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The GHR offers an exciting publishing opportunity for graduate students working on all fields and periods of history. We welcome original and innovative submissions from emerging scholars in history and related disciplines across the world.

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COVER IMAGE

The cover of this issue of *The Graduate History Review* is a circa 1910s photograph of timber workers in Te Tai Tokerau (Northland), New Zealand. The photograph likely depicts the felling of *agathis australis*, more commonly known by the Māori name, kauri. Beginning on page 73 of this issue, Andrew Johnston examines the role of the kauri timber industry in the dispossession of Māori land throughout the nineteenth century. Johnston uses a case study of a late nineteenth century legal trial, *Mangakāhia v. New Zealand Timber Company* (1882), to illustrate how land law was manipulated to undermine Māori rights to their traditional forests. Johnston argues that the economic and political power of the kauri timber industry was leveraged to have Mangakāhia's case against the New Zealand Timber Company's unlawful logging of his land dismissed from court. This image was taken from Te Tai Tokerau, the northern-most region of New Zealand, by the Northwood brothers: Arthur, Richard, and Charles. It is housed in the National Library of New Zealand, and we graciously thank them for permission to reproduce it here. [Timber workers. Ref: 1/1-006293-G. Alexander Turnbull Library, Wellington, New Zealand/records/23089317]

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President's Message

I am pleased to introduce the 8th volume of the University of Victoria's *Graduate History Review*.

Our university is committed to providing students with experiential and research-enriched learning opportunities that empowers them to explore and create knowledge alongside peers, mentors and world-class scholars. The creation and dissemination of knowledge through this publication advances that goal and is a great example of experiential learning in action.

This excellent collection of articles crosses our globe, exploring historical periods of significance in the United States, Northern Ireland, South Africa, and New Zealand. Within these pages, readers will be engaged in discussions about race in America, Jewish community history, land dispossession, uprisings, armed conflict, and more. These articles enhance our knowledge of historical issues, helping us to understand our past, our present, and to inform and shape our future.

The Graduate History Review also highlights collaborations between UVic history graduate students, faculty members and colleagues from University College Cork, the University of California, Santa Barbara and the University of Rochester, who have worked together to bring us this outstanding publication.

Congratulations to the talented and dedicated graduate students, faculty advisors and mentors for their contributions to this thought-provoking collection of articles. Thank you for sharing your passion and knowledge with us and for contributing to a better future for people and the planet.

Professor Jamie Cassels, QC
President and Vice-Chancellor
University of Victoria

Chair's Message

This small book you hold in your hand is a tiny miracle. Admittedly, not on the scale of turning loaves into fish—but miraculous nonetheless, because it embodies an ideal rarely achieved: a space where people work hard, strive for excellence, and give of their time generously, all for the love of learning, developing their own skills, and sharing knowledge.

The fact that many graduate students in our department have occupied this space this year—defending it against the many academic, economic, and social pressures that work to push them off this mountain top, is a remarkable testament to the editors, peer reviewers and contributors. To have all the pieces necessary to create such a journal all come together is as rare and powerful as a lightning strike; that this is the eighth edition is like having lightning strike the same place eight times. A miracle.

Because the essays in each volume represent some of the best graduate work in North America, they are both a snapshot of the cutting edge of the profession and harbingers of promising scholarly or professional careers. Not surprisingly the approaches, regions and topics of the essays in this volume are almost as varied as the profession. Yet, they point to the fact that race, ethnicity, and religion are the tectonic plates which carry human history and often cause cataclysmic eruptions of violence. From the dispossession of Indigenous peoples in New Zealand, to the maintenance of racial caste systems in the United States, to the overthrow of Apartheid in South Africa, three of the essays take on the issues of race privilege which continue to structure our lives. Two of the essays focus on religion: Protestants versus Catholics in Northern Ireland and the Jewish community in Philadelphia. These latter essays examine the Irish peace process and the importance of interfaith cooperative public history and remind us that there are alternatives to conflict and violence. All five call to mind Marx's observation that we do not get to choose the past we inherit, but that we can change the old pathways and make our own history.

Congratulations and thanks to the team that created this little miracle!

John Sutton Lutz
Professor and Chair
Department of History
University of Victoria

Editor's Introduction

I am thrilled to present Volume 8 of *The Graduate History Review*. This journal has a long history in our department, and I am pleased to be able to continue our commitment to peer-reviewed, open access scholarship from the next generation of graduate students.

The Graduate History Review continues to be an international effort. Our authors and reviewers are based in Canada, the United States, the United Kingdom, and Europe. The journal now sends thematic calls for submissions, a practice implemented in Volume 7. This year, we asked authors to consider the practical applications of history. The result is a diverse collection of manuscripts that spans several cultures and time periods. Our issue examines collaborative public history in Philadelphia, political models of conflict resolution in Northern Ireland, Indigenous dispossession in New Zealand, social constructs of race in the United States, and freedom fighters in South Africa.

I would like to thank our six authors who have worked tirelessly with us through our year-long editorial process: Daniel James Haverty from University College Cork, Andrew Johnston, Faelan Lundeberg, and Oakley Ramprashad from the University of Victoria, Andreína Soto Segura from the University of California, Santa Barbara, and Daniel Gorman Jr. from the University of Rochester. These six graduate students have produced engaging, creative, and unique manuscripts. Their work displays the high standards apparent in excellent graduate student work.

This issue would not be possible without the support of the students and faculty from the Department of History at the University of Victoria. Current students and alumnus from the UVic's History Department form the backbone of our publication process, serving as members of the Editorial Advisory Committee (EAC), peer-reviewers, manuscript editors, copy-editors, and proofreaders. I would like to thank our faculty advisor Dr. Penny Bryden for bringing the journal's standards up to their current form, as well as our faculty peer-reviewers, who graciously volunteer their time and expertise to make our journal the best it can be. The EAC played a crucial role in the publication of this issue. Members spent many hours reviewing and debating the merits of submissions, advertising the journal at academic events, and providing support in the

editorial process. Special thanks go to Alexie Glover, Editor-in-Chief of Volume 7. Her rigorous standards and attention to detail helped streamline our editorial process into its current iteration. We benefited greatly from her invaluable advice this year.

I would like to extend an important thank-you to Darren Reid. As assistant editor, Darren's calm, steady presence was exactly what we needed for this publication cycle. His high-quality work and careful eye helped shape this volume immensely. The journal will be in excellent hands under his leadership for Volume 9 and I am excited to see what he will produce.

Sincerely,

Jill Levine
Editor-in-Chief
The Graduate History Review

A Discursive Construct of Race in America: The Jim Crow Analogy and the Study of Mass Incarceration

OAKLEY RAMPRASHAD

Abstract: A very specific racial discourse defined the Jim Crow era in the United States. Many believed that overturning the laws of segregation and oppression that defined the Jim Crow era through court decisions and legislation would fundamentally change racial discourse in the United States. However, in the 1990s and 2000s, scholarship on the mass incarceration of black American men emerged which invoked the Jim Crow analogy. This scholarship claimed that the racial caste system that had defined the Jim Crow era had simply evolved and was as present as ever. The utilization of the Jim Crow analogy suggests that as a society, the United States has maintained the same racial realities since the turn of the 20th century. Scholars have set up opposing camps in favour of and against the use of the Jim Crow analogy. This paper attempts to explore the divide that has emerged in the study of mass incarceration.

“Jim Crow” is a highly evocative and loaded term, primarily used to describe the systematic segregation and disenfranchisement of black Americans in the era between the United States Supreme Court’s 1896 decision in *Plessy v. Ferguson* (henceforth referred to as *Plessy*) and its 1964 decision in *Brown v. the Board of Education of Topeka* (henceforth referred to as *Brown*).¹ Fearful of the possibility of black American political influence in the post-Slavery era, white Americans maintained an oppressive and rigid racial hierarchy in the United States following the Civil War. In the five years after the *Plessy* decision, for example, an average of 101 black Americans were lynched every year. Not only were black Americans the victims of physical oppression, they were also overwhelmingly disenfranchised, and segregation continued to be rampant under the auspices of ‘separate but equal’ treatment under the law.² However, with the *Brown* decision came hope; the Court held that

¹ Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford, UK: Oxford University Press, 2006), 4. In *Plessy* the court ruled that separate but equal was a legitimate stance when it came to services, facilities, opportunities etc. offered to black and white Americans. In *Brown* the court overturned this ruling stating that separate but equal could never in fact be equal.

² *Ibid.* See also the works of scholars such as Michelle Alexander, James Forman Jr., Richard Wormser, and Jerrold Packard.

‘separate but equal’ would no longer satisfy the equal protections Amendment of the Constitution; and, coupled with the Civil Rights Act of 1964, segregation and discrimination on the basis of race became illegal.³ With the implementation of *Brown* and the Civil Rights Act, many believed the *formal* Jim Crow era to be over, but recent scholarship has called this idea into question.

In the 1990s, the term “Jim Crow” was reintroduced into mainstream scholarship and media to describe the continued marginalization and discrimination black Americans faced in the United States. In 1999, in a piece entitled “Challenging Racial Profiles: Attacking Jim Crow on the Interstate,” William Buckman and John Lamberth argued:

Jim Crow is alive on America's highways, trains and in its airports. Minorities are suspect when they appear in public, especially when they exercise the most basic and fundamental freedom of travel. In an uncanny likeness to the supposedly dead Jim Crow of old, law enforcement finds cause for suspicion in the mere fact that certain minorities are in transit. But the Jim Crow of today is more troubling: despite overwhelming evidence of its vitality, law enforcement denies its existence, hides the evidence of its perpetration and criticizes those who even dare to complain.⁴

Although there is some debate as to the origins of the more modern use of the term “Jim Crow” to describe the legal and normative frameworks of persistent discrimination, scholars like James Forman Jr. cite Buckman and Lamberth’s article as one of the first modern usages of it.⁵ As quickly

³ In the *Brown* decision, Justice Earl Warren noted that, “in the field of public education, the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.” Equally significant, 10 years later, the Civil Rights Act of 1964 stated (among other things), “It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.” Found in *Brown v. Board of Education*, 347 U.S. 495 (1954) and “Civil Rights Act of 1964.” *Title VII, Equal Employment Opportunities* (1964).

⁴ William H. Buckman and John Lamberth, “Challenging racial profiles: attacking Jim Crow on the interstate,” *Rutgers Race & L. Rev.* 3 (2001): 83.

⁵ This paper focuses on two scholars. Professor Forman is one of them; the other is Michelle Alexander. See James Forman’s citation of Buckman and Lamberth’s, “Challenging racial profiles: attacking Jim Crow on the interstate,” 83, in his article, “Racial Critiques of Mass Incarceration: Beyond the New Jim Crow,” *NYUL Rev.* 87 (2012): 105 as one of the first contemporary usages of the analogy.

as it had vanished from national discourse, the term had returned and scholars began to equate the modern criminal justice system with “Jim Crow.” The term quickly garnered national attention in the United States. Books about Jim Crow became best sellers and Oscar-nominated documentaries were made.⁶ One of the most famous among these best sellers was Michelle Alexander’s book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, which explored the mass incarceration of black American men since the 1980s.⁷

Despite the book’s overwhelming success, however, some scholars have attempted to problematize the equation of the mass incarceration of black men as the new Jim Crow. As a result, two ‘camps’ emerged regarding the use of the Jim Crow analogy in scholarly writing. The first—best exemplified by Michelle Alexander—identifies policing practices and law as the chief causes of mass incarceration and, in turn, portrays mass incarceration as a new form of Jim Crow. The second camp—best exemplified by James Forman Jr.—argues that while policing practices and law have created the conditions for mass incarceration, it does not follow that we find ourselves in a “Jim Crow Era.”

This paper will examine the two historical accounts of modern mass incarceration offered by Alexander and Forman in an effort to move the collective conversation forward. I hope to show that these accounts are not mutually exclusive, but rather tell different parts of the same story. Perhaps more importantly, the accounts are complimentary in crucial ways. They draw on similar theories and might be described as symbiotic rather than opposing or contrary. By deconstructing the divide between these two accounts of modern mass incarceration, this paper aims to unify the academic discourse and thus advance the collective conversation on this topic to new and pressing areas of analysis.

Before proceeding further, it is important to situate Michelle Alexander, James Forman Jr., and myself to the subject matter of this paper. While I am a man of colour and have spent over half my life in the United States, I am not black. Both Michelle Alexander and James Forman Jr., however, are black Americans. Alexander is a civil rights lawyer, activist, and scholar. She worked with the American Civil Liberties Union (ACLU) early in her career. Previously a law professor, she resigned from that position in order to pursue “publicly accessible writing” in 2016. Her

⁶ *The New Jim Crow* by Michelle Alexander was on the New York Times bestseller list for over a year, and the Netflix documentary the 13th was nominated for an Academy Award.

⁷ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2012).

social justice work on behalf of the ACLU and others continues to inform and define her activism and writing.⁸ Forman—who is now a law professor at Yale University—spent the beginning of his career as a public defender in Washington, D.C., for both juvenile and adult offenders.⁹ This may in part explain his views on the complexity of crime and violence in low-income racialized neighbourhoods and the ways in which it presents challenges to Alexander's theses.

The New Jim Crow?

Michelle Alexander's book *The New Jim Crow* was met with wide acclaim when it was published in 2010. It quickly became one of the seminal texts for anyone studying mass incarceration, the War on Drugs policies of the 1980s, and the Violent Crime Control and Law Enforcement Act in the 1994.¹⁰ Even James Forman Jr. recognized Alexander's "contribution to the literature [as] the most comprehensive and persuasive to date."¹¹

Alexander's analysis centers around two realities of the American criminal justice system that were derived from two significant and racially coded pieces (or series of) legislation and laws passed during the administrations of Ronald Reagan and Bill Clinton.¹² First, a series of policing practices and techniques arose in the 1980s as a result of legislation put in place under the guise of the Reagan administration's War on Drugs. Increasing numbers of black Americans fell victim to predatory practices, like stop and frisk, that allowed police to target them on the basis of race. The federal government put mandates and policies into place to allow and encourage racist policing practices. One of the more infamous examples of this came to be known as Operation Pipeline, which was launched in 1984:

⁸ For more on Michelle Alexander, see "About the Author," *The New Jim Crow*, <http://newjimcrow.com/about-the-author> (accessed November 24, 2018).

⁹ See "James Forman Jr.," Yale Law School, <https://law.yale.edu/james-forman-jr> (accessed November 24, 2018).

¹⁰ In this paper, I simply use "mass incarceration" to refer to the staggering numbers of black American men put in prisons in the United States since the 1980s. The increase has been astounding with the United States prison population growing by 500% since 1980, from 300,000 to nearly two million by 2016. See, "Key Statistics: Prisoners," Bureau of Justice Statistics, <https://www.bjs.gov/index.cfm?ty=kfdetail&iid=488> (accessed August 8, 2019).

¹¹ James Forman Jr., "'Racial Critiques of Mass Incarceration: Beyond the New Jim Crow,'" *NYUL Rev.* 87 (2012): 104.

¹² Alexander, *The New Jim Crow*, 5, 55.

The federal program, administered by over three hundred state and local law enforcement agencies, trains state and local law enforcement officers to use pretextual traffic stops and consent searches on a large scale for drug interdiction. Officers learn, among other things, how to use a minor traffic violation as a pretext to stop someone, how to lengthen a routine traffic stop and leverage it into a search for drugs, how to obtain consent from a reluctant motorist, and how to use drug-sniffing dogs to obtain probable cause.¹³

This operation allowed for a massive number of stops and searches that previously would have been ruled unconstitutional under the Fourth Amendment of the U.S. Constitution. This breach of constitutional protections was, as Alexander argues, reminiscent of the Jim Crow era. As a result of policies put in place under the guise of Reagan's War on Drugs, incarceration rates reached an unprecedented level.¹⁴

The second component of Alexander's argument centers on the conditions faced by convicted felons once reintroduced into society. African Americans are disproportionately overrepresented in the prison system; in fact, the United States incarcerates a larger percentage of its black population than South Africa did at the height of Apartheid.¹⁵ For this significant group of convicted African American felons, Alexander explains that "the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal."¹⁶ In other words, a black man who is an ex-felon in the United States today has as few rights as a black man living in the Southern United States at the height of Jim Crow. According to Alexander, the United States has "not ended racial caste in America; [it has] merely redesigned it."¹⁷

Forman does not take issue with Alexander's premises; he sees the same policies as having contributed to the phenomenon of mass incarceration; he agrees that policing practices are racist and that the treatment of felons is unconstitutional; and he sees mass incarceration as detrimental to the black population. His overarching criticism centers on the usage of the analogy or discourse of Jim Crow and how that discourse has coloured Alexander's analysis. In his view, the analogy is flawed in

¹³ *Ibid.*, 69.

¹⁴ *Ibid.*, 6.

¹⁵ *Ibid.*, 6.

¹⁶ *Ibid.*, 2.

¹⁷ *Ibid.*, 2.

six ways. First, Forman suggests that the use of this analogy to draw attention to the role of politicians who sought “to exploit racial fears while minimizing other social factors” is an oversimplification of mass incarceration’s origins. Second, the analogy (and Alexander’s analysis in general) does not adequately address the attitudes of African Americans towards harsher punishment for crime; as Forman points out, significant portions of the black community supported many of the policies. Third, he claims that Alexander’s narrow focus on the War on Drugs pulls attention away from “violent crime [in black communities]—a troubling oversight given that violence destroys so many lives in low-income black communities and that violent offenders make up a plurality of the prison population.” Fourth, Alexander’s *The New Jim Crow* applies the analogy across the entire black American population, when it is low-income and poorly educated black Americans who are most affected by mass incarceration. Fifth, the analogy suggests that mass incarceration is a phenomenon limited to black Americans when all American demographics were/are incarcerated at rates that were not only anomalous by any American metric but by any global metric as well. Finally, the use of the analogy is reductive of the dangers associated with the ‘Old Jim Crow’.¹⁸ That is to say (in Forman’s eyes), while the era of mass incarceration and the Jim Crow era share many similarities, to say the external dangers the black body had to endure during the Jim Crow era are akin to that of the era of mass incarceration is an incomplete and oversimplified understanding of the Jim Crow era.

Of these critiques, Forman identifies two as the most significant: the role of black Americans in mass incarceration and the ways in which poor black Americans are disproportionately affected by mass incarceration.¹⁹ While not explicitly naming Alexander—after all, Alexander is not alone in using the term “Jim Crow” to refer to the mass incarceration apparatus—his most recent book, *Locking Up Our Own: Crime and Punishment in Black America*, argues that the Jim Crow analogy

fail[s] to appreciate the role that blacks have played in shaping criminal justice policy over the past forty years. African-Americans performed this role as citizens, voter, mayors,

¹⁸ Forman Jr., “Racial Critiques of Mass Incarceration,” 103.

¹⁹ For examples of the significance these factors have, see James Forman Jr., *Locking Up Our Own: Crime and Punishment in Black America* (New York, NY: Farrar, Straus and Giroux, 2017) and James Forman Jr., “The Black Poor, Black Elites, and America’s Prisons,” *Cardozo L. Rev.* 32 (2010): 791-806.

legislators, prosecutors, police officers, police chiefs, corrections officials, and community activists...[a]nd to a significant extent, the new black leaders and their constituents supported tough-on-crime measures.²⁰

Forman's book tells the history of the heroin epidemic (and drug epidemic more broadly) in Washington, D.C., from the 1960s to the 1990s. In so doing, Forman highlights the degree to which African Americans called for, and participated in, harsher punishment for drug offenders, and, more importantly, for violent crime offenders. He also highlights the significance of violent crime within African American communities. Forman's critiques can and should be viewed as an elaboration of Alexander's work instead of a denunciation.

Theory

While these authors differ in their conceptions of the history and/or effects of mass incarceration, they both—due to the nature and subject of their work—engage with and work within similar theoretical frameworks. At the same time, it is where these frameworks diverge that we see the logic behind their differing analyses.

Both Forman and Alexander work within the frameworks of Critical Legal Theory and Critical Race Theory. Critical Legal Theory (or Critical Legal Studies) became prominent in the 1980s and 1990s and has remained an important facet of legal scholarship on race.²¹ Critical Legal Theory (CLT) has its foundations in the early neo-Marxist critiques of the "orthodoxies of legal culture."²² More specifically, it draws its roots from Antonio Gramsci's ideas of law as an ideology that can be used as an instrument of hegemony.²³ Once the field became established, it started to treat law and legal writings as a discourse that:

function so as to portray existing constellations of rights, powers, privileges, and immunities recognized by the legal system as if they were natural and inevitable...and as close to being good as they could be...[b]y such means the law 'reifies' and thus helps to freeze in place scripted social roles[.]²⁴

²⁰ Forman Jr., *Locking Up Our Own: Crime and Punishment in Black America*, 10.

²¹ Robert W. Gordon, "Critical Legal Studies," *International Encyclopedia of the Social & Behavioral Sciences*, no. 5 (2001): 251.

²² *Ibid.*, 251.

²³ *Ibid.*, 251.

²⁴ *Ibid.*, 252.

While CLT originated out of Marxist ideas of class critique and replication, it evolved to include all “subordinated groups, using historical examples to show how ruling groups had used neutral- and equal-sounding legal doctrines to extend and justify their rule.”²⁵

Both Alexander and Forman are lawyers and CLT scholars who discuss the law’s relationship to race at the core black American history. More specifically, both draw extensively on specific laws put in place that disproportionately targeted and affected the black community. For example, mandatory minimum sentencing lies at the center of both their arguments (as one of the primary reasons for prison population growth) and the discussion of it arises repeatedly throughout their texts.²⁶ Perhaps the most infamous example of the racially coded nature of the law in the context of mass incarceration is the Anti-Drug Abuse Act of 1986, signed into law during the Reagan Administration. Mandatory minimum sentencing was implemented for all drug offences dealing with the distribution of cocaine, although the punishment would be significantly more severe for the distribution of crack (a form of cocaine). As Alexander shows, the drug typically associated with black people (crack) was punished more severely than the drug that was more expensive and typically associated with white people (cocaine).²⁷ Through this and other examples, it is clear that both Alexander and Forman take a critical stance towards the so-called neutrality of law.²⁸

Out of Critical Legal Theory emerged Critical Race Theory (CRT), which, as the name suggests, focuses more explicitly on the role of law “in the construction and maintenance of social domination and subordination” of African Americans.²⁹ CRT maintains that, “racism is ordinary and normal in contemporary society, indeed perhaps integral to social practices and institutions.”³⁰ Both Alexander and Forman ascribe to this view and use CRT in their work. This framework within which Alexander and Forman operate might be best described as that of Critical Theory with a focus or emphasis on Race and Law (or perhaps its evolution into the discursive nature of Race and Law). As Max

²⁵ Ibid., 253.

²⁶ See Alexander, *The New Jim Crow*, 14, 52-53, 86-91 and Forman Jr., *Locking Up Our Own*, 114, 119-150, 236.

²⁷ Alexander, *The New Jim Crow*, 52.

²⁸ Gordon, “Critical Legal Studies,” 251.

²⁹ Kimberlé Crenshaw et al., eds., *Critical Race Theory: The Key Writings That Formed the Movement* (New York, NY: New Press, 1995), xi.

³⁰ Angela P. Harris, “Critical Race Theory,” *International Encyclopedia of the Social & Behavioral Sciences* (2012): 5.

Horkheimer, the father of Critical Theory described it, Critical Theory seeks human “emancipation from slavery” through liberation from the historical discourses and structures that claimed neutrality and apoliticalness but were in fact oppressive and subordinating.³¹

While both Alexander and Forman draw on Critical Legal Studies and Critical Race Theory, their use of these fields differ in significant ways that lend insight into their opposing views on whether mass incarceration should be likened to something we might call the new Jim Crow. The first significant difference centers on Forman’s use of Michael B. Katz, Mark J. Stern, and Jamie J. Fader’s concept of ‘differentiation.’³² Katz, Stern, and Fader use this term in the context of their quantitative history of African American inequality in order to argue for the relevance of particularized or differentiated African American experience to understanding inequality at a more fundamental level:

Differentiation is a more precise and objective way to talk about the change than to cast it as the emergence of a black middle class—a common trope in discussions of recent trends in black social structure but one lacking precise features and difficult to track over time. Differentiation underscores the importance of disaggregating blacks experience by gender and class. Only through disaggregation is it possible to pinpoint what has persisted and what has changed in African Americans’ history of work, income, education, poverty, and mobility.³³

Forman critiques Alexander’s treatment of black Americans as a homogenous group whose experience of mass incarceration and its policies is the same across class and gender. For example, Alexander has said that mass incarceration, like Jim Crow, has “served to define the meaning and significance of race in America.”³⁴ She goes on to say:

Indeed, a primary function of any racial caste system is to define the meaning of race in its time. Slavery defined what it meant to be black (a slave), and Jim Crow defined what it meant to be black (a second-class citizen). Today mass incarceration defines

³¹ Max Horkheimer, *Critical Theory* (New York, NY: Continuum, 1982), 246.

³² Michael B. Katz, Mark J. Stern, and Jamie J. Fader, "The New African American Inequality," *The Journal of American History* 92, no. 1 (2005): 105.

³³ *Ibid.*, 105.

³⁴ Alexander, *The New Jim Crow*, 192.

the meaning of blackness in America: black people, especially black men, are criminals. That is what it means to be black.³⁵

Forman sees this claim as highly problematic because the criminal justice system does not affect all black Americans equally. For example, he explains that “we must be specific about the fact that prison has become the province of the poor and uneducated, even within the black community.”³⁶ He argues that it does not make sense, and that it is in fact disingenuous for the history of mass incarceration, to refer to “black people” as a singular group without differentiating along lines of class, gender, disability, and so on. Similarly, the effects of mass incarceration are not uniformly felt throughout the entire black American community, as Alexander implicitly suggests.³⁷ This critique of a lack of differentiation is very much rooted in Foucauldian ideas of discourse. To Forman, the Jim Crow analogy (or discourse) presents a reductionist view of mass incarceration. What discourse does, is not only “[rule] in way[s] to talk, write, or conduct oneself, so also by definition, it rules out, limits and restricts other ways of talking, of conducting ourselves in relation to the top or constructing knowledge about it.”³⁸ The equation of mass incarceration with Jim Crow, in Forman’s view, limits the way we talk and think about it. According to this argument, we are compelled to ignore the differences between mass incarceration and Jim Crow if we allow the discourse of Jim Crow to be replicated in the discourse of mass incarceration.

Alexander incorporates other theories (or perhaps different understandings of similar theories) into her framework that differ from Forman, and that demonstrate why she frames her argument as she does. Alexander’s argument that racial castes define the meaning of race in any particular time, speaks very strongly to her racial formation theorist roots. Racial Formation Theory (RFT) comes from sociologists Michael Omi and Howard Winant and holds that:

through changing racial formations, US society has shifted from one defined by a racial dictatorship (slavery, segregation) to a much less Draconian society defined by a ‘racial democracy’ whose structures and practices are rooted in significant consent

³⁵ *Ibid.*, 192.

³⁶ Forman Jr., “The Black Poor, Black Elites, and America’s Prisons,” 794.

³⁷ *Ibid.*, 794.

³⁸ Stuart Hall, “Foucault: Power, knowledge and discourse,” in *Discourse theory and practice: A reader*, ed. Margaret Wetherell, Stephanie Taylor and Simeon J. Yates (London, UK: Sage, 2001): 72.

from less-powerful racial groups and hegemonic control over those groups by powerful racial groups. For Omi and Winant, through political power struggles of racial groups within the USA, the concepts and formations of race have shifted very significantly, and in the course of sociohistorical transformations the politics of ‘racial totalitarianism’ has been replaced by a politics of ‘racial democracy.’³⁹

Alexander’s understanding of the reproduction of racial structures and systems since Jim Crow as reminiscent of and reproducing similar inequalities is very much founded in this theory. Alexander diverges from RFT in critical ways—Omi and Winant would explicitly argue that this new structure of racial relationships and discourse is different from Jim Crow. The replication and evolution of racial structures is a foundational part of Alexander’s argument and could be used to explain why she excludes the role of violent crime in the prison population increase and the role of black politicians, community leaders, and citizens in facilitating mass incarceration.⁴⁰ While those realities are markedly different than Jim Crow, they are part of the new formation of a familiar racial caste system and for Alexander, it is perhaps more important to shed light on the system itself and not necessarily the particulars within it.

The “reductionist” nature of the Jim Crow discourse that Forman takes issue with is also, in Alexander’s view, crucial to the framing of mass incarceration. The Racial Formation Theoretical framework, within which Alexander’s analysis can be situated, draws on an amalgamation of Foucauldian and Gramscian ideas. Alexander sees the similarities of the discursive construction of a race in the eras of Jim Crow and of mass incarceration as evidence of a surviving and persistent hegemonic racial discourse in the United States. Perhaps a result of her CLT roots and its neo-Marxist foundations, Alexander’s writing and juxtaposing of the black population (a racialized proletariat) against the racist white population and policy makers (a racist bourgeoisie) could, to an extent, be interpreted as her own version of a Marxist Manifesto. In *The New Jim Crow*, she makes calculated choices to create a narrative that the mass incarceration of black Americans between 1980 and the present is the result of racialized policies and policing practices that were created to target the black population, and that much of these policies and practices

³⁹ Joe Feagin and Sean Elias, “Rethinking racial formation theory: a systemic racism critique,” *Ethnic and Racial Studies* 36, no. 6 (2013): 934-935.

⁴⁰ *Ibid.*, 934-935.

centered around drug offences.⁴¹ Though the forceful and perhaps reductionist narrative that Alexander puts forth is controversial, it is not without its value. While statistics suggest the greatest factor in mass incarceration is violent crime, and not drug offences, her omission of these statistics is done to create a dialectic.⁴² The whole text of the Communist Manifesto builds up to a Marxist call for revolution:

They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communistic revolution. The proletarians have nothing to lose but their chains. They have a world to win.⁴³

While perhaps tamer in her wording, Alexander wants to inspire a revolutionary movement with her text. She argues that “nothing short of a major social movement can successfully dismantle the new caste system” and what is needed is a “radical restructuring of society” and a “radical restructuring of our approach to racial justice advocacy.” She urges her audience “to be emboldened...by the fierce urgency of now.”⁴⁴

It is not ultimately necessary to choose a side between Alexander and Forman. They bring different and necessary analyses to bear on the question of mass incarceration and are speaking—at least in part—to different audiences. I do not want to minimize or ignore their differences, of course, but to suggest a way of embracing their contributions as equally valid and valuable. The lack of discussion of intra-racial violence that Forman sees as an oversight in Alexander’s work, is a legitimate critique of her scholarship. In addition, black Americans played a much larger role in creating and enforcing mass incarceration policies than Alexander

⁴¹ Alexander, *The New Jim Crow*, 99. For more on the narrativizing or moralizing of history, see Hayden White, “The Value of Narrativity in the Representation of Reality,” *Critical inquiry* 7, no. 1 (1980): 17-18.

⁴² “According to the Bureau of Justice Statistics, in 2006 there were 1.3 million prisoners in state prisons, 760,000 in local jails, and 190,000 in federal prisons. Among the state prisoners, 50% were serving time for violent offenses, 21% for property offenses, 20% for drug offenses, and 8% for public order offenses.” Forman Jr., “Racial Critiques of Mass Incarceration,” 125-126.

⁴³ Karl Marx and Friedrich Engels, *The Communist Manifesto* (London, UK: Penguin Classics, [1848] 2002), 34.

⁴⁴ Alexander, *The New Jim Crow*, 247. See also pages 18-19.

⁴⁴ I would be remiss if I did not mention that intra-racial violence is a pervasive problem across the United States. According to 2017 FBI crime statistics, the vast majority of homicides committed against white Americans are committed by white perpetrators and

admits in her writing.⁴⁵ But to suggest that black Americans need to accept and acknowledge the role they have played in mass incarceration also seems to be an insufficient framing of the discussion. As Alexander explains, white Americans created an environment, through policy and exploitation of systemic racism, where disproportionate numbers of black Americans were and are forced out of the mainstream economy through incarceration and into an economy that involves drug sales. As a result of this, Forman explains, violent crime rose in low-income black neighbourhoods as fights over territory spread through the inner cities; to combat this, black citizens, politicians, community leaders, and police fought for stricter punitive laws. But in an attempt to gain control over their bodies and, in a sense, ‘join white culture’ due to the continuation of, and more overt reemergence of a racial caste system, black Americans killed other black Americans, and put black Americans in prison for it.

Together, Forman’s attention to intra-racial violence among black Americans, and Alexander’s emphasis on the white oppression of the black community provide a valuable picture of the phenomenon of mass incarceration. Ta-Nehisi Coates makes clear in his text, *Between the World and Me*, the inadvertent “attempts to be white” through “white” actions *did* result in intra-community violence and support for mass incarceration, but the blame cannot be set at the feet of black people themselves. Coates states that what has historically defined ‘whiteness’ in America is, “the flaying of backs; the chaining of limbs; the strangling of dissidents; [and] the destruction of families” and that the, “[d]ream of acting white, of talking white, [and] of being white” has led to so much violence being perpetrated by black Americans against black Americans.⁴⁶ However, he (Coates) makes it emphatically clear that to ignore the role of white Americans in the creation of this violence inducing environment would be naïve, negligent, and case of historical malpractice. Their social conditions have been structured in large part by white oppression, policy, and practice.

the vast majority of homicides committed against black Americans are committed by black American perpetrators. That is to say intra-racial violence, while endemic in the African American community, is not unique to the black American community. See, Federal Bureau of Investigation, "Expanded Homicide Date Table 6," 2017 Crime in the United States, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/expanded-homicide-data-table-6.xls> (accessed August 8, 2019).

⁴⁶ Ta-Nehisi Coates, *Between the World and Me* (New York: Spiegel & Grau, 2015), 8, 110.

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Writing History Among the Tombstones: Notes from Har Hasetim

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Abstract: This paper examines the collaborative project to preserve and interpret Har Hasetim, the Gladwyne Jewish Memorial Cemetery. In fall 2015, Villanova University professor Craig Bailey approached the Friends of the Cemetery, an organization affiliated with the local Beth David Reform Congregation, about jointly restoring Har Hasetim. The ensuing project, in which the authors participated as M.A. students, began by expanding the database of known interments in the cemetery, relying on local archives, Philadelphia death records, and census data. This initial work evolved into a range of public history projects such as scout and school lesson plans, informational booklets, academic research papers, and preservation plans. This paper reflects upon the lessons learned from the partnership between our public history class and the Friends. The authors of this paper detail their personal research projects as well as their classmates' findings about the cemetery, the people buried there, and the neighborhood of Philadelphia—the historic Jewish Quarter—where the deceased once resided. The Har Hasetim project treated history as a civic initiative, helping a community organization to document its history, preserving a physical site, producing materials for site-specific education, and sharing historical discoveries with the public.

In the introduction to his 2017 volume *Interpreting American Jewish History at Museums and Historic Sites*, Avi Decter stresses the importance of collaboration in bringing U.S. Jewish history to the general public. Decter explains that, despite the richness of American Jewish history, a limited number of museums and historical organizations are devoted to this subject. He recommends partnerships between secular museums and “Jewish counterpart[s] that can bring resources (collections, contacts, and context) and expertise to the project.”¹ Furthermore, Decter argues that such a partnership could bring economic benefits, since “many donors and funders recognize the advantages of funding multiple agencies through a single gift or grant.”² Decter’s book provides multiple case studies depicting his model of

¹ Avi Y. Decter, *Interpreting American Jewish History at Museums and Historic Sites*, Interpreting History Series (Lanham, MD: Rowman & Littlefield, 2017), 19.

² *Ibid.*

institutional cooperation (e.g., between secular and Jewish groups) in the development of interpretative projects about U.S. Jewish history. Such efforts require public historians to serve their communities and suggest the possibility of academic institutions becoming sponsors for community-based Jewish histories.³ In our case, Villanova University professor Craig Bailey became a liaison between the university and the Greater Philadelphia Jewish community.⁴



Figure 1. *Har Hasetim, Gladwyne, Pennsylvania, 2016.*

In spring 2016, we and our M.A. classmates in Villanova University's Public History Practicum helped to interpret the history of the Gladwyne Jewish Memorial Cemetery, formerly known as Har

³ Cf. Hilda Kean and Paul Ashton, "Introduction: People and Their Pasts and Public History," in *People and their Pasts — Public History Today*, edited by Kean and Ashton (London: Palgrave Macmillan U.K., 2008), 1–20, esp. 2; Marianne Babal, "Sticky History: Connecting Historians with the Public," *The Public Historian* 32, No. 4 (Fall 2010): 80.

⁴ Although Villanova University is a Roman Catholic university, Catholicism did not figure into the Har Hasetim restoration project, so Villanova essentially served as one of the secular historical partners for a Jewish community organization, per the secular-Jewish partnerships Decter describes.

Hasetim (Mount of Olives).⁵ Under the guidance of Prof. Bailey, the Har Hasetim Project became a collaborative effort between our class and the Friends of the Cemetery to learn about the site's story and share it with the public. This partnership produced both collective and individual research projects that drew from public history, historic preservation, and genealogy.

While researching the Philadelphia Main Line suburbs, Bailey had previously stumbled upon the story of Har Hasetim, one of the relatively few Jewish cemeteries located in the historically Protestant-dominated Main Line. Fascinated, Bailey contacted the Friends of the Gladwyne Jewish Memorial Cemetery, who are now in charge of safekeeping the Mount of Olives, to learn more about the site.⁶ Residents of Philadelphia's Jewish Quarter founded Har Hasetim sometime between 1880 and 1893.⁷ Most of the burials occurred in the 1890s and 1910s, but the last burial was not until 1945. As time passed and new cemeteries opened in the Philadelphia suburbs, serving the needs of the next Jewish generations, Har Hasetim changed hands repeatedly.⁸

⁵ The Villanova students, aside from Soto Segura and Gorman, were: Helen Gassmann, Riley Hubbard, Sarah Johnson, Paul Kopacz, Blake McGready, Elizabeth Motich, Bill Petersen, Brianna Quade, Amanda Rockwood, Ann Shipley, and Emily Vasas.

⁶ Bailey's research background: Emily Vasas, "Stories from Har Hasetim: Exhibits From One of Philadelphia's Oldest Jewish Cemeteries" (unpublished manuscript, Villanova University, spring 2016), 6, Microsoft Word file. For the beginning of the project, see: Richard Ilgenfritz, "Renewed Effort to Fix Up Lower Merion's Abandoned Jewish Cemetery," *Main Line Times*, Oct. 8, 2015, www.mainlinemedianews.com/mainlinetimes/news/renewed-effort-to-fix-up-lower-merion-s-abandoned-jewish-article_ae68b09b-8745-5c66-ad62-5c43aa190771.html.

⁷ According to Friend of the Cemetery Stephen F. Finkelman [email to Daniel Gorman Jr., April 28, 2019], William Silverstone and Raphael S. Green purchased the land for the cemetery from Charles Greaves in May of 1893. Shortly thereafter, Raphael S. Green transferred his rights to Meyer Wachtel. The Har Hasetim Association was incorporated in the year 1893

⁸ Andreína Soto Segura, with Riley Hubbard, Sarah Johnson, Blake McGready, Elizabeth Motich, and Ann Shipley, "Discovering the People of Har Hasetim: Introduction and Research Guide" (unpublished manuscript, Villanova University, spring 2016), PDF file; "History," B'nai Abraham Chabad [Philadelphia, PA], last modified 2017, <https://www.phillyshul.com/history-timeline/> (accessed Jan. 26, 2019), ; Stephen F. Finkelman, "Working Copy of Material for Har Hasetim and Related Entities to be Used to Create a History of the Cemetery" (unpublished manuscript, Friends of the Gladwyne Jewish Memorial Cemetery, last modified Oct. 30, 2015), Microsoft Word file; Stephen F. Finkelman, email to Daniel Gorman Jr., Feb. 10, 2018. Primary sources on ownership changes: "The Latest News in Real Estate... Montgomery County Transfers," *The Philadelphia Inquirer* 144, No. 109, Apr. 19, 1901, 15, *ReadEx: America's Historical Newspapers*; Harry Schneiderman, ed., *The American Jewish Year Book 5680, September 25, 1919, to September 12, 1920*, Vol. 21 (Philadelphia: The Jewish

Horace P. Moore, a developer who briefly gained control of the property in 1913, dug up a number of bodies.⁹ Wolf Belostosky recovered Har Hasetim from Moore, and in 1914 Belostosky sold the cemetery to the Independent Chevra Kadisho (I.C.K.), a burial society from downtown Philadelphia. By the mid-twentieth-century the I.C.K. had failed to keep the cemetery from falling into disrepair, and Main Line residents forgot the cemetery and the people interred there.¹⁰ The Beth David Reform Congregation in Gladwyne, Pennsylvania, is Har Hasetim's current owner; many of the Friends are members of this synagogue.¹¹ Bailey's conversations with the Friends led to the idea that Villanova's upcoming public history course could focus on the cemetery—one of the “relatively few” Jewish-run American historical sites or “collections” that Decter describes.¹² Students could explore Har Hasetim's history, help the Friends revitalize the site, and invite Beth David's members to a town hall meeting at semester's end to share their findings.

While our work followed some of Decter's principles, it diverged in several ways. The practicum inverted Decter's model of a historical institution setting parameters for research projects and inviting Jewish groups' collaboration. Instead, the Friends, who were already experts on the cemetery's history, specified what help they needed, and we strove to meet their needs while still pursuing our own research interests. The Friends' primary requests were help with the site's physical restoration, identifying people buried at the site, and detailing the people who owned and managed Har Hasetim. In a final break from

Publication Society of America, for the American Jewish Committee, 1919), 555, HathiTrust, <https://hdl.handle.net/2027/njp.32101044278917?urlappend=%3Bseq=569>.

⁹ “Contractor Rips Up Big Hebrew Cemetery,” *The Philadelphia Inquirer* 168, No. 26, Jan. 26, 1913, 7; Finkelman, email to Gorman

¹⁰ Soto Segura et al., “Discovering”; Stephen F. Finkelman, “Data on Independent Chevrah Kadisho of Philadelphia” (unpublished manuscript, Friends of the Gladwyne Jewish Memorial Cemetery), Microsoft Word file; Finkelman, “Working Copy”; Minutes of the Independent Chevra Kadisho 1932–1980 (copy held by the Friends of the Gladwyne Jewish Memorial Cemetery), PDF file.

¹¹ The Friends have asked us to acknowledge that members of other synagogues, as well as individuals who are not Jewish, are part of the Board and volunteer with the organization. Although the Beth David congregation currently owns the cemetery, the operations of the Friends see to the maintenance of the cemetery as a memorial park for the synagogue and Friends, see: Beth David Reform Congregation, 1130 Vaughan Lane, Gladwyne, PA 19035, United States, <https://bdavid.org/>; Friends of the Gladwyne Jewish Memorial Cemetery, <https://www.gladwynejewishcemetery.org/>. Our primary contacts with the Friends were the late Stephen J. Anderer, Jill Cooper, Stephen F. Finkelman, and Neil Sukonik.

¹² Decter, *Interpreting*, 3.

Decter, we did not pursue fundraising for our work, aside from asking the History Department to provide some refreshments for the town hall. We operated on a fairly ad hoc basis, and reciprocity was the core of this project. The students worked on an actual public history project instead of simply reading articles about public history; the Friends received a new team of volunteers; and group discussions between the students and Friends shaped the parameters of the project.

The Har Hasetim project grew beyond the cemetery itself. As we accumulated newspaper articles and census records, and as we planned our capstone projects, we gained a deeper understanding of daily life in Philadelphia's early-twentieth-century Jewish Quarter, which has received less historiographic attention than New York's celebrated Jewish Lower East Side. We learned how Jewish *landsmanshaftn* (benevolent societies) and *chevras* (variously, synagogues or burial societies) provided institutional assistance to their members in times of need.¹³ We considered how immigrant Jews engaged with the cemetery over time, how *chevras* eased concerns about the afterlife by providing burial services to the members of the Jewish communities of Philadelphia, and how the cemetery restoration could meld public history and archaeological preservation.

Our first order of business was checking the contents of the Friends' original burial database, which Bailey had edited. This database included roughly 600 names, along with demographic information such

¹³ On *landsmanshaftn* see: Decter, *Interpreting*, 70, 105; Hannah Kliger, "In a Common Cause, In This New Found Country": Fellowship and Farein in Philadelphia," in *Traditions in Transition: Jewish Culture in Philadelphia, 1840–1940: An Exhibition in the Museum of the Balch Institute for Ethnic Studies, April 24–October 21, 1989*, edited by Gail F. Stern, Federation of Jewish Agencies of Greater Philadelphia (Lanham, MD: AASLH Library (for the Balch Institute, Philadelphia, PA), 1989), 28; Rakhmiel Peltz, "125 Years of Building Jewish Immigrant Communities in Philadelphia," in *Global Philadelphia: Immigrant Communities Old and New*, edited by Ayumi Takenaka and Mary Johnson Osirim (Philadelphia: Temple University Press, 2010), 35–36; Beth S. Wenger, *The Jewish Americans: Three Centuries of Jewish Voices in America* (New York: Doubleday, 2007), 97. On *chevras* see: Harry D. Boonin, *The Jewish Quarter of Philadelphia: A History and Guide, 1881–1930* (Warrington, PA: Jewish Walking Tours of Philadelphia, Inc., 1999), 42; Julius H. Greenstone, "Religious Activity: Philadelphia," in *The Russian Jew in the United States: Studies of Social Conditions in New York, Philadelphia, and Chicago, with a description of rural settlements*, edited by Charles S. Bernheimer (Philadelphia: John C. Winston, 1905), 162–63, <https://catalog.hathitrust.org/Record/000335985>; Philip Rosen, "Orthodox Institution Builder: Rabbi Bernard Lewis Levinthal," in *When Philadelphia Was the Capital of Jewish America*, edited by Murray Friedman, Sara F. Yoseloff Memorial Publications in Judaism and Jewish Affairs (Philadelphia: The Balch Institute Press, 1993), 128.

as birth years, national origins, Philadelphia addresses, and occupations, and it was our job to confirm the information of the persons interred at the cemetery.¹⁴ Bailey gave the class a training exercise using digitized newspaper records and genealogical databases such as Ancestry and FamilySearch. He told us each to find as much as we could about Benjamin Schur, the last person buried in Har Hasetim (1945). Bailey had done his own research on Schurr, proving that contrary to local myth, Schurr served in World War One, not Two, and died of heart disease, not because of combat injuries.¹⁵ We compared our findings with Bailey's summary, and after this trial run, we applied the same research methods in order to check the rest of the interment database. Each of us reviewed the information of 50–60 interments from the burial database to ensure that these persons were properly recorded.



Figure 2. *Benjamin Schurr's headstone.*

The next phase was to produce a *reversed chronology*, tracing the cemetery from its current, dilapidated state back to its past glory as a Jewish gathering place. We developed a variety of capstone projects, but we all wanted to balance an understanding of the geographic Mount of Olives with the family and communal histories of the people interred there. The tombstones represented individuals, but the whole landscape represented families and communities connected by religion and ethnicity. It would take archival research to draw out these cultural and

¹⁴ Craig Bailey and the Friends of the Gladwyne Jewish Memorial Cemetery, original interment database (unpublished manuscript, last modified Jan. 2016), Microsoft Excel file.

¹⁵ Ilgenfritz, “Renewed Effort.” See also: Daniel Gorman Jr., “Timeline of Benjamin Schurr’s Life” (unpublished manuscript, Villanova University, last modified Jan. 7, 2016), Microsoft Word file.

social dynamics, which meant learning about Jewish lives in the Philadelphia region between 1880 and 1920, the years of substantial Ashkenazi Jewish immigration to America.¹⁶ By doing so, we were able to document the way that Quarter's residents engaged with burial places and created strong communal bonds in the process. For example, period newspaper articles detail how, in the early 1900s, hundreds of urban Jews took the train to the Main Line and then walked or rode horses to Har Hasetim, where they performed annual rituals in memory of their deceased relatives.¹⁷ While we found records of such rituals for 1907 and 1908, it is unclear at what point in the twentieth century mourners stopped visiting Har Hasetim regularly.

An important element of our project was finding out who was interred at the Mount of Olives. Our colleague Paul Kopacz expanded the list of burials beyond the initial 600. After consulting Philadelphia death certificates and other sources, Kopacz identified 2,773 people—the majority of whom were children—buried in Har Hasetim between 1893 and 1915. Most of the adult Jews buried there were Russian immigrants, while most of the children were born in the U.S.¹⁸ This tally remains incomplete, since burials from 1894 and between 1915 to 1945 have yet to be identified. The class appreciated the solemnity of this genealogical work. A revised burial database could help Jewish citizens find deceased relatives, even if headstones did not survive for all names. The full list, in a sense, had always been there in the Philadelphia archives, but not in useful form until our class began probing.

We also wanted to give the Friends a range of public history materials, since they planned to invite genealogists, schoolchildren, and professional historians alike to Har Hasetim in the future. Our research,

¹⁶ On Ashkenazi immigration see: Murray Friedman, "Introduction: The Making of a National Jewish Community," in *Jewish Life in Philadelphia, 1830–1940*, edited by Friedman (Philadelphia: Institute for the Study of Human Issues/ISHI Publications, 1983), 7–8; Melissa R. Klapper, *Small Strangers: The Experiences of Immigrant Children in America, 1880–1925* (Chicago: Ivan R. Dee, 2007), xi, 10; Evelyn Bodek Rosen, *The Philadelphia Fels, 1880–1920: A Social Portrait* (Madison/Teaneck, NJ: Fairleigh Dickinson University Press, 2000), 58–60.

¹⁷ See: "Hebrews Flock to Gladwyn Cemetery," *The Philadelphia Inquirer*, Sept. 21, 1908, 3, *ReadEx: America's Historical Newspapers*; "Hebrews Observe Decoration Day," *The Philadelphia Inquirer*, Sept. 2, 1907, 3, *ReadEx: America's Historical Newspapers*.

¹⁸ The total number of interments and the year of the first interments remains inconclusive. Paul Kopacz's complete burial database for Har Hasetim records the earliest interments back to 1893 ("Complete Burial Database for Har Hasetim," unpublished manuscript, Villanova University, last modified Mar. 31, 2016), Microsoft Excel file.

as a class and as individual historians, combined fieldwork, statistical analysis, and visits to research libraries such as the Free Library of Philadelphia and the Historical Society of Montgomery County. The class essentially enacted Decter's emphasis on "appropriate formats," producing materials that could tell Har Hasetim's story to different audiences.¹⁹ Student capstone projects included: Ann Shipley's scout guide and essay about Philadelphia newspapers' coverage of Jewish residents; Blake McGready's study of Russian immigration to Philadelphia; Brianna Quade's paper on Jewish housing patterns in Philadelphia; Elizabeth Motich and Andreína Soto Segura's papers on burial and benevolent societies; Amanda Rockwood and Emily Vasas's study of disease and healthcare in early-twentieth-century Philadelphia; Helen Gassmann's survey of Philadelphia cemeteries; Bill Petersen's study of Har Hasetim's geography; Sarah Johnson and Riley Hubbard's refurbishment of a single Har Hasetim plot as a model for repairing tombstones throughout the property; and a co-authored booklet summarizing the cemetery's history. We hoped that, after we graduated, the Friends would partner with other historical organizations and that they would use our project materials as a stepping stone as they continued to revitalize the Mount of Olives.

Tracing the history of the individuals interred at the Mount of Olives and the communities connected to it was key to Gorman and Soto Segura's individual projects. Soto Segura wrote a paper studying how beneficial and burial societies created, in Decter's terms, "extra-familial" networks in the Jewish Quarter, as *chevras* facilitated traditional Jewish burials at Har Hasetim and Har Jehuda, another local cemetery.²⁰ Instead of viewing Har Hasetim as an isolated space, Soto Segura sought to understand who took care of the cemetery and its residents. She began by documenting the administrative activities of the Independent Chevra Kadisho (I.C.K.), the Har Hasetim Association, and other burial societies established in Philadelphia in the 1890s. Their members, on a volunteer basis, started acquiring plots in Har Hasetim in 1894, managing the care of the tombstones and the land, and providing funerary services for Jewish families.²¹ Soto Segura's work drew on the minutes from I.C.K.

¹⁹ Decter, *Interpreting*, 21.

²⁰ Decter explains that "extra-familial factors" had important functions for Jewish immigrants by providing different forms of support "from camaraderie to burial assistance." (*Interpreting*, 70); Andreína Soto Segura, "K'vod Hamet and the Making of a Communal Life: Benevolent and Burial Societies in the Greater Philadelphia Area," (unpublished manuscript, Villanova University, spring 2016).

²¹ Stephen F. Finkelman, email to Daniel Gorman Jr. on April 28, 2019.

meetings, correspondence between the *chevras* and beneficiaries of the cemetery (now in the Friends' possession), and newspaper articles about burial sites and beneficial organizations available in the online database *ReadEx: America's Historical Newspapers*. Compiling this information also involved visiting Philadelphia institutions that hold valuable collections related to Har Hasetim, particularly the Historical Society of Pennsylvania and the Special Collection Research Center at Temple University.²² By tracing some of the *chevras* that interred their members at Har Hasetim, Soto Segura also reflected upon the role of these Jewish organizations in the performance of funerary rituals based on *K'vod Hamet*, the code requiring the purification of the deceased body, its proper burial with the observance of Jewish traditions, and assistance to the deceased's family during the mourning period.²³ In collaboration with classmate Elizabeth Motich, Soto Segura created a database for the Friends with information about the burial societies with proof of interment at Har Hasetim, including their sections, plots, and rows in the cemetery.²⁴

Gorman wrote a microhistory connecting Har Hasetim to Philadelphia's urban and social history. He focused on a Russian immigrant family, the Fensters, who lived on Philadelphia's South Fourth Street. Max and Minnie Fenster buried three children in Har Hasetim between 1898 and 1901. The second child who perished, four-year-old Sarah Fenster, died in the summer of 1900, shortly after the 1900 census was taken. Given the overlap of Sarah's death with the census, Gorman decided to reconstruct what life was like on the Fensters' block circa 1900. He reviewed census enumeration records, found via Ancestry.com, to identify the home ownership status, birth places, careers, and other relevant details of the people on the block. He then connected this information to the Fensters, speculating how the neighborhood's demographics, as well as local institutions, would have affected a young Jewish family. Overall, Gorman's project illuminated the Jewish Quarter's demographics and numerous cultural organizations

²² Minutes of the Independent Chevra Kadisho 1932–1980; Historical Society of Pennsylvania, “Jewish Resources” collection; Temple University, Special Collection Research Center, Jewish Vertical Files, Har Hasetim — Deed Books (1893–1900), Cemeteries; Temple University, Special Collection Research Center, Har Jehuda–I.C.K. Records, Box 1, Folder 1, Accession #2086.

²³ Andreína Soto Segura, “K'vod Hamet and the Making of a Communal Life” (unpublished manuscript, Villanova University, spring 2016), Microsoft Word file.

²⁴ Elizabeth Motich and Andreína Soto Segura, Database: “Burial Societies with Proof of Interment at Har Hasetim” (unpublished manuscript, Villanova University, last modified Apr. 21, 2016), Microsoft Excel file.

(not all of which were Jewish) during the period of Ashkenazi migration. Many U.S. national trends, from growing religious and ethnic diversity to contentious labor politics, were visible in only a few hundred feet of South Fourth Street.²⁵ Soto Segura and Gorman hope to publish their papers in academic journals in the near-future.



Figure 3. Soto Segura and Gorman's combined maps, showing locations of Synagogues and Burial Societies circa 1900. The box represents the Philadelphia Inquirer's borders for the Jewish Quarter in 1889.²⁶

While writing their papers, Soto Segura and Gorman produced several G.I.S. maps using Google Maps. Soto Segura, who amassed an extensive list of Jewish *chevras* and other benevolent societies, plotted the locations of burial societies' offices. Meanwhile, Gorman mapped the locations of Jewish Quarter synagogues circa 1900. The first image below is based on our combined G.I.S. data, outlining the Jewish Quarter's temples and the *chevras* associated with the Mount of Olives.

²⁵ Daniel Gorman Jr., "Sarah Fenster's Neighborhood: Demography, Community, and One Child's Life in 1900 Jewish Philadelphia" (unpublished manuscript, Villanova University, last modified May 21, 2016), Microsoft Word file.

²⁶ "Important Hebrew Move: The Israelites of this City in an Aggressive Humor," *The Philadelphia Inquirer* 120, No. 46 (Feb. 22, 1889), 2, *ReadEx: America's Historical Newspapers*.

The second map shows the location of Har Hasetim and Har Jehuda in relation to the city of Philadelphia, where the cemeteries' residents once lived. These images show the vibrant society packed into the Jewish Quarter and speak to the potential of user-friendly, open-source platforms that historians can use to make interactive materials for local history projects.

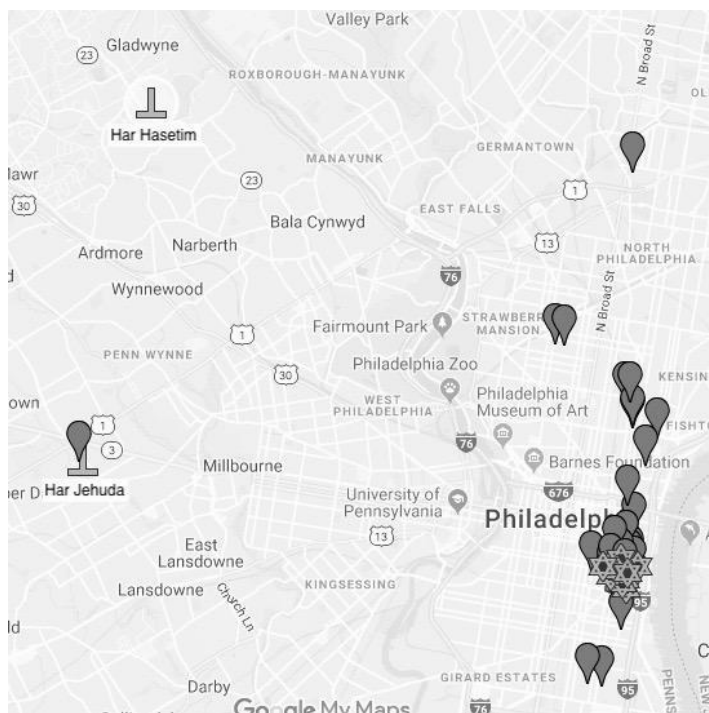


Figure 4. *The location of Har Hasetim and Har Jehuda, in relation to Jewish synagogues and benevolent societies in Philadelphia. During the early twentieth century, the Independent Chevra Kadisho (I.C.K.) managed both cemeteries.*²⁷

While the class did not produce a website for the Har Hasetim project, we discussed how this kind of public history project could easily take a digital form. The lack of time in the semester and the challenge of maintaining a website for the long term, on behalf of the Friends, dissuaded us from making a digital platform for our work. The Friends

²⁷ Minutes of the Independent Chevra Kadisho 1932–1980; “Notes of the Courts.” *The Philadelphia Inquirer*, May 8 1906, 15; Allen Meyers, *The Jewish Community of South Philadelphia* (Charleston, S.C.: Arcadia, 1998), 34; Soto Segura, “K’vod Hamet.”

received an external hard drive containing all of our files, which would help as the Friends worked on their Pennsylvania Historical Landmark proposal for Har Hasetim. However, looking back on the Har Hasetim project, we recognize that despite the time-intensive nature of cemetery visits, genealogical research, and writing capstones, we should have made a full data management plan in consultation with the Villanova University Library. Historians working on community-based histories similar to the Har Hasetim project should consider the best way to preserve their materials and make them accessible, whether in physical or digital form, to future researchers.

On April 28, 2016, the M.A. students who participated in the Public History Practicum held their town hall meeting, “Legacy of Har Hasetim: The Making, Unmaking, and Preservation of Gladwyne’s Unknown Jewish Cemetery.” The symposium was an opportunity to share our collective and individual findings with the Friends, Beth David’s congregation, and faculty and students from Villanova University. The event was received positively by the attendees, especially by individuals who had ties to the Mount of Olives. We discussed the importance of academic communities engaging with their localities through public history, how burial sites could be repaired, and how the microcosm of the cemetery reflected Philadelphia’s larger Jewish history. Ending the course with the symposium emphasized the project’s spirit of collaboration and reciprocity. The Har Hasetim project showed how university classrooms — not only the large-scale museums and Jewish historical societies Decter describes in his book — might partner with synagogues to tell stories about local Jewish history.²⁸ Immigrant Jews once worked together to found Har Hasetim. This time, historians worked with their neighbors to write history among the tombstones.

²⁸ Cf. Decter, *Interpreting*, 217.

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Figures

Figure 1: *Har Hasetim, Gladwyne, Pennsylvania*, 2016.

Photo by Daniel Gorman Jr.

Figure 2: *Benjamin Schurr’s headstone*. Photo by Daniel Gorman Jr.

Figure 3: *Soto Segura and Gorman’s combined maps, showing locations of Synagogues and Burial Societies circa 1900*. Map plotted by the authors.

Figure 4: *The location of Har Hasetim and Har Jehuda, in relation to Jewish synagogues and benevolent societies in Philadelphia*. Map plotted by the authors.

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'Breeding Ground for Terrorism:' Constitutional Aspects of the Northern Ireland Peace Process, 1993-8

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Abstract: The Northern Ireland peace process is one of the few models for conflict resolution to have produced a demonstrable reduction in paramilitary activity by restructuring society to allow for genuine participation by their political associates. Several scholars have attempted to discern how the developments that occurred during this period convinced loyalist and republican paramilitaries to make previously unimaginable compromises and enter into nonviolent constitutional politics. This article is a departure from previous theories because it focuses on the activities of the Irish and British governments and their acceptance of the fundamental principles of unionist consent and national self-determination. They enshrined these principles into their respective constitutions, demonstrating to Northern Ireland's warring communities that they had effectively renounced their traditional positions in the conflict and indicated that the constitutional future of Northern Ireland would be determined by its people alone. It examines the interplay between the governments' activities and the loyalist and republican responses, and finally argues that it was these unique constitutional changes that occurred in the 1990s that enticed the republican and loyalist paramilitaries to end their armed campaigns and to support the political settlement enshrined within the Good Friday Agreement.

The 1990s Northern Ireland peace process is important to historians and scholars of international relations because it is one of the few conflict resolution models to have delivered a sustained and lasting peace. This phenomenon is usually explained within the context of the broader regional and international developments occurring within and without Northern Ireland. This article offers a new way to understand the peace process by explaining its relative success through the historical prisms that both paramilitaries used to conceptualise the conflict.¹ It concludes

¹ This article uses the terms 'unionist,' 'loyalist,' 'nationalist,' and 'republican' extensively. Unionism is one of two dominant traditions in Northern Ireland which is held mostly (though not exclusively) by the country's Protestant community and which strives to maintain Northern Ireland's status as a member of the United Kingdom. Nationalism is the other dominant tradition. It is held mostly (though not exclusively) by

that the Good Friday Agreement was ultimately acceptable to republicans and loyalists alike because it established a revolutionary constitutional relationship between Britain, Northern Ireland, and the Republic of Ireland. This newly crafted relationship was designed explicitly to alleviate the fundamental grievances that were rooted in their competing conceptions of history and practically eliminated the justification for their armed campaigns.

The theories that scholars have used to explain the Northern Ireland peace process generally fall under three broad categories. European integration redefined traditional conceptions of national identity and sovereignty which made republican and loyalist aspirations irrelevant.² The end of the Cold War indirectly altered the relationship between Britain and Northern Ireland which allowed for a sufficient degree of compromise.³ Changes that occurred within Northern Ireland in the 1980s allowed loyalist and (especially) republican political parties to emerge which necessarily made compromise more likely.⁴ While these theories do help to explain the changing social and political environment which created the conditions that were conducive to peace, they fail to fully explain the broader political transformation because they provide little insight into the internal processes that republicanism and loyalism underwent between 1993 and 1998 in order to end the violence.

The nexus of the peace process centred on three main issues: (1) executive power-sharing between nationalists and unionists; (2) "all-island" institutions in which both Northern Ireland and the Republic of

the Catholic community and seeks to unite Northern Ireland with the Republic of Ireland. Loyalism and republicanism are subsets of unionism and nationalism, respectively. Both are more closely associated with the working-classes and are characterized by a greater propensity for violence. For that reason, the use of the terms 'loyalist' and 'republican' will refer to the more radical tendencies of the broader traditions, while 'unionist' and 'nationalist' will refer to the traditions themselves.

² Jonathan Stevenson, "Peace in Northern Ireland: Why Now?" *Foreign Policy*, no. 112 (Autumn, 1998): 41-2; Clodagh Harris, "Anglo-Irish Elite Cooperation and the Peace Process: The Impact of the EEC/EU," *Irish Studies in International Affairs* 12 (2001): 209.

³ Oliver Ramsbotham, Tom Woodhouse, and Hugh Miall, *Contemporary Conflict Resolution* (Cambridge: Polity Press, 2011), 178; Michael Cox, "Bringing in the 'International': The IRA Ceasefire and the End of the Cold War," *International Affairs (Royal Institute of International Affairs 1944-)* 73, no. 4 (1997): 676.

⁴ Eileen Connolly and John Doyle, "Ripe moments for Exiting Political Violence: an Analysis of the Northern Ireland Case," *Irish Studies in International Affairs* 26 (2015): 147-62; Jonathan Tonge, Peter Shirlow and James McAuley, "Why Did the Guns Fall Silent? How Interplay, Not Stalemate, Explains the Northern Ireland Peace Process," *Irish Political Studies* 26, no. 1 (2011): 8.

Ireland would participate; and (3) the relationship between the United Kingdom and the Republic of Ireland. These issues were negotiated to varying degrees throughout the twentieth century, but participation was always exclusive to the national governments and constitutional parties, meaning the particular viewpoints of loyalists and republicans were not permitted to affect any outcome. This was especially problematic during the conflict years when the constitutional actors attempted to forge peace settlements without the leaders of the armed campaigns, virtually ensuring their failure. By the early 1990s, however, several officials accepted that the success of the peace process depended upon meaningful participation from republicans and loyalists.

Paramilitary participation by itself, however, was insufficient to seal the agreement's success. It is critical to remember that the republican and loyalist leaderships justified their campaigns within the context of their respective notions of history, identity, and conflict, all of which were sustained and reinforced by the policy positions of both the Irish and British governments. This is one of the core assumptions of this article. The governments' constitutional positions *vis-à-vis* Northern Ireland were themselves rooted in the same nationalist and unionist conceptions of history which, consequently, caused the paramilitaries to deeply distrust and misconstrue their intentions, providing the primary justification for their armed campaigns. Unionists feared that the Republic of Ireland was bent on conquering Northern Ireland and forcing its Protestant community into a united Ireland unwillingly, whereas republicans believed that Britain would never willingly concede a united Ireland outside of military force. These two attitudes were mutually exclusive, but the constitutional changes that occurred between 1993 and 1998 redefined the broader framework in a way that challenged these traditional assumptions and effectively undermined the justifications for the armed campaigns. This allowed both republican and loyalist paramilitaries to accept a political settlement for the first time. The final peace agreement was therefore successful compared to prior attempts at peace because it was the first to meaningfully address the deeper concerns of the communities.

This article will begin with an historical overview of the nationalist and unionist conceptions of the conflict in order to isolate the principal grievances of each community and to construct a more holistic understanding of the motivations for the armed campaigns. It will then place these conceptions into the established historical narrative of the 1990s. It will explain that the paramilitaries' acceptance of key documents, namely, the 1993 Downing Street Declaration and the 1998

Good Friday Agreement, and the unprecedented compromises they made therein were possible only because the documents themselves radically reoriented the broader constitutional framework. This allowed them to pursue their objectives by nonviolent means. It will conclude with a short discussion of the agreement's inherent weaknesses. The shortcomings of the agreement stem from its inability to definitively resolve the fundamental disagreement between the two communities, thus ensuring the constitutional question will remain open to future generations.

Historical Conceptions of Conflict

Nationalist Conception

In the nationalist conception, the conflict was the latest iteration in a centuries-long series of armed insurrections by the oppressed Irish people against the tyrannical British Empire.⁵ While nationalists generally regard the Anglo-Norman invasion in the late 1160s as the date at which English rule in Ireland began, events that occurred in the late sixteenth and seventeenth centuries defined the fundamental principles of Irish nationalism to the present day. The political, religious, and social upheaval generated by the Reformation in the mid-sixteenth century helped prompt King Henry VIII to initiate a campaign to restore the Crown's eroded authority in Ireland. Foreign interventions from Catholic Spain and hostile papal decrees against Queen Elizabeth I⁶ in the latter half of the sixteenth century placed a series of relatively small-scale Irish insurrections into the context of the seismic Reformationist power struggle engulfing all of Europe during that period.⁷ The outcome was the promulgation of a series of strict measures designed to thwart and eliminate Catholicism from Ireland. These measures accelerated the final destruction of the Gaelic social order, replaced the native Catholic elite with a foreign Protestant one, and produced the images of the displaced,

⁵ See: Richard English, *Irish Freedom: The History of Nationalism in Ireland* (London: Macmillan Ltd., 2006).

⁶ In 1570, Pope Pius V issued Papal Bull *Regnans in Excelsis* which freed all Catholics in the British Isles from their obedience to Queen Elizabeth I, and threatened them with excommunication if they did not actively resist her rule. See: Pius V, "Regnans in Excelsis: Excommunicating Elizabeth I of England," February 25, 1570, Papal Encyclicals Online.

⁷ See: John McGurk, *The Elizabethan conquest of Ireland: the 1590s crisis* (Manchester: Manchester University Press, 1997).

oppressed, and persecuted Irish Catholic majority which pervaded nationalist ethos throughout the modern period.⁸

The principal objective of each of the uprisings after 1603 (including the conflict under review) was the restoration of the ascendancy of the Irish Catholic people and the removal of the English/British presence from Ireland. In most of these campaigns, however, liberal Protestants played leading roles, demonstrating that nationalism was never as rigidly sectarian as contemporary republicans often portrayed it. The partition of Ireland in the 1920s added a novel dimension to the conflict by creating new majorities and minorities inside two new nation-states, but it did little to change nationalism's fundamental understanding that the conflict was an anticolonial struggle between the Irish people and the British state. This rigid historical conception necessarily excluded any constructive role for unionists. Republicans routinely employed this interpretation to disregard unionists as minor pieces in Britain's broader imperial strategy. They argued that a complete British withdrawal would "free unionists from their historic laager mentality" and facilitate their assimilation into the wider Irish nation.⁹ Not only did this grossly disregard Protestant unionists' distinct but real historical experiences in Ireland, but it also ignored genuine contemporary concerns. The republican view was wholly unsupported by constitutional nationalists in both the Republic and in the rival Social Democratic and Labour Party (SDLP), but it formed the basis of Sinn Fein's argument that unionists could not be permitted to use consent to inhibit the right of the Irish people as a whole to national self-determination.

The principle of self-determination was popularised only in the early twentieth century, but its *theoretical* application to the Irish case is evident in all preceding political movements on the island. During the civil wars of the mid-seventeenth century, an alliance of Anglo-Norman and Irish Catholic nobles established a civil administration in an attempt to create a "united Ireland" free from English rule which would promote and serve Catholic interests.¹⁰ Jacobitism formed an integral part of Irish Catholic politics after 1688, and it was similarly premised on the belief that a Catholic monarch best represented the interests of a Catholic

⁸ See: Marianne Elliott, *The Catholics of Ulster: A History* (London: The Penguin Press, 2000).

⁹ "A Scenario for Peace," Sinn Fein, November 1989, <https://www.sinnfein.ie/contents/15210>.

¹⁰ Mark Kishlansky, *A Monarchy Transformed: Britain, 1603-1714* (London: The Penguin Press: 1996), 197.

people.¹¹ Daniel O'Connell's Repeal and Charles Stewart Parnell's Home Rule movements in the nineteenth century were both based on the belief that a national government in Ireland ought to serve the majority of the Irish people alone.¹² The means, principles, and even the objectives of each of the preceding movements differed widely, and modern republicanism likewise offered a dramatically different approach to the issue of Irish sovereignty. Nonetheless, the fundamental notion that the Irish Catholic people had to gain (some form of) independence from Britain, and that the majority of the people of the entire island of Ireland had a right to determine its political future are consistent themes linking each of these movements together. The right of self-determination subsequently formed the core of both Sinn Fein and the SDLP's political demands throughout the duration of the peace process.

Unionist Conception

The unionist conception of the conflict is based on a distinct understanding of the Protestant historical experience and its unique place inside modern Ireland. Unionists claim descent from the Scottish and English Protestant settlers who arrived in Ulster in the early seventeenth century. In their view, the plantations marked the arrival of civilisation, democracy, and enlightenment in an otherwise heathen and barbaric land.¹³ The relationship between settlers and natives during the first few decades after the plantations was mostly cooperative, and a degree of intermarriage and intercultural exchange did occur.¹⁴ These burgeoning intercommunal relationships, however, were unable to withstand the social and political upheaval caused by the English civil wars in the 1640s. Protestant settlers—whose pattern of settlement never stretched beyond a few medium-sized pockets in north-eastern Ireland—sustained a wave of concerted attacks against their communities from local Gaelic Catholics, many of them seeking to reclaim lost land and property. Conflict in seventeenth century Ireland was no doubt fuelled in part by the grisly religious wars occurring in Europe at the same time which provided a regular litany of stories of the atrocities committed by the other, all of which helped to entrench sectarian suspicions and hatreds.

¹¹ Jacqueline Riding, *Jacobites* (London: Bloomsbury, 2016), 106.

¹² See: *A New History of Ireland: Ireland Under the Union, 1801-70*, ed. W.E. Vaughan (Oxford: Clarendon Press, 1989); W.E. Vaughan, ed., *A New History of Ireland: Ireland Under the Union, 1870-1921* (Oxford: Clarendon Press, 1996).

¹³ See: Jonathan Bardon, *The Plantation of Ulster* (Dublin: Gill & Macmillan, 2011).

¹⁴ Elliott, *The Catholics of Ulster*, 100-1.

Marianne Elliot argues that the Protestant experience during the civil wars was the seminal moment in the formation of the modern unionist identity in Northern Ireland. “The events of 1641 firmly implanted this notion of Catholicism as a dangerous political system and as such underpinned [British] state policy for almost two centuries and Ulster Protestant perceptions for even longer.”¹⁵ It instilled the notions that Protestants constituted a small minority in a largely foreign and hostile land, that Irish Catholics posed an inherent threat to their security, and that their survival depended on constant organisation and defence. The modern unionist understanding of the conflict was based in this image of the embattled Protestant defending himself against a much larger enemy. It was born in the violent inception of Irish Protestantism in the seventeenth century and resuscitated in later centuries during periods of heightened sectarian tension. This happened especially in opposition to political movements and armed insurrections whose intended outcome was an independent Irish state in which Catholics would necessarily dominate. The great majority of Catholics during most of these events sought only structural reform and not social revolution, indicating that the perceived threat to Protestants was often overblown and needlessly sectarian. Nonetheless, unionist fears and suspicions persisted, and despite the establishment of a devolved local administration in Northern Ireland in which Protestants formed a majority, northern unionists remained insecure about the possibility of a future in which Northern Ireland was subsumed into the far larger Republic.

While the use of the term ‘consent’ to characterise unionist aspirations dates only to the middle of the twentieth century, it has been a *de facto* element in this community’s opposition to several Catholic-dominated social and political movements dating to at least the late eighteenth century.¹⁶ The Orange Order’s opposition to the United Irishmen in the 1790s, the campaigns against Home Rule in the late nineteenth and early twentieth centuries, and the organised opposition throughout the recent conflict were each underpinned by the notion that Protestant unionists did not consent to constitutional change that would

¹⁵ *Ibid.*, 105.

¹⁶ For a detailed analysis of loyalist activity in the decades pre- and post-1798 uprising, see: Allen Blackstock, *Loyalism in Ireland, 1789-1829* (Woodbridge, United Kingdom: The Boydell Press, 1988).

end with their absorption inside an independent Ireland.¹⁷ Like nationalism, the means, objectives, and motivations of these campaigns have changed considerably over time, but the fundamental concept that the consent of unionists was an essential condition for political change has remained the same. Unsurprisingly, the affirmation of the principle of consent by both the British and Irish governments was the central demand of all unionist parties and paramilitaries during the peace process.

Ceasefires

Although efforts towards ceasefire began in the early 1970s, the most decisive step forward was the landmark Downing Street Declaration (DSD) issued in December 1993. The DSD was a joint statement made by the Irish and British prime ministers that outlined the principles on which all-party negotiations would proceed. The main purpose of the document, however, was to provide guarantees to the paramilitaries (based on discussions between their representatives and the governments) that were designed to convince them that a nonviolent, constitutional path to their objectives existed.¹⁸ These directly addressed the issues described in the previous section; Irish Taoiseach (prime minister) Albert Reynolds explicitly and unequivocally committed Dublin to the principle of unionist consent, and British Prime Minister John Major affirmed London's acceptance of the Irish people's right to self-determination. In the long-term, the DSD set the foundation on which wide-scale constitutional change could be considered, negotiated, and ultimately implemented, paving the way for a lasting and durable peace settlement. In the short-term, the political terms outlined in the DSD offered a potentially revolutionary route to the realisation of the paramilitaries' political objectives by nonviolent means.

Republican Ceasefire

Republicans' initial reactions to the DSD were characteristically unenthusiastic. One republican veteran stated gloomily that "there is just nothing in the document that would allow [Sinn Fein president] Gerry Adams to go to the IRA and persuade them to lay down their arms or call

¹⁷ For a detailed analysis of the history of unionism since the 1798 rebellion, see: D. George Boyce and Alan O'Day, ed., *Defenders of the Union: A survey of British and Irish unionism since 1801* (London: Routledge, 2001).

¹⁸ "Joint Declaration on Peace: The Downing Street Declaration," December 15, 1993, CAIN Web Service.

a ceasefire.”¹⁹ Begoña Aretxaga touches on this broad sense of unease in her book *Shattering Silence: Women, Nationalism, and Political Subjectivity in Northern Ireland*. Living in Belfast at the time of the ceasefire, Aretxaga phoned a local republican feminist after the Irish Republican Army (IRA) announcement. “There is no peace yet,’ she said, ‘only deals being made by male politicians behind closed doors; it’s all very confusing.’ [She] was critical of the fact that a decision so profoundly affecting the lives of everybody in Northern Ireland had been made so unilaterally.”²⁰ The document was nonetheless significant because it was the first time the British government explicitly guaranteed the right to self-determination to the entire population of Ireland.²¹ This was the critical concession for the leadership, and despite some republicans’ unenthusiastic initial reactions, it chose to study the document at length before issuing an official response.²²

Sinn Fein stalled for several months after the publication of the DSD. It took until July 1994 for delegates to gather at a special party conference in Letterkenny, County Donegal, in order to debate the contents of the DSD in full and to produce an official statement. The IRA pre-empted the Letterkenny conference with its own statement, indicating that it had “adopted a positive and flexible attitude to developments in the peace process” and that “this remains our position.”²³ IRA statements on peace were often derided as contradictory, but this one was a positive contribution because it both foreshadowed and permitted a relatively open deliberation at Letterkenny. In the motion which contained Sinn Fein’s response, party delegates “willingly acknowledged” that “the British government for the first time in such direct terms addresses...the right of the people of the island of Ireland alone to exercise our right to self-determination.”²⁴ This statement was crucial because republicans traditionally justified the armed struggle partly on the basis that Britain would always deny the

¹⁹ “Peace blueprint challenge to IRA,” *Irish News*, December 16, 1993.

²⁰ Begoña Aretxaga, *Shattering Silence: Women, Nationalism, and Political Subjectivity in Northern Ireland* (Princeton: Princeton University Press, 1997), 3.

²¹ “Declaration Was Stage in the Process—Now Time to Advance,” *An Phoblacht*, July 28, 1994.

²² “Party members ‘disappointed’ over contents of document,” *Irish News*, December 16, 1993.

²³ “IRA comments on weekend conference,” *An Phoblacht*, July 21, 1994.

²⁴ “Declaration Was Stage in the Process,” *An Phoblacht*, July 28, 1994.

Irish people a political path to their objectives.²⁵ They argued that armed force was therefore the only available option because they could only hope to affect unification by dictating peace terms to a vanquished British state. But by stating explicitly that it would no longer block unification if that was the genuinely expressed wish of the whole Irish people, the British government effectively indicated that a nonviolent, political route to republican objectives was now open. This caused huge sections of both the leadership and grassroots levels of the republican movement to doubt whether armed struggle was still a necessary part of their strategy.

Debates surrounding the use of armed force versus political participation have had profound impacts on republicanism since its beginning. Provisional republicanism was similarly affected by this central dispute, though when the Provisional IRA emerged in 1969, political participation was practically non-existent next to the predominance of the armed struggle. Prior to the outbreak of violence, however, the leadership of the IRA was moving the organization into constitutional politics. Both Protestant and Catholic grassroots political energies were primarily directed into a nonviolent civil rights movement that sought to undo a series of deep social, political, and economic inequalities that barred Catholic nationalists from Northern Irish public life. The shift from constitutionalism to paramilitarism was due in large part to the combined British and loyalist backlash against the civil rights movement during the 1968-72 period which seemed to affirm the republican belief that Britain would never willingly concede social reform to Northern Ireland's Catholic community.²⁶ The movement was unshakeably committed to armed struggle for the first decade of the conflict, but as the campaign settled into a gruelling war of attrition by the end of the 1970s, a growing cohort of republicans became convinced that armed force alone was insufficient to achieve their objectives.²⁷ The energy and sympathy generated by the 1980-1 hunger strikes caused a substantial re-evaluation of the potential for electoral politics, providing the political wing with an opportunity to begin shifting the movement's

²⁵ See: "Towards A Lasting Peace in Ireland," Sinn Fein, October 1994 <https://www.sinnfein.ie/contents/15212>; "A Scenario for Peace," Sinn Fein, November 1989, <https://www.sinnfein.ie/contents/15210>.

²⁶ Although backlash against civil rights demonstrations was usually spearheaded by loyalist mobs, members of the security forces were often implicated in beatings, shootings, and killings.

²⁷ Malachi O'Doherty, *Gerry Adams* (London: Faber & Faber Ltd., 2017), 169-70.

emphasis away from armed struggle and towards political participation.²⁸ Despite the empowerment of Sinn Fein within the movement and the legitimisation of its political programme, the military wing remained committed to violence, permitting certain compromises only under the guarantee that armed struggle would remain an integral part of the republican strategy. In private, the political wing understood that the armed campaign would eventually have to end if Sinn Fein was to grow into a mass-based political movement, though it knew several rounds of introspection had to occur first in order to convince the wider movement that electoral politics was more likely to deliver Irish unity and that the armed struggle was no longer necessary.²⁹

It took well into the 1980s for mainstream politicians in Dublin and London to recognise that an opportunity for peace existed if they could empower the emergent Sinn Fein, marginalise the military wing, and ultimately force the IRA to end its campaign. Through secret back-channel discussions with Sinn Fein and more open discussions with the Irish government and the SDLP, the British government eventually accepted that the republican leadership could convince the rank-and-file to adopt a strictly political strategy if they had clear assurances that a nonviolent path to independence existed.³⁰ These changes are what ultimately caused John Major to commit the British government to the right to self-determination in the DSD.³¹

Official security assessments attained by journalist Brian Rowan provide insight into the internal debates surrounding these issues. He wrote that the grassroots were especially apprehensive about ending the armed campaign because they felt that “war was all Britain understood.” The leadership counteracted this view on two main points: more could be achieved through the unarmed approach, and that the IRA would remain intact, thus ensuring that the armed struggle would continue to form a central part of the broader campaign.³² Considering Rowan’s observations together with the outcome of the Letterkenny conference, it is argued here that the political wing effectively convinced the republican rank-and-file about the merits of a ceasefire based on the notion that the

²⁸ Brian Feeney, *Sinn Fein: A Hundred Turbulent Years* (Dublin: The O’Brien Press, 2002), 292-333.

²⁹ Tommy McKearney, *The Provisional IRA: From Insurrection to Parliament* (London: Pluto Press, 2011), 179.

³⁰ KP Bloomfield to Northern Ireland Office, “British ‘neutrality,’” October 7, 1988.

³¹ John Major, *The Autobiography* (London: HarperCollins Publishers, 1999), 441-2.

³² Brian Rowan, *Behind the Lines: The Story of the IRA and Loyalist Ceasefires* (Belfast: The Blackstaff Press, 1995), 85.

DSD's guarantee of self-determination provided a genuine political path wherein republicans could achieve their objectives through nonviolent means. Furthermore, the maintenance of the IRA's military capabilities was intended to appease the military wing and to demonstrate more broadly that the acceptance of political terms was not the end of the struggle, and that the leadership would continue to pursue unification beyond the peace settlement.

This final point is significant because the 'no surrender' mentality had always been a central plank of republicanism, and even when defeat was unavoidable after previous campaigns, the IRA had always rejected political terms, thus ensuring that the armed struggle could resume later.³³ It was crucial for the political wing to convince the republican base that the route down which it led them was not the end of the struggle but rather the beginning of a new phase. This meant reassuring them that the acceptance of political terms did not amount to defeat or surrender, and that the achievement of the right to self-determination was a means to their long-established ends, rather than an end in itself. Therefore, Rowan's conclusion that "republicans had not suddenly come to believe that violence was morally wrong but that the debate within the movement had been won on the argument that 'more could be gained along an unarmed path'" must be qualified.³⁴ It is certainly true that republicans had warmed to the idea of nonviolent politics considerably after the DSD. However, they were ultimately convinced of this strategy both on the basis that constitutionalism was more effective in the new political climate, *and* that the acceptance of peace terms simply marked the end of the armed struggle and the beginning of a political one whose goals were essentially the same. This was the substance of the argument the political wing employed to deliver the ceasefire in August 1994.

Loyalist Ceasefire

Loyalists held a joint conference in January 1994 shortly after the publication of the DSD in order to determine a unified response to its contents. Around twenty to thirty individuals representing the two dominant forces within loyalism—the Ulster Defence Association (UDA)/Ulster Democratic Party (UDP) and the Ulster Volunteer Force (UVF)/Progressive Unionist Party (PUP)—met privately at a hotel on

³³ Tim Pat Coogan, *The IRA* (Dublin: HarperCollins, 2000).

³⁴ Brian Rowan, *Behind the Lines: The Story of the IRA and Loyalist Ceasefires* (Belfast: The Blackstaff Press, 1995), 85.

Park Avenue in Belfast.³⁵ Despite some reservations from the paramilitary leaderships of both the UDA and UVF, loyalists collectively affirmed the DSD as a basis for further negotiation. David Ervine, a leading political figure in the PUP, noted the importance of this decision, saying, “that conference was a way of lifting a barrier that allowed the political process proper to take off. If we hadn’t got past that base, we were going nowhere.”³⁶ Shortly thereafter, the Combined Loyalist Military Command (CLMC)—an umbrella organisation consisting of the leaderships of the major paramilitaries—issued a statement indicating its willingness to consider a ceasefire and, perhaps more importantly, recognising the legitimacy of the pursuit of a united Ireland by peaceful and democratic means.³⁷ These developments were noted positively by officials in Dublin and London, and were a clear indication that loyalists were moving towards compromise.

Despite these positive signals, the CLMC officially declared that “we cannot have a definitive response to an indefinite document (sic)” and chose instead to adopt a “wait-and-see” approach.³⁸ The CLMC’s next public statement of significance came just over a week after the announcement of the IRA ceasefire in August 1994. Unconvinced by the sincerity of the ceasefire and fearful of British duplicity, it published a list of six immediate concerns that, if addressed satisfactorily, would allow it to “make a meaningful contribution towards peace”—a hint towards its own ceasefire.³⁹ Although the statement devoted a substantial degree of space to questioning the “bona fides” of the IRA ceasefire, its primary purpose was to articulate the suspicions inherent to the fundamental nature of loyalism itself.⁴⁰ It demanded explicit assurances from the Irish government that it would recognise the principle of consent as well as Northern Ireland’s right to exist, and that the British government would not strike a secret deal with the IRA to secure its ceasefire.

The fear of British duplicity is a core part of the loyalist psyche and has deep historical roots in the unionist experience. Although the term ‘loyalist’ presumes abject loyalty to the whole British state, they

³⁵ Henry Sinnerton, *David Ervine: Uncharted Waters* (Dingle: Brandon Press, 2002), 152-3.

³⁶ *Ibid.*, 155.

³⁷ *Ibid.*, 156.

³⁸ Suzanne Breen, “Loyalists adopt a wait-and-see attitude,” *The Irish Times*, January 26, 1994.

³⁹ “Loyalists outline ceasefire terms,” *Belfast Telegraph*, September 9, 1994.

⁴⁰ *Ibid.*

consider themselves loyal only to Crown and country. As such, they regard their allegiance to the government and its apparatus (including the security forces) as conditional. Indeed, as part of their oath to the staunchly loyalist and hugely influential Orange Order, members swear to defend “the King and his heirs *so long as he or they support the Protestant Ascendancy* [emphasis added].”⁴¹ This explicit statement of conditionality indicates that allegiance to the state is dependant solely upon its willingness to defend the unionist community. The gap between unionism and the state underlaid unionist-led opposition to several state-led proposals throughout the twentieth century. Unionist opposition to Home Rule (1913), the Sunningdale Agreement (1973), and the Anglo-Irish Agreement (1985) was motivated both by the fear that the Irish government was preparing for conquest *and* that the British government had abandoned northern Protestants. On at least one occasion, unionists in the British Army refused to follow orders if they would be forced to use arms to coerce Northern Ireland into a political settlement to which it did not consent.⁴² Loyalist paramilitaries also often fought British security forces as viciously as they did their republican enemies. Loyalists were nearly as concerned about British duplicity as they were Irish irredentism, meaning the principle of consent applied equally to the British government as it did the Irish.

The effort to address loyalist concerns was spearheaded by the British side and began only a day after the publication of the CLMC statement. Archbishop Robin Eames, a trusted figure in the northern Protestant community with close contacts in both governments, conducted a press conference at St. Anne’s Cathedral in Belfast. He told reporters that he had received personal guarantees from John Major that there was no secret agreement between London and the IRA, and urged loyalists that “there is more to be gained in the political sense through

⁴¹ “Supplement to the Evidence of Lieutenant Colonel Verner and Reverend Holt Waring,” in *Selection of Reports and Papers of the House of Commons: State of Ireland; Volume 7* (London: 1836), 344.

⁴² In late 1913, unionists based in what is now Northern Ireland formed the paramilitary Ulster Volunteers to prevent the British Parliament from establishing an independent parliament for Ireland (which would be dominated by Catholics). As their numbers and activity expanded, the British Cabinet contemplated using military force against them, but several junior-level officers (mostly with Irish Protestant leanings) stationed in Ireland threatened to resign their posts rather than use arms against their countrymen. The Home Rule Bill was later postponed, further antagonizing relations between nationalists and unionists. See: A.T.Q. Stewart, *The Ulster Crisis: Resistance to Home Rule, 1912-14* (London: Faber & Faber, 1969).

dialogue than will ever be gained through the barrel of a gun.”⁴³ In a subsequent interview with Rowan, Eames recalled that the main purpose of this press conference was to relay to loyalist leaders what he considered the real intentions of the British government. As a leading member of the Anglican Church and a highly trusted figure among Protestants, loyalists were more disposed to assurances from Eames than from government officials directly. By stating effectively that he could confirm London’s commitments in the DSD, the hard-line loyalist sense of mistrust and opposition began to soften. One loyalist recalled later that “we were of the view that John Major wouldn’t lie to him. We then had to make a decision, do we accept it or not? And in the end we accepted it.”⁴⁴

Of course, the ultimate decision to accept the British government’s guarantee of unionist consent lay with the leadership. In late September 1994, representatives of the government’s Northern Ireland Office (NIO) met secretly with UDP leader Gary McMichael, PUP Alderman Hugh Smyth, and leading members of the UDA (acting primarily on behalf of the CLMC) to discuss loyalist concerns at length.⁴⁵ These meetings were requested at the behest of the NIO in direct response to the 8 September statement and were geared specifically towards addressing the six points articulated in its text. The civil servants warned that they could not guarantee the “permanency of the IRA ceasefire,” but they did give an “iron-clad guarantee that only the people of Northern Ireland could change the constitutional position” of the country and, importantly, that “there had been no secret deals done between HMG [Her Majesty’s Government] and Sinn Fein/IRA.”⁴⁶ Whereas Eames’s public statement helped assuage the fears of the loyalist rank-and-file, these private discussions were meant to secure wavering opinion at leadership level. Understandably, the loyalist leadership was in no position to guarantee a ceasefire to British officials at that time, but they continued to reinforce these points through public statements and private meetings for the remainder of September and into early October.

In addition to the British government, the Republic’s role as IRA *provocateur* in the unionist conception meant that the Irish government had a clear responsibility to guarantee its own commitment to unionist

⁴³ Desmond McCartan and Mark Simpson, “Loyalists need time,” *Belfast Telegraph*, September 9, 1994.; Rowan, *Behind the Lines*, 117.

⁴⁴ Rowan, *Behind the Lines*, 137.

⁴⁵ *Ibid.*, 117-8.

⁴⁶ *Ibid.*

consent. Taoiseach Albert Reynolds met secretly with PUP leaders Gusty Spence and David Ervine in September 1994 in order to convince them of its commitment to the terms outlined in the DSD.⁴⁷ Although the specific details of this meeting are not known, contemporary evidence makes it clear that Reynolds based his plea on explicit assurances that it would not force Northern Ireland into unification without the consent of its population.⁴⁸ Ervine left convinced that the Irish government's position was sincere, and although Dublin's direct contact with loyalists was markedly less extensive than London's, this meeting combined with the British government's simultaneous efforts to ensure the loyalist leadership that, indeed, the terms outlined in the Downing Street Declaration were genuine. The Irish government would not coerce Northern Ireland into constitutional change without its consent, and the British government would continue to govern the country until it was no longer the will of the majority. The leadership worked to convince the loyalist base of these terms, leading ultimately to the CLMC's "universal" ceasefire on 13 October 1994.⁴⁹

Good Friday Agreement and Aftermath

The Good Friday Agreement (GFA) was the exhaustive peace settlement that established the new political arrangements, but in order for it to have any effect, the paramilitary parties demanded that the DSD's guarantees of consent and self-determination be enshrined into constitutional law. For nationalists, that meant the British government renouncing its right to rule Northern Ireland and providing a constitutionally-sanctioned path to Irish unification. When the GFA was finally signed on 10 April 1998, the British government agreed to repeal sections of the Government of Ireland Act 1920 entirely,⁵⁰ declaring that "this Act shall have effect notwithstanding any other previous enactment" and, importantly, that "if the wish expressed by a majority [of the population] is that Northern

⁴⁷ Albert Reynolds, *My Autobiography* (London: Transworld Ireland, 2009), 369-70.

⁴⁸ Sinnerton, *David Ervine*, 167.

⁴⁹ "Loyalist Statement," *The Irish Times*, October 14, 1994.

⁵⁰ The Government of Ireland Act 1920 was passed by the British Parliament during the Irish War of Independence as a compromise between nationalists and unionists. It created two new devolved administrations within the United Kingdom, Northern Ireland and Southern Ireland. Although Southern Ireland never functioned (and was formally abolished with the creation of the independent Irish Free State), the Act itself was viewed by nationalists throughout the twentieth century as the legal basis for partition and the British government's continued presence in Ireland. See: "Extracts from the Government of Ireland Act, 23 December 1920," *The Constitution of Northern Ireland* (Belfast: Her Majesty's Stationery Office, 1956), CAIN Web Service.

Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State [of Northern Ireland] shall lay before Parliament such proposals to give effect to that wish.”⁵¹

Sinn Fein endorsed the GFA to its supporters based on its view that the British government’s commitments to constitutional change had the net effect of weakening the union between Britain and Northern Ireland.⁵² While addressing a special party conference in April 1998, Martin McGuinness declared that “the Union has undoubtedly been weakened” because “we...got the repeal of the Government of Ireland Act which underpinned [it].”⁵³ Perhaps more importantly, he also noted that “the life of the Union [is limited] to the will of a majority in the Northern state,” a fact which legitimised their aspirations in both fact and law.⁵⁴ Still, McGuinness was careful to remind the republican base that the island remained divided and that their struggle was only entering a new phase, paralleling the argument used in 1994 to deliver the ceasefire. From the leadership’s perspective, then, the fundamental nature of the conflict remained unchanged, but the relationship between Britain and Ireland had undergone a sufficient degree of modification to allow republicans to enter strictly into constitutional politics.

After it was signed, the agreement was put to a referendum before the populations of both parts of Ireland, separately. SDLP leader John Hume argued that this dual-referenda formula met republican demands that Irish sovereignty could only be exercised by the entirety of the island’s population.⁵⁵ Unsurprisingly, the republican leadership did not agree with Hume’s interpretation, insisting that only the Irish people *as a unit* could determine its future. The IRA warned in a statement preceding the vote that “the two imminent referenda do not constitute the exercise of national self-determination,”⁵⁶ and Sinn Fein followed shortly thereafter with a motion at a special party conference that was a restatement of the IRA position almost verbatim.⁵⁷ Although the republican leadership probably genuinely believed that these terms were inconsistent with the right to self-determination, its endorsement of the

⁵¹ “The Agreement: Agreement reached in the multi-party negotiations,” April 10, 1998, CAIN Web Service.

⁵² “‘Widespread Concern’ over Articles 2 and 3,” *An Phoblacht*, April 23, 1998.

⁵³ “Negotiating an agenda for change,” *An Phoblacht*, April 23, 1998.

⁵⁴ *Ibid.*

⁵⁵ John Hume, *John Hume: In His Own Words*, ed. Sean Farren (Dublin: Four Courts Press, 2018), 252.

⁵⁶ “The IRA’s response,” *An Phoblacht*, April 30, 1998.

⁵⁷ “Ard Comhairle paper to 1998 Sinn Fein Ard Fheis,” *An Phoblacht*, April 30, 1998.

GFA was a tacit indication that it agreed to accept the outcome of the votes. This did not, however, mean that its traditional view that unification was the ultimate expression of the will of the Irish people had changed, but rather that the removal of the Government of Ireland Act and the formation of a constitutional path to unification provided the means by which republicans could attain their version of self-determination politically and non-violently.

On the unionist side, the affirmation of the principle of consent required Dublin to remove its territorial claim to Northern Ireland contained in Articles 2 and 3 of its 1937 constitution.⁵⁸ Although this issue had been one of the most contentious between unionists and the Irish government for the duration of the peace process (dating to the 1970s), Dublin ultimately agreed to amend the offensive articles and remove completely the territorial claim from its constitution. Article 2, which originally declared that “the national territory consists of the whole island of Ireland,” was changed to read that “it is the entitlement and birthright of every person born in the island of Ireland...to be part of the Irish nation.”⁵⁹ Article 3, which had previously declared that the “government established by this constitution [is] to exercise jurisdiction over the whole territory [as defined by Article 2],” eliminated completely the jurisdictional claim and instead rearticulated the agreed commitments to consent and self-determination: “It is the firm wish of the Irish nation...to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people...in both jurisdictions in the island.”⁶⁰

The leaderships of both the PUP and UDP recommended the agreement to their supporters based on the absolute fact that Northern Ireland would remain a part of the United Kingdom and, crucially, that that status was now protected against the Republic by the Irish

⁵⁸ Articles 2 and 3 of the 1937 Irish Constitution established the government’s constitutional claim of right to rule the entire “national territory” of Ireland. When it was initially ratified, nationalists took issue with the articles because they saw them as a tacit recognition of Northern Ireland, though over time they came to regard them as the ultimate expression of their national aspirations. On the other side, unionists saw indisputable evidence that, at best, the Irish government shared the aspirations of the IRA, and, at worst, that it was actively working to support its campaign of violence. The removal of Articles 2 and 3 were a core demand of unionists throughout the conflict, and the Irish government’s refusal to even negotiate the text scuttled several peace initiatives.

⁵⁹ “The Agreement: Agreement reached in the multi-party negotiations.”

⁶⁰ *Ibid.*

government's official recognition. The right to self-determination was a concession to nationalists, but it was actually favourable to unionists in this context because they still comprised a clear majority of the population and a free vote on the country's future would almost certainly result in the maintenance of the union. So while nationalists might begrudgingly accept the agreement because it offered the hope that demographic change could deliver their intended outcome *in the future*, at present unionists could feel certain that their majority ensured that the constitutional status of Northern Ireland would not change. David Ervine reflected this view when he reminded the PUP base that "Northern Ireland shall remain part of the Union—as per the will of Northern Ireland" because "all of nationalism—including the Provos [Provisional IRA]—have accepted the constitutional reality of Northern Ireland within the United Kingdom."⁶¹

Gary McMichael emphasised the renunciation of the territorial claim as the main reason for his party's endorsement: "There will no longer be a constitutional imperative for a united Ireland and Articles 2 and 3 can no longer be construed by republicans as an excuse for their violence."⁶² This, he argued, "explicitly recognises Northern Ireland's status within the UK...[which] means that the Union is not only safe, but has, in fact, been strengthened."⁶³ McMichael rightly pointed out that, no matter what republicans said publicly, Sinn Féin's acceptance of the GFA meant it recognised the principle of consent and the existence of Northern Ireland itself. Although loyalists did permit several key concessions to nationalists, they did not necessarily believe this was tantamount to defeat because at the fundamental level they viewed the Irish government as their most severe threat. Indeed, several loyalists had accepted by the early 1990s that power-sharing was both necessary and desirable, but that it was unworkable if Dublin still intended to take control of Northern Ireland.⁶⁴ When the territorial claim was finally removed, loyalists felt sure not only that violence was no longer necessary, but that they could enter into a political relationship with nationalists because they now controlled the future of the country.

Conclusion

⁶¹ "The Loyalist Yes Men," *Belfast Telegraph*, May 12, 1998.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ "Common Sense: Northern Ireland – An Agreed Process," (Belfast: The Ulster Political Research Group, 1993) CAIN Web Service.

The constitutional changes undertaken by the British and Irish governments during the peace process were the defining elements that distinguished the Downing Street Declaration and the Good Friday Agreement from all previous attempts at peace. The governments' respective relationships to Northern Ireland were not only considered the source of the two communities' main grievances, but they served as the legitimating logic behind paramilitary violence. The republican campaign was premised on the notion that the British government would never willingly renounce control of Northern Ireland, and that only armed force could push it out of the country. On the other side, the loyalist campaign was premised on the notion that the Irish government aimed to subject the northern Protestant population to southern Irish Catholic rule, and that armed force was the only available means of protection. When the governments agreed to redefine their constitutional positions, they effectively renounced their claims to Northern Ireland and left its future exclusively in the hands of its communities, thereby removing themselves as directly-involved actors and undermining both paramilitaries' justifications for violence. It took a significant degree of persuasion and movement between 1993 and 1998 to convince the paramilitaries of the new realities, but both the republican and loyalist leaderships eventually accepted that they could now achieve their political objectives through nonviolent means. These changes underpinned the ceasefires in the aftermath of the Downing Street Declaration as well as the outright end of the armed campaigns after the Good Friday Agreement. Despite several setbacks since 1998, the Irish and British governments have largely accepted their new roles as facilitators of the agreement, and this has been the main factor underlying the current era of peace and reconciliation.

Although the Good Friday Agreement revolutionised the ways republicans, loyalists, and the British and Irish governments interact politically, it has failed to resolve the core disagreement because the communities remain in open competition over the constitutional status of Northern Ireland. While the *de jure* removal of the Irish and British governments as direct actors to the conflict has effectively transformed it into an internal political dispute, the essence of the conflict has remained unchanged and therefore there has been no substantive resolution of the differences between the communities. The nature of the conflict ensures that this will remain true until one community (or both) changes its aspirations, a prospect practically impossible to envision in the present political climate. The Good Friday Agreement is thus only a temporary settlement, itself containing explicit stipulations for future

constitutional change. Of course, it is possible that these changes will never occur, but that only means it will be a temporary settlement into perpetuity because the *possibility* of constitutional change is fixed. This leaves an inherent warning; although the agreement introduced a uniquely complex and accommodating political settlement which has largely been responsible for the end of wide-scale political violence, it is not a conclusive arrangement. Ultimately, it did nothing to remove the central dispute between nationalism and unionism, thereby leaving open the possibility of future conflict over the same issues, particularly if one government (or both) chooses to reclaim its traditional position *vis-à-vis* Northern Ireland and become a direct actor again.

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To New Zealand for Land: The Timber Industry, Land Law, and Māori Dispossession in Nineteenth-Century New Zealand

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Abstract: This paper analyzes the influences of the timber industry on the development of the colony of New Zealand and its land law during the nineteenth century, especially in regard to the dispossession of the indigenous Maori population from the Kauri forests of the North Island. By conducting a case study of Mangakāhia v the New Zealand Timber Company, Ltd. (1882), this paper illustrates the manner by which Maori landowners were increasingly barred from full legal status by the New Zealand courts, and how the economic and political power of the timber industry allowed the Court of Appeals to essentially dismiss Mangakāhia's case out of hand.

On 22 December 1881 the New Zealand Court of Appeals began hearings for *Mangakāhia v the New Zealand Timber Company, Limited*.¹ The Timber Company had requested a demurrer² following the objection of Hāmiora Mangakāhia to the building of a railroad across his land at Whangapoua, near Auckland on the North Island.³ According to the court records, Mangakāhia challenged the workers of the Timber Company for their alleged trespassing, and following several verbal and written warnings took legal action when they refused to leave. Mangakāhia's declaration was summarized in the trial record and described the nature of the ownership and origin of title that he held over the land in question, drawing reference from the Native Lands Act 1873. The declaration then summarized the action Mangakāhia had taken against the Timber Company before concluding with the claims of the plaintiff—£500 and an injunction against the Company.⁴ However, by the end of January the case was over. The demurrer was granted, and the Timber Company won a

¹ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 345 (1884 Vol. 2).

² Demurrer: a formal objection or appeal to a legal pleading. Jonathan Law and Elizabeth A. Martin, *A Dictionary of Law*, s.v. "demur" (Oxford, UK: Oxford University Press, 2018).

³ Note: the author possesses no knowledge of the Māori language, and therefore has used English terminology or third-party translations when available. Any resulting misinterpretations are entirely the fault of the author.

⁴ *Mangakāhia v. N.Z. Timber Co.*, 346.

surprisingly simple legal victory against the strongest Māori landholder in the region.

If the title claimed by Mangakāhia over the land was true and complied with the current law of New Zealand, then why was the demurrer allowed for the Company on 24 January 1882? *Mangakāhia v The New Zealand Timber Company* was by no means a landmark case in the legal history of New Zealand. No significant attention was drawn to the outcome by contemporary newspapers nor modern historical analysis, and it is clear from the New Zealand Law Reports that the trial itself was significantly shorter in length than many others.⁵ However, the sheer speed and efficiency of the trial demonstrated how New Zealand law had evolved from the days of first contact and early settlement, through the 1840 Treaty of Waitangi and formal colonization, to the multiple Native Lands Acts and related legislation of the late nineteenth century. This paper will argue, as shown by the statements of the Timber Company, that by the 1880s New Zealand's land law had developed in a manner which made it very easy to deny property rights to the Indigenous Māori, especially when the timber industry was involved.

For years, the understanding of land law in New Zealand developed around a debate that echoed in other common law societies—the relationship between force and law. Scholars such as Stuart Banner, in his overview of Indigenous dispossessions in the Pacific world, argued that the law was the chief engine of dispossession in New Zealand.⁶ Despite occasional conflict, initial contact between the British and the Indigenous inhabitants of New Zealand was quite favourable, and the agricultural basis of Māori society gave them a perceived legal equality with European settlers.⁷ The question of the existence of Māori title to their land was indisputable, and therefore dispossession needed to take place via the law.

This assessment was challenged by others, such as James Belich, who argued along an older vein that it was not until the Māori lost their allegedly equal standing with the British through armed conflict that true dispossession took place. Because of the primacy that modern western society has placed on the law, Belich stated it was inevitable that “the legal approach often wins out” in the debate surrounding factors of colonization. As such, other approaches are needed to appreciate the bigger picture in which colonialism and dispossession actually took place.

⁵ As compared to other cases in the NZ Law Reports, 1884.

⁶ Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Harvard University Press, 2007), *Conquest by Contract and Conquest by Land Reform*.

⁷ Banner, *Possessing the Pacific*, 60.

For example, while the 1865 creation of the New Zealand Native Land Court is often cited as a central tool of Māori dispossession, Belich noted that its opening coincided with the arrival of the first of nearly 18,000 British soldiers who fought in the New Zealand Wars of the late nineteenth century.⁸ Although it is undeniable that the influences of law and force continue to have a central role in dispossession, more recent scholarship has problematized this binary, especially in the wider discussion of Indigenous dispossession around the common law world.

In *Unmaking Native Space*, Paige Raibmon argued that the actions of individual colonists, “the microtechniques of dispossession,” played a major role in Indigenous land-takings in colonial British Columbia. While many of her specific examples remain outside the scope of this paper, her broader statements remain equally as valid in the New Zealand context as they were in North America. Raibmon argued that “breaches of the spirit and letter of colonial laws were not so much colonial anomalies as they were constituent elements of colonialism,” and therefore we must turn to other “discrete practices on the ground” to identify the ‘true’ relationship between the various factors of dispossession.⁹ Unfortunately, references to such ‘discrete practices’ are as difficult to come by in New Zealand as in British Columbia. However, although written law was as easily ignored in the New Zealand example, the dismissal of Mangakāhia’s charges against the New Zealand Timber Company showed that the spirit and letter of the law was not, in fact, breached. Instead, the Company made use of the flexible and contradictory nature of the common law to receive a favourable outcome to the hearing, working entirely within a legal framework that had evolved in a manner which aided dispossession.

Another major factor in the discussion of Māori dispossession is that of language. In 2011 Tony Ballantyne argued that the European colonial system was at its core a “culture of paper,” and the increasing primacy of the written word and the subsequent emphasis on literacy irreparably altered the medium of historical discourse in colonial New Zealand, as well as the balance of power between the colonizers and the

⁸ James Belich, “Review of *Possessing the Pacific* by Stuart Banner,” *American Historical Review* 113 No.5 (2008): 1473.

⁹ Paige Raibmon, “Unmaking Native Space: A Genealogy of Indian Policy, Settler Practice, and the Microtechniques of Dispossession,” in *The Power of Promise: Rethinking Indian Treaties in the Pacific Northwest*, ed. Alexandra Harmon (U of Washington Press, 2008), 67.

colonized.¹⁰ This was especially true in regard to written law, specifically the 1840 Treaty of Waitangi (Te Tiriti o Waitangi) and the various legislative acts which will be discussed later in further detail. The primacy of the written word was also keenly felt in the context of the Native Land Court,¹¹ which was one of the primary tools of dispossession in New Zealand from its founding in 1865. Ballantyne argued that the European foundations of evidence in the Court, the practices of “map-making, inscription, and formal archivization, that underwrote state-sponsored geographic knowledge,” inherently excluded the Māori traditions of “naming and claiming,”¹² and is therefore a very similar implicit argument to that presented by Stuart Banner in *Possessing the Pacific*. The primacy of language within the colonial system clearly disadvantaged even those Māori who had grown up within that system, as shown by Mangakāhia’s experience with the New Zealand Court of Appeals.

In recent decades the discussion of Indigenous dispossession in the common law world has expanded beyond the legislation-force dichotomy that dominated it for so long, thus making room for the much more nuanced discussion of the practices of individual settlers and Indigenous peoples, language, and the medium of history itself. While this paper will remain focused on the legislative, legal, and economic forces of dispossession, I will not be ignoring the issues brought up by Ballantyne and others. As previously mentioned, issues of language are quite prominent within the discussion of legal dispossession, whether in the context of the Treaty of Waitangi, the Native Land Courts, or elsewhere. It remains important to recognize that the works of Banner, Belich and Ballantyne are unable to provide a complete analysis of this complex subject on their own, and it remains the work of current and future scholars to continue to problematize the topic of nineteenth-century Māori dispossession. In the words of Matthew Palmer, writing on the Treaty of Waitangi, “it is time to reassess whether New Zealand wishes to clarify the meaning of the Treaty or, at least to clarify who should have the authority to clarify that meaning.”¹³ As will be shown, the question of clarity is a recurring theme in the legal history of New Zealand, from the

¹⁰ Tony Ballantyne, “Paper, Pen, and Print: The Transformation of the Kai Tahu Knowledge Order,” *Comparative Studies in Society and History* 53 no. 2 (April 2011): 236.

¹¹ As of 1954 the Māori Land Court.

¹² Ballantyne, “Paper, Pen, and Print,” 255.

¹³ Matthew Palmer, *The Treaty of Waitangi in New Zealand’s Law and Constitution* (Wellington: Victoria University Press, 2008), 18.

1840 Treaty of Waitangi, the beginnings of ‘formal’ colonization, and Mangakāhia’s legal defeat in 1882.

Despite direct reference to several pieces of mid-Victorian legislation as legal precedent, the historical context of *Mangakāhia v The New Zealand Timber Company* dates to the earliest history of colonial New Zealand. European first contact with New Zealand occurred in 1642, when Dutch explorer Abel Tasman made a brief stop on the islands. Tasman’s short visit proved quite hostile, with four of his crew and an unknown number of Māori killed, but his ‘discovery’ put New Zealand on the map for future European explorers.¹⁴ Over a century passed before the next recorded European explorer, James Cook, arrived in New Zealand in 1769. Both explorers and their crews were awestruck at what they viewed to be a very industrious civilization with relatively advanced agricultural practices compared to Indigenous peoples elsewhere.¹⁵ In addition to Māori agriculture, Cook made another observation during his time in New Zealand, one that would have long-lasting consequences—the kauri.

The kauri, or *Agathis Australis*, is a very large species of tree native to the Coromandel Peninsula of New Zealand’s North Island.¹⁶ Capable of reaching immense sizes, Cook described the kauri as providing “such masts as no country in Europe can produce.”¹⁷ However, it was many years before any official notice was taken of this observation, and it was not until the early nineteenth century that colonization and industrial development began to take off in any organized manner.¹⁸ As for timber specifically, even the Royal Navy’s ever-growing thirst for masts, spars, and other high-quality woodwork was not enough to justify sailing to the far side of the world, especially during a lengthy period of war against France.¹⁹ Despite the lengthy delay in official action by the navy on the question of New Zealand timber, small independent contractors were quick to make their mark on the fledgling trade. Although the days of even a small-scale domestic timber industry were far ahead, as the neighbouring colony of New South Wales expanded, individual ships

¹⁴ “A Brief History of New Zealand,” New Zealand Immigration, <https://www.newzealandnow.govt.nz/living-in-nz/history-government/a-brief-history> (accessed November 30 2018).

¹⁵ Banner, *Possessing the Pacific*, 48.

¹⁶ John Halkett and E.V. Sale, *The World of the Kauri* (Auckland: Reed Methuen Publishers, 1986), 1.

¹⁷ Michael Roche, *History of New Zealand Forestry* (Wellington: G.P. Books, 1990), 14.

¹⁸ E.V. Sale, *Quest for the Kauri: Forest Giants and Where to Find Them* (Wellington: A.H. and A.W. Reed, 1978), 14.

¹⁹ Robert G. Albion, *Forests and Sea Power: The Timber Problem of the Royal Navy 1652-1862* (Cambridge: Harvard University Press, 1926), 326.

came in increasing numbers to New Zealand to gather kauri. These voyages faced a rocky start, however, following one of the most infamous episodes in New Zealand's history—the *Boyd* Massacre.

In December of 1809, the merchant brig *Boyd* anchored off the northern coast of New Zealand, returning to England after delivering a load of transported convicts to Australia. In an effort to maximize profit from the trip, Captain John Thompson decided to fill his empty hold with a load of kauri spars for the trip back to England, which even by the early 1800s were renowned in Europe for their high quality. He also provided transport back to New Zealand for several Māori who were visiting Australia, including Te Ara, the son of a chief.²⁰ Specific accounts vary, ranging from refusing to work for his passage to minor theft, but regardless of the reason, Te Ara was flogged by the captain during the voyage. Te Ara desired revenge and directed Captain Thompson to land for kauri near the home of his tribe, whom he rallied to his defence. The captain and several of his officers and men disembarked to search for suitable wood with assistance from the local Māori, but when they attempted to turn back due to “fears of increasing Māori anger,”²¹ they were slaughtered by the Māori, who then took their clothing, returned to the ship, and killed the majority of the crew and passengers. The reports of the five survivors and physical evidence suggest widespread cannibalism took place at the scene of the massacre, terrifying the European settlers who heard the news.²² Events such as the *Boyd* Massacre were by no means common occurrence in New Zealand, but fears of continued troubles with the Māori put a stop to major developments within the New Zealand timber industry for many years. Small-scale practices continued as they had before the *Boyd* Massacre, but larger ventures were put on hold until 1814, when the newly-founded and short-lived New South Wales and New Zealand Company sent two ships to gather kauri spars on the east coast of the Coromandel Peninsula.²³

Although an anecdote reporting that the Royal Navy used kauri spars at the 1805 Battle of Trafalgar is likely false, New Zealand spars would have entered European navies by the end of the Napoleonic Wars (1803-1815).²⁴ However, even when large-scale trade began again, the

²⁰ Kelly Chaves, “Great Violence Has Been Done: The Collision of Māori Culture and British Seafaring Culture 1803-1817,” *The Great Circle* 29 No. 1 (2007), 33.

²¹ Chaves, “Great Violence Has Been Done,” 22.

²² “The Boyd,” *The Sydney Gazette*, 8 May 1832, 4.

²³ Thomas Simpson, *Kauri to Radiata: Origin and Expansion of the Timber Industry of New Zealand* (Auckland: Hodder and Stoughton, 1973), 23.

²⁴ Roche, *History of New Zealand Forestry*, 15.

Royal Navy was hesitant to commit too many resources into so distant a market.²⁵ Despite this, the pressures placed upon the Navy by the Napoleonic Wars and the necessities of the *Pax Britannica*, required more timber than Europe could provide, necessitating a resumption of trade with New Zealand. The first major Royal Navy-sponsored expedition for kauri took place in 1820, when HMS *Dromedary* and the supply ship *Coromandel* travelled to New Zealand. However, due to confusion between species it is almost certain that the majority of wood collected was actually kahikatea, a significantly inferior wood for naval purposes.²⁶ This mistake, combined with the enormous cost of the voyage itself (estimated fifty percent higher than spars of equal quality from North America),²⁷ convinced the Admiralty that New Zealand timber was more trouble than it was worth, and although smaller voyages continued, the lack of interest by the Royal Navy temporarily ended large-scale interest in kauri.

Trade began to flourish, however. Regardless of the difficulties, the Navy's need for timber would remain unquenched until the development of iron warships in the 1860s.²⁸ Additionally, increased British settlement in New Zealand had sparked a boom in the 'domestic' timber market, and mills began springing up on the North Island. By 1826, a small timber mill and shipyard had been founded at Horeke, one of the first established British settlements in New Zealand.²⁹ The settlers' safety had been guaranteed by one of the local chiefs, a necessity in a period of fierce intertribal warfare. This early settlement bore no comparison to the later, formal colonization of New Zealand after 1840, nor to the necessities of land acquisition suggested by Stuart Banner.³⁰ However, given its extremely limited nature and the evident consent of the local chiefs, it is unlikely that these early settlers felt that any necessity to obtain formal title to the land from the Māori.

It was in this manner that the timber industry became the foundation of British colonial efforts in New Zealand. Cook's initial observations of the quantity and quality of kauri wood sparked an initial interest in an attempt to fill the timber requirements of the Royal Navy, allowing for the creation of a fledgling industry that was integral to the first British

²⁵ Michael Roche, "Forest Conservation for Royal Navy Timber Supplies in New Zealand 1840-1841," *The Mariner's Mirror* 73 no. 3 (1987): 261.

²⁶ Roche, *History of New Zealand Forestry*, 16.

²⁷ *Ibid*, 17.

²⁸ Albion, *Forests and Sea Power*, 403.

²⁹ Halkett and Sale, *The World of the Kauri*, 45.

³⁰ Banner, *Possessing the Pacific*, 72.

settlements in New Zealand. Despite episodes such as the *Boyd* Massacre, early European contact with the Māori generally left the settlers with a very favourable disposition towards the native New Zealand population, which greatly influenced New Zealand land policy following the Treaty of Waitangi. The firm establishment of the New Zealand timber industry would lead to rapid deforestation within a few decades, putting increasing pressure on to the timber companies to acquire more land—often to the detriment of the Māori.

The 1840 Treaty of Waitangi remains one of the most significant documents in the colonial history of New Zealand. Its groundwork was laid as early as 1831, when the chiefs of New Zealand addressed a letter to King William IV requesting assistance against the French in the region.³¹ The chiefs also expressed concerns regarding some of the British settlers in the area, requesting the king “be angry with them that they may be obedient, lest the anger of the people of this land fall upon them.”³² Although no direct examples are mentioned in the letter, it is likely that the Māori were concerned with events such as the *Boyd* Massacre flaring up into open conflict, as they nearly did in 1809 and again later against the French. One of the key aspects of this letter was the Māori acknowledgement of the land as their only ‘real’ source of wealth within the European context. Special attention is paid in this letter to the timber and flax industries, which are acknowledged, along with pork and potatoes as tradable goods, “and then we see the property of Europeans. It is only the land which is liberal towards [the Māori].”³³ This explicit acknowledgement of the importance of alienable land, alongside the specific mention of timber and flax, very clearly shows the importance that these issues held in the minds of both the British and the Māori years before an official treaty.

The Treaty of Waitangi was preceded by the New Zealand Declaration of Independence in 1835. Written at the encouragement of James Busby, appointed in 1831 as the King’s Resident in New Zealand, the Declaration established a confederation—the “United Tribes of New Zealand”—confirmed Māori sovereignty over the whole of New Zealand, and requested the king’s continued protection over them.³⁴ The Declaration was acknowledged by Lord Glenelg, Secretary of State for

³¹ Colonial Office, “Correspondence with the Secretary of State Relative to New Zealand,” (London: W. Clowes and Sons, 1840), 7.

³² Colonial Office, “Correspondence with the Secretary of State Relative to New Zealand,” 7.

³³ *Ibid.*

³⁴ *Ibid.*

the Colonies, who was enthusiastic that the Māori showed “a due regard to the just rights of others and to the interests of His Majesty’s subjects.”³⁵ The Declaration of Independence proved to have very little long-term impact, as it was overshadowed in importance by the Treaty of Waitangi five years later. Its most important effect was the official recognition of Māori sovereignty over New Zealand, which was formally surrendered to Britain in Waitangi. This would prove to be the source of many problems in the years ahead.

The controversy regarding the Treaty of Waitangi hearkens back to discussion of language in colonial systems emphasized by Tony Ballantyne. When signed in 1840, only a very small number of the approximately 500 chiefs signed an English copy of the treaty. The rest signed in Māori, a document which Claudia Orange has shown differed substantially from the English version.³⁶ Orange described the ensuing confusion as a “war of sovereignty,” as colonized and colonizer each tried to enforce their own interpretation of what the treaty actually meant. In fact, the translation issues surrounding the treaty caused so much discord that it remains impossible to talk about a single Māori understanding of what the treaty conveyed.³⁷ This turbulent period continued until the 1860s, when the colonial government assumed direct control of Māori affairs, assigning legal equivalence between the Māori and European settlers.

The central issue that the treaty raised was the same issue that it inherited from the Declaration of Independence five years earlier—that of sovereignty. It is evident from the modern translation of Sir Hugh Kawharu (scholar and chief of the Ngāti Whātua until his death in 2006), that the original Māori translation of the treaty was very different from the English text. In a literal translation of the Māori text, he highlighted an issue with specific definitions in article one. The English text reads:

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation *all the rights and powers of Sovereignty* which the said Confederation or Individual Chiefs respectively exercise or possess, or may be

³⁵ Letter from Lord Glenelg to Maj-Gen. Bourke, New South Wales (25 May 1836), in *Facsimiles of the Declaration of Independence and the Treaty of Waitangi* (Wellington: George Didsbury, 1877), 5.

³⁶ Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen and Unwin, 1987), 1.

³⁷ Orange, *The Treaty of Waitangi*, 3.

supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof (Author's emphasis).³⁸

However, instead of "sovereignty," the Māori text used the word "kawanatanga," which roughly translates as "government" or "governance." Kawharu made specific note that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty' ... on the basis of experience or cultural precedent."³⁹

It is here that we get into a deeper analysis of Ballantyne's discussion of the role that language played in colonial systems. To the Europeans the wording of the treaty was set in stone, although the common law remained flexible enough that the exact interpretation could change from court-to-court, a phenomenon which almost always benefitted the colonial power.⁴⁰ For the Māori, their plethora of understandings as to the meaning of the treaty created a massive imbalance in the negotiating positions of the two sides, effectively allowing the colonial government to dominate the debate surrounding the treaty for much of the nineteenth and twentieth centuries.⁴¹ The effective control over the language of sovereignty that the treaty provided the Europeans was something highly emphasized in Matthew Palmer's *The Treaty of Waitangi*, in which he argued that the treaty needs to be redefined in a manner that allows "the prospering of Māori as Māori," and not simply as the lesser partners of a long standing colonial system.⁴² The fact that such inequalities still exist between the various understandings of the treaty nearly 200 years after its signing emphasizes the very real issues Waitangi and its interpretations caused for the Māori over the past centuries and today.

The controversy over sovereignty created by Waitangi remains a major focus of New Zealand land law to this day, but by 1860 the question had moved past sovereignty and became one of official, legal title. As Stuart Banner argued, due to British understandings of Māori property law it was very unlikely that *terra nullius* would become official policy in New Zealand as it had in Australia.⁴³ Instead of deciding whether or not the Māori possessed title to their land, the question became: how much of

³⁸ *The Treaty of Waitangi*, trans. by Dr. Sir. Hugh Kawharu, 1.

³⁹ *The Treaty of Waitangi*, 2.

⁴⁰ Orange, *The Treaty of Waitangi*, 3.

⁴¹ *Ibid*, 4.

⁴² Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution*, 361.

⁴³ Banner, *Possessing the Pacific*, 60.

New Zealand *did* they in fact possess? This was a fairly complicated question. The agricultural basis of much of Māori society suggested a more settled lifestyle than elsewhere in the British colonial project. Additionally, there were very strong reasons for the settlers to desire a confirmation of complete Māori title, ranging from humanitarian concerns to settlers who needed such proof of ownership to justify their own land purchases.

Conversely, many settlers complained about vast tracts of ‘waste land,’ which they believed the Māori to be squandering by not actively using them.⁴⁴ John Locke’s conception of property rights, which formed the basis of the British understanding of land ownership, held that it was the labour that is put into the land that defines ownership, and this labour was understood in the sense of European agriculture.⁴⁵ Despite the similarities of the two agricultural systems that impressed early European explorers, once colonization began in earnest it became much easier for the public imagination to dismiss what were seen as inferior Māori agricultural practices. Additionally, in early colonial New Zealand the Māori possessed a much higher percentage of the land for their population density than did the British, which in the vein of Locke was seen as unfair:

And will any one say he had no right to those Acorns or Apples he thus appropriated, because he had not the consent of all Mankind to make them his? ... If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him.⁴⁶

Many government officials had quite different views of how Māori land ownership should translate into the British system. In Barbara Arneil’s *The Wild Indian’s Venison*, she stated that the Crown’s view of Indigenous title in eighteenth-century North America was directly opposed to the Lockian notions held by many settlers, and believed that “the aboriginal peoples of North America are sovereign, self-governing nations with exclusive jurisdiction over and ownership of their territories.”⁴⁷ Favourable correspondence between the Māori and the

⁴⁴ Banner, *Possessing the Pacific*, 64.

⁴⁵ Barbara Arneil, “The Wild Indian’s Venison: Locke’s Theory of Property and English Colonialism in America,” *Political Studies* XLIV (1996): 62.

⁴⁶ John Locke, *Two Treatises of Government* (Sixth Edition, London, 1764), 196-197, <https://www.gale.com/primary-sources/eighteenth-century-collections-online> (accessed April 30 2019).

⁴⁷ Arneil, “The Wild Indian’s Venison,” 61.

British government in 1840 suggests that this positive sentiment continued into nineteenth-century New Zealand,⁴⁸ but unfortunately little concrete evidence of Parliament's stance on the Māori remains to validate this. The original English text of Waitangi was largely silent on the issue of land rights, and it proved to be a question that saw significant differences in opinion from settlers, the local government, and the Colonial Office, especially as the century continued.⁴⁹ Although the eventual decision officially sided with recognition of complete title for the Māori, confusion arising from miscommunications in Waitangi as well as differing conceptions of property rights necessitated more definitive legislation.

Such legislation took a surprisingly long time to come about. Even once acts related to land purchase and native title began appearing, constant amendments and revisions prolonged the confusion for many years after Waitangi. However, despite such confusion, specific land use rights began to factor heavily into these first pieces of property law, especially relating to "purchase of the right of cutting timber or other trees."⁵⁰ This early focus on codifying logging rights in New Zealand emphasizes the importance of the timber industry to the colony's economy, and by extension to its law and governance. Additionally, the Native Land Purchase Act 1846 also makes specific mention of the Crown's sole right to purchase land directly from the Māori – all other purchases were deemed illegal.⁵¹ The first major piece of legislation regarding purchase of Māori land, and also the first specific act mentioned in *Mangakāhia v The New Zealand Timber Company*, was the Native Lands Act 1862, "An Act to provide for the ascertainment of the Ownership of Native Lands and for granting Certificates of Title thereto ..."⁵² The Act's preamble acknowledged the absence of definitive legislation in the twenty-two years since Waitangi but failed to fully define the relationship between existing native land title and that which existed under the British system, necessitating further legislation over the years to come. Unfortunately, despite the attempt of a legal reckoning, at over two decades after Waitangi it was much too late to avoid bloodshed.

⁴⁸ Colonial Office, "Correspondence with the Secretary of State Relative to New Zealand," 7.

⁴⁹ Banner, *Possessing the Pacific*, 60.

⁵⁰ New Zealand, *Native Land Purchase Act, 10 Victoriae 1846*, no. 19.

⁵¹ *Native Land Purchase Act, 10 Victoriae 1846*, no. 19.

⁵² New Zealand, *Native Lands Act, 26 Victoriae 1862*, no. 42.

For much of the nineteenth century, many of the Māori tribes engaged in some form of warfare, either against each other or the British.⁵³ The Māori were by no means a peaceful people even before European contact, but increased trade with the Europeans in the late 1700s eventually introduced modern weapons to the islands, sparking a period of fierce intertribal conflict known as the Musket Wars. Officially, the wars lasted from 1807-1842, but as many of the individual conflicts bled over from an earlier time, it is hard to tell for certain. For this reason, many historians dispute the name ‘Musket Wars,’ as the very name suggests a larger European role in the outbreak of war. However, it is indisputable that European contact and trade made the wars bloodier and more destructive than they otherwise would have been.⁵⁴ The Musket Wars were also directly responsible for much of the early legislation post-Waitangi, as the Arms Importation Act 1845 was passed expressly to put an end to the import of the weapons that ‘fueled’ the Musket Wars.⁵⁵

The New Zealand Wars, on the other hand, were much more directly related to the issue of property rights. The first confirmed action of the conflict was the Wairau Affray on the South Island, which was sparked by an attempted forced clearance of Māori by members of the New Zealand Company. The Company was in possession of a deed to the land (which was later confirmed to be fake), and after an attempted arrest of two of the local chiefs fighting broke out, leaving over twenty settlers and four to six Māori dead.⁵⁶ This was the only conflict of the Wars to take place on the South Island, with the vast majority of the fighting taking place in the North where land was in much higher demand, the European and Māori populations in closer contact, and therefore potential for conflict much higher.

Much like the Musket Wars that preceded them, the New Zealand Wars were a collection of smaller conflicts pitting various Māori tribes against one another. They lasted roughly from 1845-1872, but unlike the previous intertribal wars featured a heavy British presence involving over 18,000 regular soldiers, supported by colonial militia and several pro-

⁵³ James Belich, *New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland University Press, 2015), 17.

⁵⁴ New Zealand Ministry for Culture and Heritage, “Musket Wars,” *New Zealand History*, <https://nzhistory.govt.nz/war/new-zealands-19th-century-wars/the-musket-wars> (accessed on Nov. 30 2018).

⁵⁵ New Zealand, *Arms Importation Act, 9 Victoriae 1845*, no. 1. It should go without saying that this act did not end the import of firearms to New Zealand.

⁵⁶ Belich, *New Zealand Wars*, 21.

British Māori tribes.⁵⁷ The Wars' origins in land tensions and the following punitive land seizures by the government were critical to the development of land law and legal precedent in New Zealand during the late nineteenth century. Additionally, as argued by Belich, the Wars played a much more direct role in the dispossession of Māori than any previous or forthcoming legal action, as without the power imbalance created by such a large-scale conflict, future legislation would not have been enforceable on the ground.⁵⁸ The 'successes' of *raupatu* and the Native Land Courts would suggest that this was very much the case.

The government land seizure of the 1860s was the single most significant transfer of land in New Zealand's colonial history. Referred to by the Māori *raupatu* (loosely 'confiscation' or 'seizure'), the dual goals were to punish the rebellious Māori tribes while simultaneously generating enough revenue to pay off the debts of nearly twenty years of guerilla warfare.⁵⁹ The legislation was passed as part of the New Zealand Settlements Act 1863, which despite a length of only six pages managed to 'legally' acquire over three million acres of land, roughly four percent of New Zealand and fifteen percent of the land remaining in Māori possession.⁶⁰ The legislation's enduring controversy stems from the indiscriminate seizures from 'rebel' and 'loyal' Māori alike, as it was deemed cheaper to simply pay compensation to the latter who found themselves dispossessed.⁶¹ The controversies and unrest surrounding the seizures in part led to the founding of the Native Land Court.

If the *raupatu* seizures were the single most significant transfer of Māori land, the Native Land Court was the most important tool used by the New Zealand government to 'verify' Māori land claims within the British colonial system. This 'individualization of title' was seen in a similar humanitarian context to the initial British annexation of New Zealand, and many Māori chiefs, even those who rebelled during the Wars, expressed favourable sentiment towards the (perceived) confirmation of their title.⁶² The court was established by the Native Lands Act 1865, which required that the court verify and confirm title to Māori land *before* it could be leased or sold.⁶³ When the court first sat in

⁵⁷ Ibid, 15.

⁵⁸ Belich, review of *Possessing the Pacific*, 1473.

⁵⁹ Bryan Gilling, "Raupatu: The Punitive Confiscation of Māori Land in the 1860s," in *Land and Freedom* (1999), 121.

⁶⁰ Gilling, "Raupatu," 117.

⁶¹ Ibid, 120.

⁶² Banner, *Possessing the Pacific*, 85.

⁶³ New Zealand, *Native Lands Act, 29 Victoriae 1865*, no. 71.

1866, two things quickly became clear. First, the court itself was horribly inefficient and made faulty judgments in the vast majority of cases, either awarding land to the ‘wrong’ person or simply sucking the money out of the Māori landowners through the lengthy and expensive process. Secondly, as Stuart Banner argued, “the Native Land Court was ... the conduit for the flow of a vast quantity of land from Māori to British owners over the rest of the century.”⁶⁴ Because the costs of the acquisition of title were so high and usually fell solely on the Māori, land was nearly always sold at a fraction of its actual worth, pushing many Māori further into landlessness and poverty.

With the exception of the experiences of the plaintiff, this largely set the stage for the legal climate that would dictate the outcome of *Mangakāhia v The New Zealand Timber Company*. Hāmiora Mangakāhia had a long history of fighting for Māori property rights, and his own life was in effect a summary of the development of nineteenth-century property law in New Zealand. Born around 1838, Mangakāhia grew up in a post-contact world, immersed from birth in the rapidly-changing economic, cultural, and political world that was early colonial New Zealand. His family originated from Whangapoua but had to flee during the inter-tribal violence of the Musket Wars.⁶⁵ Nevertheless, he eventually returned to the land, tracing his title back to his ancestors and his ties to the local tribe. Hāmiora’s distrust of the British was inherited from his brother, Mohi, who had lost much of his land to settlers, largely due to the failings of the Native Land Court. In an effort to curb its faults, Mohi eventually became an agent of the Court before finding his way into Māori politics, where he was expected to stand for election to one of the Māori seats in Parliament in 1876. However, his death in 1875 caused Hāmiora to inherit his brother’s problems, including his troubles with land-hungry speculators.

These troubles were centered around the specific land in question, land that would eventually be fought over in court. The Mangakāhia land at Whangapoua was heavily forested, and by the late nineteenth century was one of the few substantial kauri forests remaining.⁶⁶ Despite the initial lack of interest in an international kauri trade, scattered shipbuilding had exploded into a massive domestic industry by the 1850s.⁶⁷ An 1861 census

⁶⁴ Banner, *Possessing the Pacific*, 103.

⁶⁵ Angela Ballara, “Mangakahia, Hamiora,” *The Dictionary of New Zealand Biography*, 1993, <https://teara.govt.nz/en/biographies/2m29/mangakahia-hamiora> (accessed Nov. 30 2018).

⁶⁶ Halkett and Sale, *The World of the Kauri*, 53.

⁶⁷ Roche, *History of New Zealand Forestry*, 39.

estimated that over 85% of the 6,000 buildings in Auckland were constructed of kauri,⁶⁸ and by the early 1880s there were over forty operating sawmills producing nearly 260,000 cubic meters of cut kauri annually.⁶⁹ The steep growth of the kauri industry was enormously detrimental to the forests of New Zealand, with less than 10% of the original kauri forests left standing at the turn of the twentieth century.⁷⁰ Even by 1881 the kauri shortage would have been felt very acutely by the various timber companies and traders in the region, necessitating the acquisition of Mangakāhia's lands.

The hearing itself was held in Auckland, relatively close to the lands held by Mangakāhia. Although both parties possessed solicitors for the trial, it is clear from the records and the wording of the original declaration that Mangakāhia possessed a fairly complete understanding of the English judicial system of the time, making direct references to major pieces of legislation that bore relevance to the issue at hand.⁷¹ This was further enhanced by the legal and political background that Mangakāhia possessed through his brother, suggesting a much greater knowledge of the intricacies of late nineteenth-century England land law than the average Māori or European would have possessed.

The most heavily cited Act during the trial was the Native Lands Act 1873, which was referenced frequently in both Mangakāhia's original declaration and the demurrer hearings. The importance of the 1873 Act largely relates to how it handled the pre-existing legislation regarding Māori ownership. In section 4, it repealed the five previous Native Lands Acts of 1865, 1867, 1868, 1869, 1870, as well as section seventy-three of the Constitution Act. However, the 1873 Act did *not*, in fact, invalidate any pre-existing rights to the land, as its stated goal was:

to establish a system by which the Natives shall be enabled at a less cost to have their surplus land surveyed, their titles thereto ascertained and recorded, and the transfer and dealings relating thereto facilitated: And whereas it is of the highest importance that a roll should be prepared of the Native land throughout the Colony, showing as accurately as possible the extent and ownership thereof, with a view of assuring to the Natives without any doubt whatever a sufficiency of their land for their support and maintenance, as also for the purpose of establishing

⁶⁸ Halkett and Sale, *The World of the Kauri*, 52.

⁶⁹ *Ibid*, 53.

⁷⁰ *Ibid*, 204.

⁷¹ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 345 (1884 Vol. 2).

endowments for their permanent general benefit from out of such land.⁷²

With this goal in mind, it was no surprise that Mangakāhia's original declaration based his claim to ownership on the 1873 Act, also making reference to the decision by the Native Land Court on 11 December 1879, when they "...caused a memorial of ownership to be inscribed, signed and sealed ... in favor of the plaintiffs, as owners of the said land, and which said memorial of ownership is still in full force and effect..."⁷³

Given this statement, it would seem foolish for the Timber Company to claim that Mangakāhia's possession of the land was not the central issue of the hearing, but that is exactly what they did. The Timber Company argued that the issue at hand was one of right of entry, rather than possession of the land itself: "in order to have the right to enter...[and thus the right to *deny* entry to others]... [Mangakāhia] must have the legal estate" to the land in question.⁷⁴ They continued this train of thought, arguing that despite the ruling of the Native Land Court, legal estate existed only once native title has been extinguished, as "the estate, according to native custom, is one which a Court of Law cannot define", and thus the estate for Mangakāhia's land "would appear to be in the Crown *jure gentium*."⁷⁵ Simply put, despite the costs and troubles of working through the Native Land Court, all Mangakāhia had achieved was the right to sell his land, nothing more.

The plaintiffs' rebuttal suggests that Mangakāhia recognized that this argument was coming and had expressly worded the initial declaration to guard against it. Unfortunately for Mangakāhia, his argument was hypothetical rather than based on precedent, as was the Timber Company's. More to the point, the Timber Company based their argument around a slew of previous case law,⁷⁶ whereas Mangakāhia based his on an interpretation of the Native Rights Act 1865 and the Native Lands Act 1873. Specifically, he stated that if he had chosen to lease his land, as per section 48 of the 1873 Act, the lessee would have "all the incidents of ownership,"⁷⁷ including right of entry, suggesting that those in possession of memorial of ownership "should be treated as the

⁷² New Zealand, *Native Lands Act, 37 Victoriae 1873*, no. 56.

⁷³ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 346 (1884 Vol. 2).

⁷⁴ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 347 (1884 Vol. 2).

⁷⁵ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 348 (1884 Vol. 2).

⁷⁶ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 345 (1884 Vol. 2).

⁷⁷ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 351 (1884 Vol. 2).

owners of a fee simple.”⁷⁸ Such a suggestion, they claimed, was the “whole point” of the Native Rights Act 1865, which clearly stated legal equivalence between the Māori and European-born settlers in the colony – “every person of the Māori race within the Colony of New Zealand whether born before or since New Zealand became a dependency of Great Britain shall be taken and deemed to be a natural born subject of Her Majesty to all intents and purposes whatsoever.”⁷⁹ Using such a literal interpretation of the Act, it could easily be argued that there was no legal difference between Māori land held in traditional tenure and land held in British fee simple.

The Timber Company’s final statement in the trial record evidently left no further room for debate, as the demurrer was allowed. Arguing the difference between ‘title’ and ‘ownership,’ they dismissed the Native Rights Act 1865 as “merely declaratory,” recognizing similarities but not equivalencies between Māori and European land rights.⁸⁰ Their entire argument can be summed up by the following claim: Mangakāhia’s declaration was based on Māori concepts of land rights, and despite his claim that the Native Rights Act 1865 declared equivalency between English and Māori law, English concepts of entry rights did not exist under Māori land law and therefore, title based on that law *could not* be used as the foundation of a trespassing declaration. In effect, the Timber Company did not dispute Mangakāhia’s claim to the land, they simply disputed his ability to evict them, and the court agreed.

Mangakāhia v The New Zealand Timber Company was decided in barely a month, with only three statements being presented to the court. But those three statements provide a clear summary of conceptions of property law in late nineteenth century New Zealand in a much more practical manner than the legislative acts themselves. Based on the development of land law in New Zealand from discovery through to the 1880s, it was all-but inevitable that Mangakāhia’s declaration was successfully appealed. Initial contact between Europeans and the Māori beginning with Tasman, Cook, and later generations of settlers suggested similarities between agricultural practices in English and Māori society, and therefore in property law. However, although these comparisons were acknowledged by official pieces of legislation it is clear that by 1881 it was generally accepted that “the physical similarity of British and Māori agricultural methods masked fundamental differences between

⁷⁸ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 348 (1884 Vol. 2).

⁷⁹ New Zealand, *Native Rights Act, 29 Victoriae* 1865, no. 11.

⁸⁰ *Mangakāhia v. N.Z. Timber Co.*, 1882 NZ App. 351 (1884 Vol. 2).

conceptions of property.”⁸¹ Additionally, the timber industry proved instrumental to the original colonial settlement of New Zealand, and despite slow beginnings eventually exploded into domestic and international markets. This put enormous pressure on the government and courts to acquire some form of property rights to the increasingly sparse kauri forests from the Māori inhabitants, yet another roadblock to legal equality for the Māori. Finally, the development of the law itself, through Waitangi, various legislative acts, and the establishment of the Native Land Court had a subtle purpose, not explicitly stated but nevertheless implied and understood – despite supposed similarities, acknowledgement of Māori ownership, and confirmation of the rights of the Māori as British subjects, the land law of New Zealand had developed in a manner that was fundamentally exclusive against the Indigenous inhabitants of New Zealand, as Hāmiora Mangakāhia found out in 1882.

⁸¹ Banner, *Possessing the Pacific*, 49.

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"A Revolution Marches on Two Feet:" The ANC's People's War in N'wamitwa

FAELAN LUNDEBERG

Abstract: In the waning days of apartheid, an operative of Umkhonto we Sizwe, the armed wing of South Africa's most powerful dissident organization the African National Congress, returned to his home community of N'wamitwa after over a decade in exile. His mission was to spark a people's war, an imported form of revolutionary warfare developed by Mao Zedong and perfected by the North Vietnamese in their revolutionary struggles. The goal of a people's war is ultimately to involve an entire population in a conflict, eventually crushing a powerful state actor between a mobilized populace and a guerilla army. Through interviews with an insurgent who took part in the uprising in N'wamitwa, this piece seeks to tell the story of the early stages of the people's war in N'wamitwa and to place the uprising in the context of the ANC's national revolutionary strategy.

As dusk fell on the evening of April 12, 1989, a car approached a temporary South African Defence Force (SADF) camp in the township of Nkowankowa, outside the city of Tzaneen.¹ Several weeks prior, the army had commandeered the football stadium as a forward operating base in response to a broad-based civil uprising in the nearby Gazankulu homeland. For over a month, the homeland had been wracked by violence. The Gazankulu police, backed by the national army, sought to suppress the insurrection. Now, the resistance prepared to hit back. As the car pulled to a halt, two blocks away from the stadium, four men exited, armed with AK-47 assault rifles and hand grenades.² The operation was meticulously planned. For several days, the operation's getaway driver had carefully observed the soldiers' movements and routines.³ As the ranking commander of the group, hereafter referred to as Comrade J, took up a firing position, the other three approached the high fences of the stadium, grenades in hand. The quiet of the night was abruptly shattered as five or six explosions ripped through the camp.⁴ As the bombers ran for the safety of the car, their comrade covered their escape, firing on pursuing

¹ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*, May 23, 2000.

² Ibid.

³ Ibid.

⁴ Ibid.

soldiers with his AK-47.⁵ Piling into their getaway car, the insurgents peeled out into the night to return to their base of operations: the rural community of N'wamitwa.

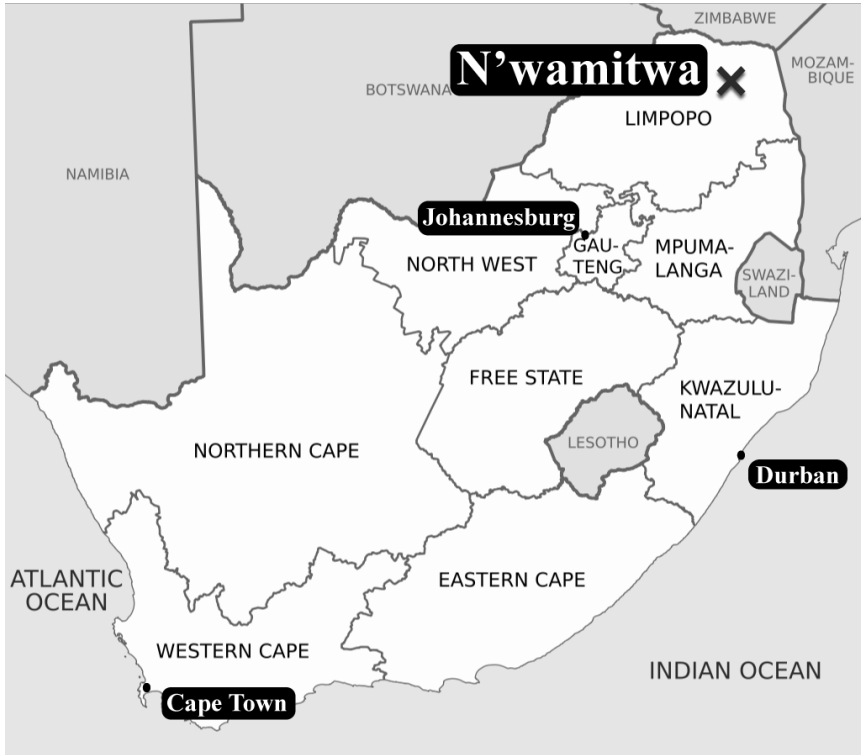


Figure 1: Map of South Africa showing the rural community of N'wamitwa.

The attack on the stadium in Nkowankowa was a single action in the decades-long war for control of South Africa between the African National Congress (ANC) and the apartheid state. This wider conflict was organized along the lines of a people's war—an imported form of revolutionary warfare. The military aspect of the struggle encompassed large-scale conventional military operations, guerilla warfare, sabotage, and terrorism. From the late 1970s onwards, these military actions were coordinated to support a campaign of mass mobilization and a sophisticated propaganda offensive. This campaign of destabilization and mass mobilization is the focus of this work. I will describe the doctrine of

⁵ Ibid.

a people's war, sketch out the political context in which the ANC chose to adopt the strategy, using the rural community of N'wamitwa as a case study to explore how the early stages of a successful people's war are implemented.

Many secondary sources have informed my scholarly approach. However, none have influenced my work as much as Anthea Jeffery's *People's War: A New Light on the Struggle for South Africa*. Jeffery challenges several commonly held views on the history of South Africa's 'miracle' transition to democracy, and ties policy decisions made by the ANC leadership in exile to events in South Africa. She successfully matches directives issued by the ANC leadership with events on the ground to make a compelling case that the ANC's adoption of the people's war strategy was a vital and understudied turning point in South African history. An aspect of Jeffery's methodology that has carried over into my own work is her use of primary sources on people's wars in East Asia to examine and analyze events in South Africa. Sources used heavily by Jeffery that also appear in this piece are the works of Mao Zedong, Võ Nguyễn Giáp, and Douglas Pike.

There have been several scholarly treatments of ANC's armed wing, referred to in this article by its colloquial acronym, MK, that use oral history as a component, such as the work of Tom Lodge, Janet Cherry and Thula Simpson.⁶ The strategy of the ANC was predominantly urban, and the scholarship of the liberation struggle reflects this. Thus, this article by focusing largely on the story of a rural guerilla unit is somewhat unique to the literature of the South African Freedom Struggle. This article is an excerpt of a wider thesis project that tells the story of the insurgency in N'wamitwa in the words of those who took part. The bulk of the primary research for this project comes from ten days of fieldwork in N'wamitwa in early 2018. I focus largely on the experience of one member of the insurgency in the first year of the people's war in the area from October 1989 to August 1990.

“Working Ass Backwards:” People's War and the ANC

The road that led to the attack in N'wamitwa began with the founding of a secret organization and another bombing three decades earlier. The

⁶ Janet Cherry, *Spear of the Nation: Umkhonto Wesizwe South Africa's Liberation Army, 1960s-1990s* (Cincinnati: Ohio University Press, 2012); Thula Simpson, *Umkhonto We Sizwe: The ANC's Armed Struggle* (Pretoria: Random House Africa, 2016). Tom Lodge, "Resistance and Reform 1973-1994," in R. Ross, A. Mager, and B. Nasson (eds.), *The Cambridge History of South Africa Vol. 2* (Cambridge: Cambridge University Press, 2011), 409-491.

vanguard of the ANC's people's war was its armed wing: *Umkhonto we Sizwe* or Spear of the Nation (MK). The founding of the MK in 1961 was not without controversy. At that time, the ANC was a devoutly Christian organization dedicated to the cause of non-violent resistance. However, the banning of the ANC and the 1960 massacre of unarmed protesters in the township of Sharpeville convinced many in the movement that the only way to counter the reactionary violence of the state was with revolutionary violence of their own. On December 16, 1961, a day of great symbolic importance to South Africa's ruling Afrikaner community, the MK announced its creation with a series of coordinated bomb attacks throughout the country.⁷ The government's response was characteristically harsh and efficient. Within 18 months most of the MK's leadership had been arrested or killed. What remained of the MK was forced to take the "Northern Highway" into exile.⁸ For the remainder of the 1960s and early 1970s, the ANC was at its lowest ebb and the organization was forced to rely on the help of friendly nations and sub-national groups for its survival.

For much of the 1960s and 1970s, the ANC was largely unknown by the masses within South Africa, or was openly disliked. The ANC's commitment to a non-racial South Africa played very poorly with the angry and disenfranchised black working class who tended to gravitate towards the Africanist philosophies of the Black Consciousness Movement.⁹ The ANC's alliance with the South African Communist Party also raised suspicions among many South Africans, particularly those with a more traditionalist or Black Consciousness outlook. As did their willingness to accept aid from non-African nations, particularly the USSR and other Eastern Bloc countries.¹⁰ Lastly, the fact that they operated as an exiled resistance movement meant that the ANC had little opportunity to build up grassroots support within South Africa. While the ANC had been sidelined for over a decade, two events in the late 1970s marked a decisive shift in the ANC's resources and strategy.

The first of these turning points occurred on June 16, 1976, and in

⁷ December 16th commemorates the remarkable Afrikaner victory over the Zulu at The Battle of Blood River. Stephen R. Davis, *Apartheid's Rebels: Inside South Africa's Hidden War* (Newhaven, CT: Yale University Press, 1987), 16-17.

⁸ Ronnie Kasrils, *Armed and Dangerous: My Undercover Struggle Against Apartheid* (Ibadan, Nigeria: Hienemann, 1992), 77.

⁹ Davis, *Apartheid's Rebels*, 24-25.; Stephen Ellis and Tsepo Sechaba, *Comrades Against Apartheid: The ANC and the South African Communist Party in Exile* (London: Peter Currey, 1992), 66.

¹⁰ Davis, *Apartheid's Rebels*, 29.; Ellis and Sechaba, *Comrades Against Apartheid*, 66.

the months immediately following. A student walkout in the Johannesburg township of Soweto erupted into unprecedented violence. The protesters were met with “overwhelming military force.”¹¹ Among black South Africans, Soweto marked a shift from weary resentment to open hostility. Riots erupted across the country. In the face of intensified repression, thousands of newly radicalized young men and women fled South Africa to seek guerrilla training in the newly independent frontline states.¹² Soweto proved to be a mixed blessing for the ANC. The MK’s fighting capacity grew as more and more young people fled repression at home to seek military training abroad. These new recruits brought a new sense of militancy into the MK and were to form the core of the organization throughout the 1980s. However, the uprising had caught the ANC leadership completely by surprise and showed that the movement was troublingly out of touch with the population they claimed to represent.¹³

In 1978, at the urging of the Soviet Union, a delegation of high-ranking ANC cadres visited the newly unified People’s Republic of Vietnam. Through meetings with the Vietnamese leadership, including the legendary guerilla commander General Võ Nguyên Giáp, the ANC sought to learn the formula for a successful people’s war.¹⁴ The doctrine of people’s war was honed by communist insurgencies in East Asia and, by the late 1970s, it had become a model for revolutionary groups to defeat militarily superior opponents. The axiom of people’s warfare is “a revolution marches on two feet”—one military and one political. In a successful people’s war, military operations play an ancillary role to mass organization and action.¹⁵ By mobilizing an entire populace, a people’s war is meant to neutralize the military superiority of an adversary by

¹¹ Martin Murray, *South Africa: Time of Agony, Time of Destiny* (Norfolk: Thetford Press, 1987), 201.

¹² Annette Seegers, *The Military in the Making of Modern South Africa* (London: International Library for African Studies, 1996), 174. The Frontline states represented the independent African nations bordering or in close proximity to South Africa. These included Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe.

¹³ Anthea Jeffery, *People’s War: A New Light on the Struggle for South Africa* (Johannesburg: Jonathan Ball, 2009) Kindle edition, location 619.; Ellis and Sechaba, *Comrades Against Apartheid*, 83.

¹⁴ I root my analysis of people’s war in the works of Mao Zedong, Võ Nguyên Giáp, and Douglas Pike – all of which can be considered primary theoretical sources on the strategy. I also use the work of South African Scholar Anthea Jeffery to understand how the strategy was imported into South Africa.

¹⁵ Douglas Pike, *Viet Cong: The Organization and Techniques of the National Liberation Front of South Vietnam* (Boston: MIT Press, 1966), 36.

turning a military conflict into a protracted battle of wills.

A people's war progresses along three stages: the defensive, the stalemate, and the counterattack. The first stage represents a period of relative weakness for the resistance. The defensive stage of a people's war is marked primarily by political organization and agitation. Networks of grassroots organizations with loose or hidden links to the insurgency are used to galvanize resistance in the form of protests, strikes, and other legal mass actions.¹⁶ In turn, a mobilized populace provides protection, manpower, and legitimacy to the underground armed struggle. Political mobilization is matched with a "programme of violence," the goal of which is to destroy the mechanisms of local government and replace them with political organs operated by the resistance.¹⁷

As the power of the state is increasingly destabilized and the resistance gains momentum, the people's war enters the second phase of stalemate.¹⁸ The stalemate can be considered a period of attritional warfare where the insurgency is expected to take enormous casualties. However, if the defensive stage has progressed as it should, the resistance will have a near endless supply of manpower and public support to draw on, wearing down the forces of the state over decades if need be. The third stage, the counterattack, is marked by a reversal of the power dynamic, an all-out blitz assault waged by conventional means to topple what remains of the state.¹⁹ Luckily for South Africa, this period of large-scale conventional warfare never materialized. However, it is interesting to note that by the end of the struggle, the MK might have become the world's most overqualified guerilla army. The majority of MK personnel remained in exile, training in sophisticated combined arms tactics for an invasion of South Africa that would never come.²⁰

The 1978 visit to Vietnam proved to be revelatory for the leadership of the MK. Upon leaving Vietnam, Joe Slovo, the organization's chief strategist, commented that for two decades the ANC had been "working ass backward."²¹ While the ANC had counted on armed actions by the MK to create a political base, their experience in Vietnam had shown the primacy of political mass mobilization to galvanize armed struggle. In the

¹⁶ Pike, *Vietcong*, 117.

¹⁷ Jeffery, *People's War*, location 1262.; Pike, *Vietcong*, 113.

¹⁸ Mao Zedong "On Protracted War" in *The Selected Works of Mao Tse Tung, Marxists Internet Archive*, https://www.marxists.org/reference/archive/mao/selected-works/volume-2/mswv2_09.htm (accessed December 13, 2017).

¹⁹ Mao, "On Protracted War."

²⁰ Lodge, "Resistance and Reform," 409-491, 435.

²¹ Jeffery, *People's War*, location 1455.

wake of their visit to Vietnam, the Revolutionary Politico-Military Commission of the ANC met in the Angolan capital of Luanda to discuss a bold strategic pivot. The end result of the Luanda meetings was the decision to import the Vietnamese style of revolutionary warfare into South Africa.²² The trip to Vietnam and the period of debate and introspection within the high command of the MK that followed led to a reappraisal of the relationship between their military struggle and the political struggle waged by the wider ANC.

Among the recommendations that came out of the Luanda conference was a commitment to drastically increase the underground presence of the ANC within South Africa itself.²³ The infiltration of trained ANC and MK cadres into South Africa was meant to aid in the creation of “genuine mass organisations among all sections of our people.”²⁴ As we shall see in N’wamitwa, guerilla activity would be coordinated alongside and subservient to mass action. Under the directives of a people’s war, the mass democratic movement played a dual role. The first was deemed the above-ground or legal struggle. This entailed organized boycotts, stayaways, strikes, and protests aimed at disrupting South Africa’s economy, society, and international image.²⁵ These activities were largely a result of popular mass mobilization, but there was certainly coercive pressure to support mass actions. Refusal to do so could often result in injury or even death.²⁶ The TRC notes that “militant youth often took it upon themselves to monitor and enforce boycotts.”²⁷

The campaign to uproot the power of the state in black majority areas was paired with an escalation of terrorist activity, aimed at South Africa’s power structures and white population and carried out by the

²² African National Congress, “The Green Book: Report of the Politico-Military Strategy Commission to the ANC National Executive Committee August 1979,” Marxists Internet Archive, <https://www.marxists.org/subject/africa/anc/1979/green-book.htm> (accessed December 14, 2017).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Davis Welsh and J. E. Spence, *Ending Apartheid* (Harlow, UK: Pearson, 2011), 108.

²⁶ Truth and Reconciliation Commission, *Final Report of the Truth and Reconciliation Commission of South Africa*, Vol. 2 (London: Macmillan Reference, 1998), 381.; Martin Murray, *The Revolution Deferred: The Painful Birth of Post-Apartheid South Africa* (New York: Verso Books, 1994), 55.

²⁷ Truth and Reconciliation Commission, *Final Report of the Truth and Reconciliation Commission of South Africa*, Vol. 2, 381.

MK.²⁸ Terrorist attacks rose considerably through the mid to late 1980s, with 136 incidents recorded in 1985, 227 in 1986, and over 300 in 1989, making MK attacks a near daily occurrence.²⁹ These attacks did little to dent the overall effectiveness of state security structures, but they did have an important psychological effect for both blacks and whites. While the strategic impact of these actions was negligible, they demonstrated that the ANC had military as well as political muscles to flex.³⁰ The cost of this campaign was high for the MK operatives who took part. It is estimated that during this period, MK operatives in South Africa suffered a near 100 percent casualty rate.³¹ One former MK operative estimated that in the field, the average survival period for guerrillas was six months.³² It is estimated that of all the casualties the MK suffered over their 34-year armed struggle, over half occurred between 1985 and 1990.³³

By the late 1980s, with many of the state's methods of control disrupted in black majority areas and with violence worsening, the South African government imposed a state of emergency.³⁴ The SADF was forced to intervene, which further inflamed tensions—in 1986 alone, 39,000 SADF soldiers were deployed in the townships.³⁵ During this period of increased destabilization, the ANC launched their most ambitious covert operation to date, Operation Vula. The goal of Operation Vula was to smuggle senior members of the ANC and MK leadership into the country in order to coordinate and direct the mass democratic movement and armed struggle.³⁶ The MK had a special role to play within the wider context of Operation Vula. While special operations units still engaged in sabotage and armed propaganda actions, specially trained MK cadres were infiltrated into South Africa with a new mandate: to begin the process of arming and training a guerilla army within the borders of South

²⁸ For a much more in-depth discussion of this process than is feasible to give here please see Cherry, *Spear of the Nation* and Jeffery, *People's War*.

²⁹ Lodge, "Resistance and Reform," 462-463.; Cherry, *Spear of the Nation*, 38.

³⁰ Lodge, "Resistance and Reform," 462-463.

³¹ Thula Simpson, "Toyi-Toyi-ing to Freedom: The Endgame in the ANC's Armed Struggle, 1989–1990," *Journal of South African Studies* 35, no. 2 (2009): 507–521, 509.

³² Howard Barrell, *MK: the ANC's Armed Struggle* (Johannesburg: Penguin, 1990), 60.; Cherry, *Spear of the Nation*, 39.

³³ Lodge, "Resistance and Reform," 462.

³⁴ Murray, *The Revolution Deferred*, 53.

³⁵ Lodge, "Resistance and Reform," 470.

³⁶ Robert D.A. Henderson, "Operation Vula Against Apartheid," *International Journal of Intelligence and Counterintelligence* 10, no. 4 (1997): 418--455, 420.; Cherry, *Spear of the Nation*, 39.

Africa itself.³⁷ Vula also represented what is likely the largest gun smuggling operation in South African history, with thousands of small arms flooding into the country between 1988 and 1990.³⁸ It was presumably under the auspices of this operation that Comrade J returned in secret to his home community of N’wamitwa after over a decade in exile.

The Return of Comrade J: Preparations for the People’s War

N’wamitwa is a communal territory comprised of a collection of 32 villages and is currently home to roughly 74,000 people.³⁹ Under the apartheid system, N’wamitwa was part of the Gazankulu homeland, devised by the architects of apartheid as a semi-autonomous enclave for the Tsonga ethnic group.⁴⁰ The homeland system within South Africa stands as a stark illustration of the institutionalized injustice of the apartheid system. Described by the famous South African dissident Steve Biko as “sophisticated concentration camps,” the homelands were kept as deliberately impoverished “tribal dumping grounds” under the control of local strongmen.⁴¹

For virtually the entirety of its existence as a homeland within South Africa, Gazankulu was under the control of one man: Professor Hudson Ntsanwisi. Ntsanwisi is somewhat of an enigma—in the historical memory of the former Gazankulu area, he is remembered as both a collaborator with apartheid and as a Tsonga renaissance man who published several novels in his native language.⁴² The Ntsanwisi family was also involved with various business interests in Gazankulu, particularly the distribution of alcohol.⁴³ In *The Revolution Deferred*, political scientist Martin Murray ranks Ntsanwisi alongside the infamous Buthelezi clan in Kwazulu as the ANC’s most implacable opponents

³⁷ Mac Maharaj and Pendrag O’Malley, *Shades of Difference: Mac Maharaj and The Struggle for South Africa* (New York: Penguin Books, 2008), 283.

³⁸ Connie Braam, *Operation Vula* (Johannesburg: Jacana, 2004), 399.

³⁹ “N’wamitwa population statistics received from Ben Shipalana. Elizabeth Vibert, personal communication.

⁴⁰ “Hudson Ntsanwisi: Leader of Gazankulu, 72.” *New York Times*, March 26, 1993.

⁴¹ Andile Mngxitama, *Biko Lives: Contesting the Legacy of Steve Biko*, ed. Andile Mngxitama Amanda Alexander and Nigel C. Gibson (New York: Palgrave MacMillan, 2008), 12; Murray, *The Revolution Deferred*, 63-65.

⁴² “Prof. Hudson Ntsanwisi, former Chief Minister of Gazankulu, dies in Johannesburg,” *South African History Online*. <http://www.sahistory.org.za/dated-event/prof-hudson-ntsawisi-former-chief-minister-gazankulu-dies-johannesburg> (accessed April 24, 2018).

⁴³ South African Institute for Race Relations, *South African Institute of Race Relations Annual Report 89/90* (Johannesburg, 1990), 497.

within the homeland system.⁴⁴ *The Sowetan*, an ANC-aligned newspaper, described Ntsanwisi as ruling the homeland with an iron fist.⁴⁵ "He wields so much power that even his name, which is mentioned in hush-hush tones, has become synonymous with the homeland."⁴⁶ Ntsanwisi's rule was enforced by a local army and constabulary loyal to him. Rural mobilization is a self-acknowledged blind spot in the ANC's people's war and up until the late 1980s, the violence engulfing much of the country had largely passed Gazankulu by.⁴⁷ In his memoir *Armed and Dangerous*, Ronnie Kasrils laments that, "until 1990 at any rate, we had not sufficiently reached out to politicise rural people."⁴⁸

Despite the isolation of growing up far away from the white-controlled urban centres, by the late 1980s youth in Gazankulu were beginning to chafe under the yoke of apartheid. Some were beginning to look to the ANC for a solution. Among them was "George."⁴⁹ George made an ideal recruit for the MK's fledgling army in N'wamitwa for several reasons. He was a rebellious and physically imposing man of 27 years, fond of picking fistfights in the local *shabeen*.⁵⁰ By 1989, he was also becoming increasingly political as an organizer in the Giyani Youth Congress, a radical youth organization with links to the ANC.⁵¹ George remembers,

I was an activist. In fact, I was one guy who would spread the ANC message around this area by then. People would consult with me. But the majority did not know that I was also an underground operative. They know me as comrade George the

⁴⁴ Murray, *The Revolution Deferred*, 67.

⁴⁵ "Big Brother Alive and Well in Giyani," *The Sowetan*, March 2, 1989.

⁴⁶ Ibid.

⁴⁷ "Hudson Ntsanwisi: Leader of Gazankulu, 72," *New York Times*. There was a vigorous, decades-long debate within the MK on whether to focus their limited resources on rural or urban mobilization. According to Ellis and Sechaba it was finally decided that "people in the townships would take the place of the jungles and mountains which had hidden guerillas in other countries." For a more in-depth discussion of this debate see *Comrades Against Apartheid*, 111.

⁴⁸ Kasrils, *Armed and Dangerous*, 195-196.

⁴⁹ Pseudonym. "George," whose story is the lynchpin of this piece was unique among my interview participants in several ways. Of all my interviewees he was the only one to join the insurgency before the unbanning of political organizations in 1990. His role as a gun runner also gives us a fascinating insight on the process of secretly arming and organizing an insurgent army.

⁵⁰ A *shabeen* is an informal drinking establishment, one of the several Gaelic words that have inexplicably worked their way into the lexicon of Black South Africa.

⁵¹ Interview with "George," February 26, 2018.

ANC guy, who talks to us about ANC.⁵²

Aside from his physical attributes and background in political activism, George possessed something else indispensable to the resistance—his brand new, bright red *bakkie*, or pick-up truck.⁵³ Perhaps the exact reason he was selected for recruitment into the MK will never be known. However, what is known is that in October 1989, George was asked to a surreptitious meeting with a high-level figure in the ANC underground. If one were to think of the insurgency in N’wamitwa as a web, Comrade J is the spider sitting in the middle, subtly manipulating the strings. Due to his refusal to be interviewed, he remains an enigmatic – if central – figure of the people’s war as it unfolded in N’wamitwa. However, through his own testimony and appeal for amnesty during the course of the South African Truth and Reconciliation Commission, and through interviews with former comrades, we can trace some aspects of his time as an exile and as the paramount commander of the MK during the people’s war in N’wamitwa.

We know Comrade J was born in Mavele village around 1960. By all accounts he was a gentle and soft-spoken child. A distant cousin who later served under him as a member of the MK, described Comrade J as “a fine man, gentle, he wouldn’t harm a fly.”⁵⁴ Due to a congenital defect in one of his legs he was left physically disabled from an early age and attended a school for the disabled in Letaba.⁵⁵ Here he distinguished himself as a brilliant student, particularly excelling in math and the sciences.⁵⁶ It remains unknown what caused Comrade J to renounce his life in South Africa and pursue a career as a stateless militant. However, we do know that he left N’wamitwa in 1977 when he was in his late teens.⁵⁷ This timing coincided with the wave of student activism that followed the Soweto riots and the subsequent government crackdown. It is widely assumed that J was one of the thousands of young South Africans who took the Northern Highway into exile during this period, in order to undergo military training in the frontline states. From J’s testimony we know his time in exile was not spent idly. In his own words:

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Interview with “Participant,” February 24, 2018.

⁵⁵ Interview with “George.”

⁵⁶ Interview with “Participant,” February 23, 2018.

⁵⁷ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

I joined the ANC in 1977 in Mozambique. I then went to complete O levels for two years at Sierra Leone. I then went to ... Tanzania, where I stayed until March 1980. I then went to Cuba to study Chemical Engineering. I returned in 1986 and went to Dakawa, Tanzania. In 1987 I was sent to Angola to do military training. Thereafter I went to Zambia to await infiltration into the country.⁵⁸

According to a former associate, someone in the MK command saw Comrade J's potential, grooming him to be their man in N'wamitwa.⁵⁹ It is impossible to know exactly what happened to J during his decade in exile. How this sensitive, physically disabled young man made it through the MK's notoriously brutal military training is equally mysterious. What is known is that by October 1989, J had returned to N'wamitwa via the ANC's smuggling routes in Swaziland.⁶⁰ Presumably, he was one of the hundreds of MK operatives smuggled into South Africa as part of Operation Vula. It seems that under the alias Norman Mangani, J re-established contact with his sister in Mavele village and used her home as a kind of forward operating base. As he explains, "My mission was to reconnoitre and establish an MK presence in the area. I had orders to establish underground units which I commanded. I also trained and recruited MK cadres in the area."⁶¹ It appears that Comrade J returned to N'wamitwa a changed man. Despite his cousin's description of a gentle soul incapable of harming the local insect life, the image of the man who returned from exile is that of a hardened covert operative, absolutely dedicated to the cause of liberation and more than willing to use violence to achieve it.

Despite Comrade J's use of an alias, George recognized him immediately.

I told him look man I know you. You were at school in Letaba, the school for the handicapped, there he was learning along with my younger brother ... And he used to tell me that you skipped the country somewhere around '77 ... I know what you are doing and I want to work with you.⁶²

⁵⁸ Ibid.

⁵⁹ Interview with "Participant," February 23, 2018.

⁶⁰ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

⁶¹ Ibid.

⁶² Interview with "George."

Even without George's firsthand experience from Letaba, by 1989 Comrade J had become something of a hometown hero amongst the rebellious youth of N'wamitwa. According to a former associate:

We heard of this one guy who had skipped the country as early as 1978.⁶³ He decided "I can't stay here as long as we are suffering," he decided to cross the country and get military training ... We only knew that around our area there was one student who decided to leave everything ... and go and fight for my country.⁶⁴

In discussions with various informants about their time working under Comrade J, two character traits stand out, traits shared by many guerilla commanders throughout history: charisma and brutality. One of the young men he recruited into the MK remembers,

[J] was very stubborn. We were very afraid of him. He was too aggressive to an extent that we thought he was crazy but he was not. He looked crippled sort of, but whatever he would say, we were going to do it.⁶⁵

As will be discussed later, this fear was well-founded. Still, many informants describe Comrade J as a charismatic leader who led by example and inspired a great deal of loyalty in those who served under him. According to another teenage MK recruit, "we all wanted to be like him."⁶⁶ It also seems that J was a canny judge of character; "it was almost like he could read someone's mind."⁶⁷ Upon his first meeting with his new commander, George was suitably impressed.

I had read books about the guys who had sacrificed for our freedom ... I read about Chief Albert Luthuli and his call let my people go ... I've read books like... *Your Country is Beautiful* by Alan Paton. So I was fascinated by these people who were bold enough to stand up and say apartheid is wrong, and it must be abolished. And when I saw Comrade [J] I saw a guy who responded to that inner call that says do something for your

⁶³ From Comrade J's TRC testimony we know he actually left in 1977. Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

⁶⁴ Interview with "Participant," February 23, 2018.

⁶⁵ Interview with "Participant," February 23, 2018.

⁶⁶ Interview with "Participant," February 22, 2018.

⁶⁷ Interview with "George."

country. And he was ... I mean physically this problem of walking. Yeah, and I was like why is this man doing this when he has this condition and I am fine. But I am doing nothing. I think I need to join this man ... he really inspired me.⁶⁸

George's induction into the shadowy world of the MK was a carefully managed affair, marked by small tests of competence and loyalty as well as an incremental escalation of his responsibilities. The first duty George was asked to perform was relatively innocuous. He was told to transport Comrade J to meet surreptitiously with his mother in nearby Jopie village.⁶⁹ George helped facilitate several secret meetings for his new commanding officer, but always had the sense of being carefully observed.⁷⁰ Eventually, he was asked to move from transporting fugitives to a much more delicate cargo, weapons. George's career as N'wamitwa's chief gun runner began somewhat inauspiciously. The comrades he was meant to rendezvous with never appeared and after a nerve-wracking night of waiting, George was forced to return home in defeat.⁷¹

In retrospect, George is certain that this event was yet another test. When asked if the guns ever did arrive, he laughed: "lots of them."⁷² From November 1989 onwards guns began to flow into N'wamitwa at an astonishing rate. The weapons that George transported were largely from the Eastern Bloc. The cargo consisted mainly of the ubiquitous AK-47 and the Škorpion, a cheap Czech-made submachine gun.⁷³ According to George:

We had hand grenades, we had landmines, and these ones that you put on electric pylons [likely some kind of limpet mine]. So we had those things. And lots of bullets of course for the Škorpions, for the AK's, they were there too.⁷⁴

Naturally, George and his cohorts took part in some unsanctioned target practice, behavior he later described as "naughty."⁷⁵ Like many insurgents the world over, George had a particular fondness for the AK-47. George

⁶⁸ Ibid. Here "George" almost certainly means the famous *Cry the Beloved Country* by Alan Paton.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

noted that “anyone could use an AK-47. Once it’s automatic, you just go like that [miming holding and aiming a gun] and shoot until the magazine is finished.”⁷⁶ The methods the MK used to communicate the location of weapon caches were low tech yet effective. As George describes,

To fetch weapons ... they would give us a map and say on the road it will be marked ... He would make mark like this [miming an x] ... Then there will be a tree somewhere and under that tree there will be a mark and you’ll start digging. You get the weapons and put them in the car and drive back.⁷⁷

The guns would then be hidden by George in a discrete, but easily accessible location.

It was very difficult but we just ... make it somewhere in the bush, far away from people, and we would try to make sure people wouldn’t realize that the soil has been disturbed. We tried our level best and it was not easy.⁷⁸

As can be imagined, moving guns for an insurgency in an authoritarian state was a delicate undertaking. Caution could easily bleed over into paranoia. The MK cell in N’wamitwa was small and tightly controlled by bonds of secrecy. It quickly becomes apparent from the TRC report that each member of the cell operated under a nom de guerre, obscuring their identities from their comrades.⁷⁹ George, as the man in charge of moving the weapons, operated largely independently from the rest of the cell. Due to constant fear of informers and police raids, he worked entirely from memory. He recalls,

It was memory because there was soldiers all over, there was security branch all over. Anytime at some stage they recognized what we were up to, and we were marked people. So they could have arrested us, beaten us, and we could have said “there they are.” They used to raid our places, they could have obtained documents, so you had to keep it in your head. If they killed us even [J] and the other guys would have forfeited the guns ...

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

they never would have found where the weapons were.⁸⁰

George's description lines up precisely with that of Mac Maharaj, the architect of Operation Vula, who noted that during his time as a covert operative in Natal "certain people had access to caches ... but only one person knew where every cache was."⁸¹ Similarly, George knew very little about who else, other than his close associates, was working with the movement or their activities.⁸² Despite taking these precautions, the MK had at least one close call which cost their unit a cache of arms.

Those guys made an arms cache during the day and there was this old man looking after the cattle. He saw them digging that pit for the guns. He went back to tell his headman, his induna, and then the induna went to report to the soldiers here in N'wamitwa ... So they came with metal detectors and took everything.⁸³

"We Were Giving Our People Hope:" Armed Propaganda and Popular Revolt in Gazankulu

From the testimony of Comrade J at his amnesty hearing, we can glean some tantalising details about the ANC's supply networks and command structure in the area. The war in N'wamitwa seems to have been run out of the neighboring Kingdom of Swaziland. According to J, the guns were coming over the border from Swaziland. The kingdom also played host, most likely unknowingly, to a mysterious figure operating under the nom de guerre Timen.⁸⁴ Timen appears to have been J's direct superior, and in charge of arming and coordinating the people's war from the relative safety of Swaziland. It seems that J was given a large amount of personal discretion as a commander. As he states,

When you are trained militarily ... you are taught to identify the enemy, then on that basis you know who to target and who not to target. Under certain circumstances, you can get orders to say that: "Deal with this person," but under certain circumstances, you as a commander on the ground, you choose which person to

⁸⁰ Interview with "George."

⁸¹ Maharaj and O'Malley, *Shades of Difference*, 283.

⁸² Interview with "George."

⁸³ Interview with "George." It is unclear whom "Those guys" refers to.

⁸⁴ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

deal with, based on the information that you have.⁸⁵

While he was largely given free rein by his superiors to plan operations as he saw fit, Comrade J remained deeply tied to the ANC command structure during this period. As he notes: “Each action that I participated in, no matter how minor it could have been, a report was sent back to my commanders.”⁸⁶ J makes reference to remaining in contact with his superiors through couriers, although he also notes he made the journey himself several times to meet with his commanders in person.⁸⁷

During their period of activity from October 1989 to June 1990, the MK carried out several armed actions in N’wamitwa and the surrounding area, targeting policemen and members of the security branch. Ngabenziwa Thomas Shingange, a “notoriously cruel” member of the homeland police force, was assassinated when the MK felt he was getting too close to discovering their identities.⁸⁸ By examining his assassination, we can extrapolate how the MK in N’wamitwa chose its targets and operated. According to J’s testimony, Shingange “was notorious for harassing political activists.”⁸⁹ J determined that an example was to be made “to show other black policemen not to follow in the footsteps of Shingange.”⁹⁰ Through analysis of the TRC testimony of three of the combatants involved in the assassination that occurred in the spring of 1990, we can create something of a post-mortem on this act of political violence.

It was decided that the MK would hit Shingange on his way to his cousin’s memorial service. Shortly after picking up his sister, his car was ambushed by two MK gunmen.⁹¹ Shingange was killed instantly while his sister Lilly was shot in the leg. In a victim impact statement given at the TRC she described the experience:

When we went out to the car after walking some metres ... we heard some shots. I was in the middle. Between myself and my brother two bullets passed. He was struck by the third bullet. After the shots went off, the car went off the road and inside another yard ... I was crying by then. I was calling for my mother

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Interview with “George.”

⁸⁹ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

⁹⁰ Ibid.

⁹¹ Ibid.

to come see us before we died. After that I can't remember ...
When I woke up I was in the hospital.⁹²

The Shingange assassination fits into the pattern of how MK hit squads tended to operate while on assignment in South Africa there was a short burst of targeted violence against a high-profile individual.⁹³ George also notes there were several skirmishes with security forces around the intersection leading to Tzaneen, the nearest large town.⁹⁴ Fitting with the first stage of a people's war, many of these can be considered acts of armed propaganda meant to dispel notions of the enemy's invulnerability and to ignite the spirit of resistance in a downtrodden population, rather than to harm the state militarily. In the words of George,

We were sort of waging an [armed] propaganda struggle giving our people hope that it is possible to fight the regime even though it was so powerful, and we were not even closer to defeating them I must acknowledge. Although my friends wouldn't like to hear this, the Afrikaners were heavily armed and prepared for war, more than prepared for war.⁹⁵

The power discrepancy between the MK and the South African state cannot be overstated. Still, it seems that an important part of MK political training involved drawing on the triumphs of other successful Third World liberation movements for inspiration. George discusses how he and others in the MK were heavily influenced and encouraged by the successes of revolutionary movements in Cuba and Vietnam.

Historically we knew that even if a regime was so powerful, it's possible to defeat them. You will know about the Cuban struggle there, they managed to win back their country. You will remember about your country's involvement in Vietnam.⁹⁶ A very, very small country, but it resisted the might of the USA, until the USA withdrew. So we studied those things, we knew

⁹² Ibid.

⁹³ For one of the best descriptions of the day-to-day operations and procedures of MK assassination squads see *A Just Defiance: The Bomb makers, the Insurgents and a Legendary Treason Trial* (London: Portobello Books, 2011), by the South African human rights lawyer Peter Harris who painstakingly recreates the activities of his clients.

⁹⁴ Interview with "George."

⁹⁵ Ibid.

⁹⁶ It seems that in much of rural South Africa, Canada is relatively unknown as a sovereign nation and is often believed to be a state within the United States.

about those things. That it is possible, as long as you win the support of the local population, you can win the struggle. But if you don't win the support of the local population then you have a problem.⁹⁷

As is to be expected in the context of a people's war, the actions of Comrade J's MK cell were a relatively minor aspect of a much wider political effort to bring the Gazankulu homeland to its knees. Throughout the late 1980s, the ANC began to increase efforts to raise its profile among the inhabitants of the Gazankulu homeland under the guise of various civic organizations. At the time, non-political civic organizations were allowed freedom of assembly, enabling them to organize and recruit. One interviewee for this project worked with a civic organization during this period that was ostensibly dedicated to improving the road system within the Gazankulu homeland. According to him, "we'd be working on the pavement but really we'd be preaching the gospel ... we'd say one, two, three, who wants to join ANC."⁹⁸

In February 1990, student activists spearheaded by the Giyani Youth Congress began to rise up against what they perceived as a corrupt and sub-par educational system. At the same time, the civil service of Gazankulu began a stay-away from work demanding better pay and the resignation of Gazankulu's Chief Minister Hudson Ntsanwisi. The South African Institute for Race Relations' annual Race Relations Survey estimated that the stay-away was "virtually total." These actions were coordinated with a large-scale boycott of businesses owned and operated by the Ntsanwisi family. Many of these businesses were also burned to the ground, along with the homes of policemen and those unwilling to take part in the strike.⁹⁹ Within two months, most aspects of administration within the homeland had been paralysed and the government was unable to deliver even basic services to the people.¹⁰⁰ For the first time in his 21 years as Chief Minister, Hudson Ntsanwisi found himself fighting for his political life.

While these actions were largely popular grassroots responses to an unpopular and ineffectual political system, there was a hard edge of

⁹⁷ Interview with "George."

⁹⁸ Interview with "Participant", February 23, 2018.

⁹⁹ South African Institute for Race Relations, *South African Institute of Race Relations Annual Report 89/90*, 497.; "4 Shot Dead in Gazankulu," *The Star*, February 22, 1990. "Boycott and Stayaway Continues in Gazankulu," *The Star*, February 23, 1990.

¹⁰⁰ South African Institute for Race Relations, *South African Institute of Race Relations Annual Report 89/90*, 499.; "Gazankulu Workers Urged to Return to Jobs," *The Star*, March 8, 1990.

coercion. The hand of the MK can be seen in a series of grenade attacks, largely against the homes of policemen, as well as against businesses who refused to shutter their doors in solidarity with the strikers.¹⁰¹ During this time a pamphlet, allegedly from the MK, circulated around the community threatening with execution any civil servants who did not take part in the strike.¹⁰² The *Cape Times* also reported several shooting incidents involving automatic weapons directed at the police in Giyani and at the homeland's transportation networks.¹⁰³

The response on the part of the state to these disturbances was characteristically heavy-handed. By April 1990, over 2000 people in Gazankulu had been arrested, and at least 29 killed, largely in clashes with the homeland police force.¹⁰⁴ Newspapers from the time record many incidents of the homeland police using deadly and overwhelming force on protesters during the unrest.¹⁰⁵ With the situation within Gazankulu rapidly deteriorating, Ntsanwisi was forced to call in outside help. On February 21, 1990, a detachment of SADF soldiers entered Gazankulu as an occupying force in order to help the homeland forces restore order.¹⁰⁶ The MK's response to the occupation has become the stuff of legend in N'wamitwa. On April 12 1990, MK guerillas staged a brazen attack on a temporary SADF base at the stadium in Nkowankowa, as was described at the beginning of this article. Four national servicemen were injured. It is worth noting that even before the attack on April 12, the local SADF commander stated that the countryside was "dangerously uneasy" and that travel between villages at night was deemed extremely hazardous.¹⁰⁷

As is typical of armed propaganda actions, the cultural and political impacts of the "battle of Nkowankowa stadium" far outweigh any effect on the military balance of power in the area. Still, the attack held tremendous symbolic importance for two reasons. Firstly, it marked the first time the resistance had directly targeted the hated army of the apartheid state within the homeland. Secondly, the stadium in Nkowankowa held symbolic value as a focal point of resistance. Before it

¹⁰¹ "Unrest in Gazankulu Not Caused by ANC," *Cape Times*, April 6, 1990.

¹⁰² South African Institute for Race Relations, *South African Institute of Race Relations Annual Report 89/90*, 500.

¹⁰³ "Unrest in Gazankulu Continues," *Cape Times*, April 11, 1990.

¹⁰⁴ "Protest March Against Hudson," *The Soweton*, April 5, 1990.

¹⁰⁵ "4 Shot Dead in Gazankulu," *The Star*, February 22, 1990.; "Unrest in Gazankulu Continues," *Cape Times*, April 11, 1990.

¹⁰⁶ "SADF Clamp: Troops Sent to Giyani as Youth's Body Found," *The Soweton*, February 21, 1990.

¹⁰⁷ South African Institute for Race Relations, *South African Institute of Race Relations Annual Report 89/90*, 498.

was taken over as a temporary base by the SADF, it had been an important staging point for political rallies. For instance, during the previous month the stadium had hosted 30,000 people for the highly politicized funeral of two young men who had died in clashes with the police.¹⁰⁸ Comrade J also notes that by attacking the stadium at Nkowankowa the MK sought to undermine notions of the SADF's invulnerability. In his words, "by attacking them [we were] showing them that the soldiers were also vulnerable."¹⁰⁹

In the aftermath of the attack at Nkowankowa, George found himself in the cross hairs of the apartheid state. "I was banned by the soldiers. They said if they should see my bakkie anywhere near Nkowankowa they would shoot to kill."¹¹⁰ Similarly, those with suspected links to the insurgency faced constant raids on their homes.¹¹¹ Despite increased pressure on the insurgency by the forces of the state, in the end the seeds of the cell's destruction were sown by internal dissention and ill-discipline within the unit. It seems that sometime in mid-1990, one of the insurgents who had taken part in the attack on Nkowankowa committed a senseless crime. Using weapons provided by the MK, he attacked a hostel for boarding students of Mahwahwa High School in the village of Nkambako, terrorising the students and raping two young women.¹¹²

Needless to say, Comrade J was furious. His subordinate's actions risked squandering the goodwill that the MK was trying so hard to build with the local community. Given the importance that the ANC put on winning over the local population, his actions could not stand. He was given a stark choice—either go into exile or be executed. Choosing the former, it fell to George to smuggle him down to Mpumalanga and over the border to Swaziland.¹¹³ George notes that during the ordeal he didn't sleep for two days.¹¹⁴ If J thought the issue had been dealt with, he forgot one important detail: the man's wife.¹¹⁵ It seems that despite MK's insistence on secrecy, their now exiled comrade had shared considerably more about the membership of the movement with his wife than he should

¹⁰⁸ "Force Chief to Quit," *The Sowetan*, March 5, 1990.

¹⁰⁹ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

¹¹⁰ Interview with "George," February 26, 2018.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

have. After his exile, possibly as an act of vengeance against the men who had forced her husband to leave the country, she turned informer.¹¹⁶

"I Might Have Been Hanged:" The Death and Rebirth of the MK in N'wamitwa

At the time, this was of course unknown to Comrade J who was already planning his next operation: a brazen attempt on the life of George Rasebotse, the police chief of the neighboring village of Rita.¹¹⁷ At around 10:00PM on the night of June 15, Comrade J and three associates lay in wait near Rasebotse's home.¹¹⁸ This time however, it was the guerrillas who were ambushed. As the four lay in wait their position was illuminated by a spotlight mounted on a SADF armoured car.¹¹⁹ After a brief firefight the insurgents were forced to scatter.¹²⁰ J's TRC testimony reveals a tragic post-script: as he sought to escape his pursuers, J jumped the fence of a nearby technical school in search of a hiding place, dropping a hand grenade in the process.¹²¹ While he tried to retrieve the bomb, in the chaos of his escape it was lost in the tall grass, later exploding and killing an unnamed civilian.¹²²

One can perhaps see the hand of the exiled man's wife in the ambush in Rita township. Whether or not the army knew about the attempt on Rasebotse's life, they knew who was responsible, and sprang into action based on her information. George, along with much of the MK membership in N'wamitwa, was arrested. "When that policeman was killed the police had a list of us. So the policeman was killed in the evening, and in the morning I was running out of the house dressing myself while running away from the police because they were coming for me."¹²³ George was taken to the police station and interrogated. However,

¹¹⁶ Ibid.

¹¹⁷ Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ This is one of several points in J's story where I have trouble reconciling his displays of athleticism with his apparent physical disability. According to Basani, my research collaborator, there are rumors that John underwent a medical procedure while in exile that increased his mobility; Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

¹²² Truth and Reconciliation Commission Amnesty Committee, *Attack on Rita Township and the Murder of Mr. Shingange*.

¹²³ I found no evidence George Rasebotse was killed during the gunfight in Rita township. Given that "George" was not present during the operation, it is safe to assume that he is confused as to the outcome; Interview with "George."

he was told that there was insufficient evidence to hold him, and he was released.¹²⁴

As was mentioned previously, Comrade J was an excellent judge of character, and did not appoint George to his important role within the organization lightly. The police had continued to detain many others within the unit who had far less affiliation with the movement than George did.¹²⁵ As such, he suspected that he was being surveilled in the hopes he would panic and lead the police to the weapons.¹²⁶ Twenty-eight years later, George still grins mischievously as he describes his attempt to bore the policemen tailing him into submission. “I just went to the *shabeen* and drank and drank every day until they came and took me away.”¹²⁷ Despite the fact that George was far too canny an operative to fall into the trap set for him, the fact remains that by the end of June 1990 the police had successfully rolled up the MK’s entire operation in N’wamitwa. Even Comrade J was caught and incarcerated. According to George, when police raided the property where J was staying, they found several AK-47s hidden in the thatched roof of his rondavel.¹²⁸

George was indicted on six felonies including kidnapping, murder, arms trafficking, transporting fugitives, and intimidation.¹²⁹ In the words of George, “if it was not ... 1990/91 I might have been hanged.”¹³⁰ Despite the obvious fact that the arrests were disastrous for the MK in N’wamitwa, they could not have come at a better time. On August 7 the ANC suspended the MK’s 29-year armed struggle, leading to the mass release of political prisoners.¹³¹ Among the 1,300 prisoners released were Comrade J and George, after just over a month in prison.¹³²

While the initial stages of the insurgency in N’wamitwa lasted only nine months, Comrade J’s unit achieved many of the goals outlined by Mao for the early phases of a people’s war. The MK had made their presence known through acts of armed propaganda. Their armed propaganda struggle took place alongside a mass civil uprising against the homeland government. This combination of targeted guerilla activity in support of mass action conforms to the ANC’s nationwide strategy as

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ “ANC Agrees to End Armed Struggle,” *The Washington Post*, July 8, 1990.

¹³² Interview with “George.”

discussed in the Green Book.¹³³ The stalemate phase was brought to a screeching halt by the disastrous fallout from the defection of the exiled man's wife and the ambush in Rita township. However, events occurring on the national level resurrected the MK's presence in N'wamitwa. These actions had also begun to shift perceptions of the ANC from being a group of unruly terrorists to that of a government-in-waiting. Furthermore, the uprising fatally weakened the homeland government of Hudson Ntsanwisi, who was able to secure his short-term political future only by negotiating with—and ultimately endorsing—the ANC.¹³⁴ Comrade J's unit would remain active in the N'wamitwa area until the democratic transfer of power in 1994. However, after his release in August 1990, Comrade J and his subordinates moved increasingly from destabilizing the area to administering it; laying the groundwork for an electoral takeover.

Today, N'wamitwa is a quiet rural community tucked away in the north of Limpopo province, one of South Africa's least developed regions. On the surface, N'wamitwa shows few signs of its tumultuous recent history. I spent a month there on another research project in 2014 with little idea that this story lurked under the surface. The stadium at Nkowankowa has largely returned to its original purpose, although it is still a major venue for political rallies. The stadium remains influential in local life and has served as a springboard for what is quickly becoming a South African phenomenon: Soccer Grannies.¹³⁵ For his part, Comrade J remains an influential figure in the area he first left 42 years ago. Due to his refusal to be interviewed, one can only wonder how he would reflect upon the changes in the community he fought to liberate.

¹³³ African National Congress, "The Green Book: Report of the Politico-Military Strategy Commission to the ANC National Executive Committee August 1979."

¹³⁴ "Five SA Homelands Support the ANC," *The Star*, May 6, 1990.

¹³⁵ Started in 2003 by Limpopo social worker Rebecca Ntsanwisi this soccer league made up entirely of elderly women now boasts over 40 teams nationwide. "Soccer Grannies," found on <https://www.soccergrannies.com/> (accessed July 25 2019).

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Figure 1: *Map of South Africa showing the rural community of N'wamitwa.* Map by Darren Reid.

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