy was for black people to develop political bodies in 'their true fatherland', the so-called 'homelands', and should have no form of parliamentary representation in South Africa. The policy also included the prohibition of racially mixed marriages, the banning of black trade unions, and strict enforcement of job reservation.⁶¹

The Afrikaans-speaking National Party followed a fiercely anti-British policy based on their experience during the Boer War. By appointing judges who were also anti-British, the English Privy Council was abolished as the highest court of appeal in the South African judicial system.⁶²

Apartheid laws aimed at separating white and black people, at instituting as a legal principle the theory that white people should be treated more favourably than black people and that separate facilities need not be equal, and at providing the State with the powers deemed necessary to deal with any opposition.⁶³

The Prohibition of Mixed Marriages Act⁶⁴ made marriages between white people and members of other racial groups illegal. The Immorality Act⁶⁵ extended an earlier ban on sexual relations between white and black people,⁶⁶ to a ban on sexual relations between white people and any other racial group.

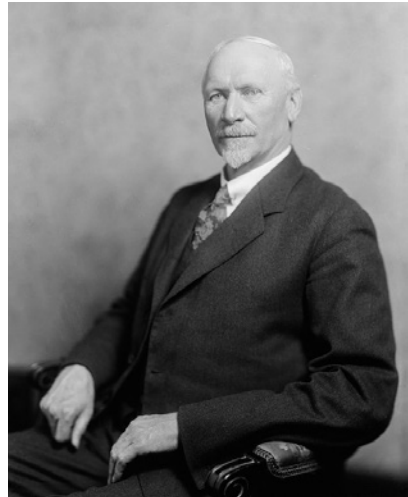


Figure 31.10 Jan Smuts⁶⁷

60 Beinart, 2001.

61 Worden, N, *Making of Modern South Africa: Conquest, Segregation and Apartheid*, Oxford: Blackwell 2000.

62 Barratt and Snyman, 2002.

63 Worden, 2012.

64 Prohibition of Mixed Marriages Act 55 of 1949.

65 Immorality Act 21 of 1950.

66 Immorality Act 5 of 1927.

67 Source: http://en.wikipedia.org/wiki/File:Jan_Christiaan_Smuts.jpg, accessed 10 January 2017. This image is in the public domain because its copyright has expired.

The Population Registration Act⁶⁸ provided the basis for separating the population of South Africa into different races. Under the terms of this Act, all residents of South Africa were to be classified as 'white', 'coloured', or 'native' (later called Bantu) people. Indian people, whom the apartheid government in 1948 had refused to recognise as permanent inhabitants of South Africa, were included under the category 'Asian' in 1959. The Act required that people be classified primarily on the basis of their 'community acceptability'; later amendments placed greater stress on 'appearance' in order to deal with the practice of light-coloured black people 'passing' as white people. The Act also provided for the compilation of a population register for the whole country and for the issuing of identity cards.⁶⁹

Other laws provided for geographic, social, and political separation. The Group Areas Act⁷⁰ extended the provisions of the Natives Land Act,⁷¹ and later laws divided South Africa into separate areas for white and black people (including coloured people), and gave the government the power to forcibly remove people from areas not designated for their particular racial group.

Police powers also underwent a much greater expansion. The Suppression of Communism Act⁷² had declared the Communist Party and its ideology illegal. Among other features, the act defined communism as any scheme that aimed 'at bringing about any political, industrial, social, or economic change within the Union by the promotion of disturbance or disorder' or that encouraged 'feelings of hostility between the European and the non-European races of the Union the consequences of which are calculated to further disorder'. The Act allowed the Minister of Justice to list members of such organisations and to ban them, usually for five-year periods, from public office, from attending public meetings, or from being in any specified area of South Africa.

The Bantu Authorities Act⁷³ established Bantu tribal, regional, and territorial authorities in the regions set out for Africans under the Group Areas Act, and it abolished the Natives Representative Council. The Bantu authorities were to be dominated by chiefs and headmen appointed by the government.

The government also sought in 1951 to remove coloured voters in the Cape from the common roll onto a separate roll and to require that they elect white representatives only.⁷⁴ The Supreme Court immediately declared the Act invalid on constitutional grounds, but after a long struggle it was successfully re-enacted by the Separate Representation of Voters Amendment Act.⁷⁵

Under the terms of the Native Laws Amendment Act,⁷⁶ black women as well as men were made subject to influx control and the pass laws and, under section 10 of the Act, neither men nor women could remain in an urban area for longer than 72 hours without a special permit stating that they were legally employed. The Abolition of Passes and Co-ordination of Documents Act,⁷⁷ which was designed to make the policy of pass restrictions easier, abolished the pass, replacing it with a document known as a 'reference book'. The Act stated

68 Population Registration Act 30 of 1950.

69 Worden, 2012.

70 Group Areas Act 41 of 1950.

71 Natives Land Act 27 of 1913.

72 Suppression of Communism Act 44 of 1950.

73 Bantu Authorities Act 68 of 1951.

74 Separate Representation of Voters Act 46 of 1951.

75 Separate Representation of Voters Amendment Act 30 of 1956.

76 Native Laws Amendment Act 54 of 1952.

77 Abolition of Passes and Co-ordination of Documents Act 67 of 1952.

that all black people had to carry a reference book containing their photograph, address, marital status, employment record, list of taxes paid, influx control endorsements, and rural district where officially resident; not having the reference book on one's person was a criminal offence punishable by a prison sentence.⁷⁸

The Public Safety Act⁷⁹ gave the British governor-general power to suspend all laws and to proclaim a state of emergency. The Criminal Law Amendment Act⁸⁰ stated that anyone accompanying a person found guilty of offences committed while 'protest[ing], or in support of any campaign for the repeal or modification of any law', would also be presumed guilty and would have the burden of proving their innocence.

The Bantu Education Act⁸¹ decreed that black people should be provided with separate educational facilities under the control of the Ministry of Native Affairs, rather than the Ministry of Education. The pupils in these schools would be taught their Bantu cultural heritage and, in the words of Hendrik Verwoerd, Minister of Native Affairs, would be trained 'in accordance with their opportunities in life', which he considered did not reach 'above the level of certain forms of labour'.

The Act also removed State subsidies from denominational schools with the result that most of the mission-run African institutions (with the exception of some schools run by the Roman Catholic Church and the Seventh Day Adventists) were sold to the government or closed.

The concept of unequal allocation of resources was built into legislation on general facilities, education, and jobs. The Reservation of Separate Amenities Act⁸² stated that all races should have separate amenities, such as toilets, parks, and beaches, and that these need not be of an equivalent quality. Under the provisions of this Act, apartheid signs were erected throughout South Africa.

In 1954, Johannes Gerhardus Strijdom succeeded DF Malan in office. He drove apartheid legislation even further. The Customs and Excise Act⁸³ and the Official Secrets Act⁸⁴ gave the government power to establish a Board of Censors to censor books, films, and other materials imported into or produced in South Africa. During the 1950s, enforcement of these various laws resulted in approximately 500 000 pass-law arrests annually, in the listing of more than 600 inhabitants as communists, in the banning of nearly 350 inhabitants, and in the banishment of more than 150 other inhabitants.

The Industrial Conciliation Act⁸⁵ enabled the Minister of Labour to reserve categories of work for members of specified racial groups. In effect, if the minister felt that white workers were being pressured by 'unfair competition' from black workers, he could categorise jobs for white workers only and increase their rates of pay. The Native Administration Act⁸⁶ permitted the government to 'banish' black people, essentially exiling them to remote rural areas far from their homes.

In June 1955, at a congress held near Kliptown, near Johannesburg, a number of organisations, including the Indian Congress and the ANC, adopted a Freedom Charter. This articulated a vision of a non-racial democratic state.

78 Worden, 2000.

79 Public Safety Act 3 of 1953.

80 Criminal Law Amendment Act 8 of 1953.

81 Bantu Education Act 47 of 1953.

82 Reservation of Separate Amenities Act 49 of 1953.

83 Customs and Excise Act of 1955.

84 Official Secrets Act 16 of 1956.

85 Industrial Conciliation Act 28 of 1956.

86 Native Administration Act 42 of 1956.

Strijdom's successor in 1958 was Hendrick Frensch Verwoerd, who has been labelled 'the architect of apartheid' for his role in shaping racial ideology and policies when he was Minister of Native Affairs during the early 1950s. The Extension of University Education Act⁸⁷ prohibited black people from attending white institutions, with few exceptions, and established separate universities and colleges for people classified as Africans, coloureds, and Indians.

In 1959, a group of disenchanted ANC members, seeking to sever all ties with white government, broke away to form the Pan African Congress.

On 21 March 1960, police opened fire on demonstrators surrounding a police station in Sharpeville, a township near Vereeniging. At least 67 people were killed, and 186 wounded; most of those shot were shot in the back. After the shooting, a massive stay-away from work was organised, and demonstrations continued. Verwoerd declared a state of emergency, giving security forces the right to detain people without trial. Over 18 000 demonstrators were arrested, including much of the ANC and PAC leadership, and both organisations were banned.⁸⁸

Verwoerd then called a referendum for white voters to decide whether South Africa should become a republic. A narrow 52% majority of white voters, irritated by growing world condemnation of apartheid, especially by the newly independent Asian and African members of the British Commonwealth of Nations, supported Verwoerd's proposal. The Republic of South Africa came into existence on 31 May 1961, that date chosen because it was the anniversary of the signing of the Treaty of Vereeniging that had brought the Anglo-Boer War to an end in 1902.⁹⁰



Figure 31.11 Apartheid signs⁸⁹

The government took several measures in the 1960s to make the theory of apartheid work in practice. Apartheid was developed to classify all black persons as belonging to one of ten racial groups. The policy was to create ten black states called 'homelands', that were to become self-governing and later, independent countries. The homelands were located in outlying areas within the borders of South Africa, and government policy was to relocate black people physically to the homelands, if necessary by forced removal. In many cases the homelands were made up of many small areas of land, geographically distant, agriculturally barren and economically destitute. The policy was designed to result in all black persons being citizens of these states, voting for governments there and losing their South African citizenship.⁹¹

87 Extension of University Education Act 45 of 1959.

88 Thompson, 2001.

89 Source: <http://en.wikipedia.org/wiki/File:ApartheidSignEnglishAfrikaans.jpg>, accessed 10 January 2017. This image is in the public domain because its copyright has expired.

90 Beinart, 2001.

91 Worden, 2012.

In 1963, the Transkei homeland, poverty-stricken and overpopulated, was made self-governing which would lead to 'independence' thirteen years later, although no country except South Africa would recognise the new state. Other homelands were even less economically viable. Bophuthatswana consisted of 19 separate pieces of land spread hundreds of kilometres apart, and KwaZulu, formed in 1972, was divided into 11 fragments interspersed with white farms and coastal lands allocated to the white population.

The South African government, nonetheless, moved ahead with preparing them for independence. Under the provisions of the Group Areas Act,⁹² urban and rural areas in South Africa were divided into zones in which members of only one racial group could live; all others had to move. In practice, it was black people who had to move, often under the threat or use of force. Between 1963 and 1985, approximately 3.5 million people were removed from areas designated for the white population and were sent to the homelands, where they added to the already critical problem of overpopulation. Still, even though the homeland population rose by 69% between 1970 and 1980, the numbers of black people in the cities continued to rise through natural growth and evasion of influx control. By 1980, after 20 years of removals, there were twice as many black people in South Africa's towns as there were white people.

As black activists continued to be arrested, the ANC and PAC began a campaign of sabotage through the armed wings of their organisations, *Umkhonto we Sizwe* (Spear of the Nation) and *Poqo* ('Pure' or 'Alone'), respectively. In July 1963, 17 members of the ANC underground movement were arrested. Together with ANC leader Nelson Rolihlahla Mandela, who had already been arrested on other charges, they were tried for treason at the widely-publicised Rivonia Trial. In June 1964, Mandela and seven others were sentenced to life imprisonment. Oliver Reginald Tambo, another member of the ANC leadership, managed to escape South Africa and lead the ANC in exile.



Figure 31.12 Hendrik Verwoerd⁹³

On 6 September 1966, Verwoerd was stabbed to death in Parliament. He was succeeded as Prime Minister by Balthazar Johannes Vorster, who had opposed South Africa's intervention on the side of the Allies in World War II. Vorster had previously spoken favourably of the Nazi regime of Adolf Hitler, whose dictatorial government he regarded as a better model for South Africa than the Westminster parliamentary system.

Vorster alienated an extremist faction of the National Party by pursuing diplomatic relations with African countries, and by agreeing to let black African diplomats live in white areas. In 1974, he forced the Rhodesian Prime Minister, Ian Smith, to accept in principle that white minority rule could not continue there indefinitely.

During the 1970s, resistance was channeled through trade unions and strikes, and then spearheaded by the South African Students' Organisation under the leadership of Steve

92 Group Areas Act 41 of 1950.

Bantu Biko. Biko founded the Black Consciousness Movement which stressed the need for psychological liberation, black pride, and non-violent opposition to apartheid.

In 1976, the Soweto Students' Representative Council organised protests against the use of Afrikaans, regarded as the language of the oppressor, in black schools. Vorster was ruthless in suppressing anti-apartheid dissent. On 16 June, police opened fire on a student march, beginning a round of nationwide demonstrations, strikes, mass arrests, riots and violence that over the next 12 months claimed over 1 000 lives.

The South African government persisted in arguing that black people should exercise political rights only in the homelands. In 1976, the government proclaimed the Transkei an independent nation-state and followed this move by granting independence to Bophuthatswana in 1977, to Venda in 1979, and to Ciskei in 1981. Citizens of these states, including the half who lived outside their borders, were then deemed aliens in South Africa. Another six ethnically based homelands were granted limited self-government in preparation for eventual independence: they were KwaZulu, Lebowa, Gazankulu, QwaQwa, KaNgwane, and KwaNdebele. None of these states received international recognition. Considerable infrastructure was built within the independent states to create the basis for a legal system, including superior and inferior courts, all modelled on South African law and legal principles.⁹³

From 1978 to 1988, the South African Defence Force made a number of major attacks inside Angola, Mozambique, Zimbabwe, Botswana, and Lesotho. All white males were liable for national service, and thousands fled into exile to avoid conscription. Many more were scarred mentally and physically by their participation in vicious struggles in the region, or in the townships.

Vorster retired as prime minister in 1978, after 12 years in office. He was succeeded by Pieter Willem Botha, a hardliner who nevertheless began the first reforms to moderate the apartheid system.⁹⁴

In 1983, the PW Botha government proposed that political power in South Africa be shared among so-called whites, coloureds, and Indians, with separate houses of parliament to be established for each racial group. A referendum was called in which only white voters would be asked whether or not they approved of the prime minister's plans for constitutional change. Some liberal opponents of the government denounced Botha's plans because they would permanently exclude black people from having any political role in South Africa. Many others argued that any change in apartheid would be an improvement. Most white voters agreed with the power-sharing plan, and two-thirds of those who participated in the referendum voted 'yes'.

In 1985, the government declared a state of emergency, which was to stay in effect for the next five years. The media was censored and, by 1988, 30 000 people had been detained without trial, and thousands tortured.

9 Dismantling apartheid – democratic South Africa

In 1989, the last president of the old South African government, Frederik Willem de Klerk, openly admitted the failure of apartheid policies. De Klerk recognised the urgent need to bring the black majority of South Africans into the political process, and most NP moderates

⁹³ Worden, 2012.

⁹⁴ Beinart, 2001.

agreed with him in principle. He had held secret talks with the imprisoned ANC leader Nelson Mandela to begin preparations for this major policy shift.

In his opening address to Parliament in February 1990, De Klerk announced that he would repeal discriminatory laws and legalise the ANC, the PAC, and the Communist Party. Media restrictions were lifted, and De Klerk released political prisoners not guilty of common-law crimes.

On 11 February 1990, 27 years after he had first been imprisoned, Nelson Mandela was released.



*Figure 31.13 Nelson Mandela on his release*⁹⁵

On 5 June 1991, the government repealed the Land Acts of 1913 and of 1936, and the Group Areas Act.⁹⁶ New legislation gave all races equal rights to own property anywhere in the country, enabled some 300 000 black householders to convert 99-year leases to full ownership, enabled suburban residents of all races to set racially non-discriminatory residency standards for their neighbourhoods, authorised the establishment of new townships and the extension of services to their residents, and encouraged the development

⁹⁵ Source: <http://www.blackpast.org/?q=1993-nelson-mandela-address-nation>, accessed 10 January 2017. This image is in the public domain.

⁹⁶ Group Areas Act 41 of 1950.

of farmland and rural communities. This legislation did not authorise compensation for black people who had been displaced from their land in the preceding 30 years; instead, it left their complaints to be dealt with by a special court or commission to be established for that purpose.

On 17 June 1991, the government repealed the Population Registration Act,⁹⁷ the most infamous pillar of apartheid, which had authorised the registration by race of newborn babies and immigrants. Its repeal was hailed as historic throughout the world.

The National Peace Accord of September 1991 was a critical step toward formal negotiations. The 33-page accord, signed by representatives of 27 political organisations and national and homeland governments, set codes of conduct for all parties to the process, including the police.

Amid claims and counterclaims of sabotage and brutality, key political leaders began formal constitutional negotiations on 20 December 1991. Calling themselves the Convention for a Democratic South Africa (Codesa), delegations from 19 governmental and political organisations began planning the creation of a transitional government and a representative parliament. They established five working groups, each made up of 38 delegates and 38 advisers, to take the lead in creating a climate for free political activity; in determining basic constitutional principles; in establishing transitional procedures for the nominally independent homelands of Bophuthatswana, Ciskei, Transkei, and Venda; in setting and overseeing timetables for the transition; and in dealing with new problems that would arise during the transition itself.

De Klerk called for a referendum among white voters to test his mandate for change. The question posed in the 17 March 1992 referendum was carefully worded: 'Do you support continuation of the reform process which the State President began on February 2, 1990, and which is aimed at a new constitution through negotiation?' The outcome was a resounding 68.6% 'Yes'. Election analysts reported that support among Afrikaners was even slightly higher than among English speakers. Only one region of the country, the northern Transvaal (later Northern Province), voted 'No'. A few militant defenders of apartheid boycotted the referendum.

The draft constitution published on 26 July 1993, contained concessions to all sides: a federal system of regional legislatures, equal voting rights regardless of race, and a bicameral legislature. Negotiators went on to establish a Transitional Executive Council, a multiracial body that would share executive responsibilities with President De Klerk during election preparations.

In November 1993, negotiators endorsed the draft of the interim constitution calling for a five-year transitional national government, and the Tricameral Parliament endorsed the draft in December.

When the elections finally took place on schedule, beginning on 26 April 1994, more than 22 million voters stood in line for hours at 9 000 polling places to exercise their newly won right to vote. Balloting was extended through 29 April. There was no voter registration list, so Independent Electoral Commission officials marked voters' fingers with indelible ink to prevent fraud.

Mandela was unanimously elected State president by the National Assembly on 9 May 1994, in Cape Town.

97 Population Registration Act 30 of 1950.

THIS CHAPTER IN ESSENCE

- 1 Our colonial past provided us with the origins of our system of law and government. This can be seen in our borders, our provinces, the way our laws operate, our legal system, our courts, our judges and our Constitution.
- 2 Overseas countries and colonists played a significant role in our past: Portuguese, Dutch, English and French.
- 3 Our law has its origins in the law of Holland as introduced by the VOC; however, our rules for civil procedure for both application and trial proceedings are based on English law.