

EXCAVATING THE LEGAL SUBJECT The Unnamed Dead of Prestwich Place, Cape Town

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In mid-2003, an extensive slave burial ground was discovered close to Cape Town's central business district. Named 'Prestwich Place' by activists for its memorialisation, the site rapidly became the focus of a debate which highlighted tensions around identity and postcolonial memory in this part of South Africa. Prestwich Place and other contentious urban heritage sites in the city are elements of a cartography of silences and hauntings of the postcolonial archive. This article begins to read the relationship between these hauntings, ethical and juridical discourses of public memory in contemporary South Africa, and the possibilities available to law for remembering and mourning the dead.

I

Cape Town, traditionally the most liberal of South Africa's apartheid cities, sits poised between the construction of a new urban future and the presence of a monumental past. Buoyed by a ceaseless property market boom, the cranes and scaffolding of property development have become fixed features of the humble urban skyline. Amidst this, a highway that was started decades ago still juts out, unfinished, over the city centre, suspended in a phantasm of grand urban planning. Construction haunts the city. This perpetual incompleteness of the built environment props itself up against the fixed and permanent: Table Mountain and the Atlantic Ocean, the two natural features which have played a defining role in the geography and history of the city. While Johannesburg can be imagined as a place discontinuous with its past, a deconstructed apartheid city whose past remains only in 'vestiges and debris',¹ Cape Town's past is always present, at least partly because of the monumental nature of its topography.

Nestled between sea and mountain, the concrete and asphalt of colonial and apartheid urban planning construct spatial segregation in wordless conspiracy with the textures of rock and water. This complicity of architecture and nature continues to both reflect and effect the racial segregation that, until the early 1990s, was strictly legislated. Today, thinking about justice and legality in Cape Town lends itself to a preoccupation with space and memory. Cape Town is still marked by the enactment of land segregation laws, as are all South African cities. To travel from centre to periphery is to experience the visibility of racial stratification. Poor black people remain on the edges of the

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¹ Mbembe (2004), p 404.

city, only able to access the centre as labour. There is a contemporary politics of urban planning that is played out between poles of change and stasis, and is often voiced as a choice between logics of development and of redistribution. In this equation, development figures as *plus ça même chose*, leaving the segregated cartography of the city unaltered.

While the geometry of the greater city follows the vision of early twentieth century social engineering and mid- to late-century apartheid segregation, the roadmap of the city centre traces even older colonial demarcations. The first boundaries of the colony are still clearly named: Strand Street ('Beach Street') recollects where the ocean-bound edge of the city once was. Parallel to it is Waterkant Street ('Water's Edge'), which once ran alongside the water's edge before part of shallow Table Bay was reclaimed to create space for the city's commercial and administrative district. Buitenkant Street ('Outer Edge') marks the easternmost boundary of the old city, its intersection with Strand Street guarded by the old military sentinel that is the Castle of Good Hope. Buitengracht Street ('Outer Canal') marks the western boundary of the old city, beyond which once lay the 'menace of wild animals [and] the depredations of marauding Hottentots',² the alien natives who once inhabited the Cape. The early colonists ventured past these very first frontiers long ago, yet the erstwhile boundaries between self and other continue to haunt the city in unexpected ways.

Follow Strand Street today and, at the point where it intersects the old west boundary, it becomes the main drag of the area known as Green Point, once named District One. Previously home to the city's red light district, gay and lesbian village, and a burgeoning narcotics trade, Green Point has now become less risqué, more well heeled, and is considered 'some of the most sought-after real estate in the country'.³ Just below the main road, nestled between an old school that remains from pre-forced removal days as a coloured working-class neighbourhood and the now-fashionable restaurants and clubs of the area, is a cordoned-off construction site. Soon a seven-storey complex dedicated to luxury living will stand in its place, but for now the site lies empty.

If you stand here, says archaeologist Antonia Malan, 'the urban landscape can be read like a political history book'.⁴ The built environment is layered according to period and style, revealing traces of previous inhabitants and their movement through the city's religious and political past. Yet, standing here, the very earth — this 'most sought-after real estate' — also conceals layers of political history deposited directly below. In mid-2003, demolition and excavation on this site, which subsequently became known as Prestwich Place, came to a sudden halt as the dull white bone of human remains was revealed. These skeletons were to become the focal point of a legal dispute about

² Murray (1964), p 3.

³ 'Old Bones of Contention: Historians Want Development of Slave Graveyard Halted', *Sunday Times*, 25 January 2004, p 12.

⁴ Malan (2004a).

heritage and development, knowledge and identity, and the discovery would be seen as a metaphorical unearthing of the city's unfinished business.

The significance and extent of Prestwich Place were quickly determined. With on average one skeleton per square metre,⁵ the full and disarticulated skeletons found at Prestwich Place amounted to almost 3000 individuals. These rediscovered burial grounds are as extensive as they are dense: an area of about 1 kilometre by 1.5 kilometres, stretching from the Bo Kaap to the Waterfront, is thought to contain unmarked graves and burial sites.⁶ Newspapers reported that the burials were those of 'a cosmopolitan community of slaves brought to the Cape from East and West Africa, second-generation slaves and freed slaves'.⁷ Documentary, archival, oral and archaeological evidence painted a picture of an area that had been used up until the mid-nineteenth century for the formal and informal graveyards of the city's underclass: these included not only slaves, but Khoikhoi, Europeans, Africans, Muslims, free blacks and 'other members of the Cape underclass'.⁸ This was where these lower strata of society buried their dead, the denial of access to the Dutch Reformed Church's formal graveyards a final marker of their lack of citizenship.

What followed the rediscovery of this site was, then, as much an excavation of human remains as an excavation of the silences of the archive, of the law, and of the disciplines of archaeology and historiography. A public consultation, held in terms of the *National Heritage Resources Act*,⁹ quickly revealed that a small but outspoken section of the public was adamant that the bodies should not be exhumed at all. The South African Heritage Resources Agency (SAHRA), the public body tasked with guiding the course of action in such a matter, announced its decision a month later: the bodies were to be exhumed forthwith, and reinterred somewhere else. There would be no grand memorialisation on the site. In response to this, a group of concerned members of the public formed the Prestwich Place Committee (PPC)¹⁰ to campaign for

⁵ Cultural Sites & Resources Forum (2003), p 4.

⁶ Vasta (2003), p 31. Archeological exhumations had already taken place at other accidental discoveries of burial grounds in the area, including Cobern Street in 1994 and Marina Residential at the V&A Waterfront in 2000 (Cultural Sites & Resources Forum, 2003, p 6). The developer of Prestwich Place claimed that: 'The problem is not unique to my site — I'm just one of the first to own up.' ('The Issue "is About Us as South Africans"', *Cape Argus*, 5 November 2003, p 14). Indeed, in October 2003 the city council was to issue a warning that developers must expect to find skeletons when developing in the extensive western area of the central business district and neighbouring Bo Kaap and Green Point areas. Developers applying for permission to rezone or build would have to also appoint an archeologist, until such time as a long-term plan for dealing with such finds could be made ('Council Says Developers Must Appoint Archeologists', *Cape Times*, 30 October 2003).

⁷ 'Old Bones of Contention', *Sunday Times*, 25 January 2004, p 12.

⁸ Cultural Sites & Resources Forum (2003), pp 6–7.

⁹ *National Heritage Resources Act 25 of 1999*.

¹⁰ Initially named the Hands Off Prestwich Place Ad Hoc Committee (HOPAHC).

the exhumation and development to be halted. The group also disputed the priority of archaeology as a body of knowledge and methodology for determining the meaning of the site.

That the dead should obstruct development in this part of the city is uncanny. Their apparition speaks of a haunting of modernity by the frontier. For the boundary between city-zen and other was a founding feature in the history of the burial ground, lying as it did outside the city's original perimeter, as the final resting place for all those denied formal burial within. This geography of bounds would in turn be reflected in the centrality of the frontier to the colonial history of the Western Cape.¹¹

In the first decade of the twentieth century, a still-born child was buried by a Muslim congregation at a cemetery that had been closed by the colonial authorities. The men were charged and convicted; on appeal to the colony's Supreme Court, the men complained that the motive for the closure of the cemetery had been segregation, since a nearby Christian cemetery had remained open.¹² As an act of morbid protest, their burial procession had been still less dramatic than that which took place 20 years earlier at burial grounds in the vicinity of Prestwich Place, on the slopes of Signal Hill. Three thousand Muslims had congregated for a funeral at Tana Baru, the final resting place for such holy men as Tuan Guru, founding figure of Islam at the Cape. The funeral was held in protest at the 1884 legislation closing these western cemeteries in the wake of a devastating smallpox epidemic. When policemen arrived to take the names of mourners, a riot broke out, and a second burial took place that day.¹³

The unrest of the nineteenth century was a response to an imperial order that legitimised its plans for reordering the growing colonial settlement in terms of advances in medical knowledge and a desire for modernity, and in spite of the religious beliefs and traditions of those affected.¹⁴ It would prove to be a premonition of how sanitation and illness would become a pretext for the removals and slum clearances of the next century.¹⁵ Today, after democratisation, the site of the old boundary between citizen and subject still haunts the city.¹⁶ The postcolonial phantom appears at the frontier of inner-city gentrification and development, and provides an opportunity for inquiry into not only the histories of the dead, but of their descendants' modes of struggle. Indeed, how would contemporary law respond to the descendants' desire to mourn the unnamed dead?

¹¹ Layne (2005).

¹² *R v Abduroof* 1906 23 SC 451. The appeal was lost.

¹³ Worden et al (1998), pp 210–11.

¹⁴ On the growth of the city and the imposition of social order at the turn of the nineteenth century, see generally Chapter 5 of Worden et al. (1998).

¹⁵ Swanson (1977).

¹⁶ The distinction is used in the sense described by Mamdani (1996).

II

The activism of the Prestwich Place Committee borrowed from some of the stances taken at the very first public consultation, at which one person had shouted from the floor: 'Stop robbing our graves!' This sentiment is not a new one; it is echoed around the world in the struggles of indigenous peoples to claim back skeletons and human remains that have been kept in colonial museum and university collections, or to prevent scientific study of newly found remains. This global contestation of the proprietorship of human remains has begun to be reflected not only in political action and rhetoric, but increasingly in legal and policy developments.

In South Africa, there have been similar calls for the repatriation of skeletons by indigenous communities.¹⁷ Martin Legassick and Ciraj Rassool's survey of the early twentieth century trade in human remains has called upon South African museums to take stock of their collections of bones.¹⁸ The exhumation of skeletons invokes deep emotions that also have a source in the history of how black bodies have been displayed by art and science. Pippa Skotnes' 1996 *Miscast* exhibition brought these emotions to the fore when indigenous representatives objected to her exhibition of Khoisan bodies at the South African National Gallery.¹⁹

While Skotnes' intention to critically exhibit the exhibitors was misread by some indigenous representatives, and was thus cause for ceaseless controversy, there was much broader consensus on the question of Sara Baartman's remains. Baartman, a 20-year-old Khoi Khoi woman, was in 1810 taken from Cape Town to London, where she became known as the 'Hottentot Venus', and was exhibited as a freak and a spectacle of exaggerated African sexuality. When she died in 1816, her body was dissected and her brains and genitals displayed at the Musée de l'Homme in Paris. Her remains were successfully repatriated and reinterred in 2002, following a dedicated campaign by South African activists and capitulation by the French Senate.²⁰ Subsequently, the body of Sara Baartman, and the narrative of the return of her remains, have been appropriated as symbols of the national estate with relevance beyond localised struggle by descendants of the Cape's indigenous peoples.

In many cases, repatriation has been plagued by doubts about the identities of the repatriated and of the community to which the remains are to be returned.²¹ This is the heart of the politics of cultural property: this difficult

¹⁷ See, for example, Engelbrecht (2002), p 243.

¹⁸ Legassick and Rassool (2000).

¹⁹ See especially Abrahams (1996a, 1996b).

²⁰ Maseko (1998, 2003).

²¹ For examples within South Africa, see Nemaheni (2002); Fish (2002). For an example of repatriation that may have been made to the wrong country, see Parsons and Segobye (2002), writing in the same volume. For a general discussion of instances of claims for repatriation and the protection of cultural heritage, as

intersection of the cultural expression of identity and the legalities of senses of proprietorship and patrimony.²² The success of claims to representation and proprietorship are especially interesting in the case of Prestwich Place, where the anonymity of the dead and the fraught identity politics of the Western Cape give rise to particular obstacles. From the beginning, the difficulty of representing the descendant community seemed apparent, and the connections between descendancy, mandate and right were not always convincingly articulated by those wishing to speak for Prestwich Place under the banner of the Prestwich Place Committee.

When SARHA announced on 1 September 2003 that exhumation would continue, it was clear that the Committee's main aim would be to prevent exhumation, rather than to take part in the discussion about off-site memorialisation. Father Michael Weeder, the main organiser of the campaign, told the media: 'A plaque is insufficient. It is an insignificant gesture. Those skeletons are the ancestors of everybody.'²³

Yet, at the same time, the Committee's press statement alluded to rifts along the lines of cultural identity:

[SAHRA has] repeatedly claimed that no immediate descendants of people buried there could be found. The conclusion that the significance of the site is therefore questionable, suggests a lack of understanding of this city's history ... We ... question how the Prestwich Street burial ground would have been dealt with if it were located in another part South Africa. Would heritage authorities have ignored the cry for the remains of ancestors to be dealt with sensitively and with respect?²⁴

While statements like this hinted at a rhetoric of regional (and, implicitly, coloured) marginalisation, the Prestwich Place Committee also positioned itself as part of a broader black (and non-regional) struggle.²⁵ Weeder delineated his specific concerns in an opinion piece published in a regional

well as the problems posed for these claims by controversies about identity, see Brown (2003) and the essays collected in Barkan and Bush (2002).

²² I have elaborated on this point in Jonker (2003).

²³ 'Skeletons May Remain in Green Point "Closet"', *Cape Times*, 4 September 2003.

²⁴ 'Hands Off Prestwich Street Ad Hoc Campaign: A Press Statement on the Prestwich Place Burial Ground', undated press release.

²⁵ The terms 'Black' (with an upper case 'B') and 'coloured' are part of apartheid's terminology of racial classification. As objectionable as uncritical use of such terms is, they are still used popularly and therefore reproduced here. On the other hand, 'black' (with a lower case 'b') is an inclusive term first adopted by those within the anti-apartheid movement, and refers to all those who were not classified white under the old racial regime. It continues to be used by those who with a progressive take on identity politics, but it does not yet heal the antagonism that often exists between those who self-identify with the terms 'Black' and 'coloured', especially in the Western Cape. The antagonism between 'Black' and 'coloured' is increasingly portrayed as a regional/national tension at the level of popular politics.

newspaper soon afterwards. He recalled the words of a speaker from the floor at the first meeting, who had asked: ‘Why are white people digging up black bodies?’²⁶ Describing his feelings on seeing a white archaeologist at work, Weeder recalled the words of Malcolm X: ‘Just because a person feeds the fish, it doesn’t mean that he is a friend of the fish.’²⁷ And yet, in the same article, voicing a vision of an inclusive descendant community, he wrote: ‘Yes they are ours, whether by blood or in the way we choose to love them as our neighbours.’²⁸

Such equivocation by activists and other commentators would foreshadow the Prestwich Place Committee’s failing attempt to articulate a marginalised subjectivity while refraining from deploying apartheid categories. In the face of this, the developer impassively referred to the legislation, which required that a representative community show ‘direct descendancy’ in order to claim any authority over the object of heritage.²⁹ Later, in an administrative appeal, the developer would elect not to contest the Committee’s claims to direct descendancy; this seemed to be disappointing to the group, which perhaps wished to use disagreement about descendancy as a stage for reimagining conceptions of identity.³⁰

Yet the identity issue did not end here. In a subsequent appeal — this time to a tribunal constituted by Department of Arts and Culture — the campaign group pleaded that the law had a much more insidious blind spot regarding identity. It contended that the public consultation process, which had drawn an intense response, albeit from a small group of people, had assumed a ‘middle-class familiarity’ with methods of public consultation, and indeed with the significance of the issue. The process failed to ‘take into account the erasure of layers of undervalued history and of memory which have come to be associated with the very communities who by history and association would have an interest in this site’.³¹ The contention was that the very act which the site symbolised was the erasure of subjectivity of the people buried there, their anonymity and the condition of their non-recognition by contemporary descendants. What really defined the Prestwich Place Committee’s efforts then, as well as its chief obstacle, was this attempt to reimagine identity and community, and to obtain legal legitimacy for this reimagined sense of a community of descendants.

Prestwich Place is but one example of a range of diverse scenarios involving collective interests and senses of proprietorship that may sensibly be grouped under the umbrella of the term ‘cultural property’. Disputes over cultural property form a vivid image of how law produces and limits subjectivities, since they typically invoke claims that are simultaneously

²⁶ Weeder (2003).

²⁷ Quoted in Weeder (2003).

²⁸ Weeder (2003).

²⁹ Section 36(6)(b) of the *National Heritage Resources Act 25 of 1999*.

³⁰ Hands Off Prestwich Place Ad Hoc Committee, ‘Issues arising from Prestwich Street hearing, Thursday 23rd Oct 2003’ (informal notes kept by Bonita Bennett).

³¹ Prestwich Place Project Committee *Submission to DAC Tribunal*, 20 May 2004.

claims *of* law and claims *against* law. As Elazar Barkan and Ronald Bush note, the term 'cultural property', used in so much of the literature about claims of this sort, is itself a paradox.³² Property is at the foundation of the Enlightenment doctrine of universal rights and individual liberties, which do not sit well with dynamic conceptions of collective identity and ownership. Claims to cultural property aspire to be claims of legality; yet often, by invoking the cultural as opposed to the civic, they are not recognised by the law, or they are recognised only as exceptions to deep-seated civic rights. Cultural property disputes are therefore generally imbued with a deep confusion of subjectivity and citizenship. Part of the problem is that cultural property only reveals its identity when it has been lost,³³ as if alienation was an intrinsic property of identity, and loss an identifying element of possession. Claims to cultural property must therefore always look back, memorialise and risk reification.

Rosemary Coombe, in her discussion of appropriation and the cultural politics of intellectual property, claims that law cannot avoid setting limitations on the collective subject, and is forced to adopt certain rhetorical positions which Coombe calls Orientalist and Romantic.³⁴ From the former perspective, law regards identity as discrete, fixed and based upon biological or cultural essences. The latter perspective borrows from Romantic thought, with its preoccupation with genius, originality and authorship:³⁵ the qualities of the self-contained individual defined by the property in his or her possession are lent by the logic of modernist thought to nation-states and ethnic groups, who are then individualised in the political imaginary.³⁶ From this perspective, then, the nations or ethnic collectives that would hold cultural property must be 'territorially and historically bounded, distinctive, internally homogenous, and complete unto themselves. In this worldview, each nation or group possesses a unique identity and culture that are constituted by its undisputed possession of property.'³⁷

This difficulty with articulating a conception of identity that is hybrid, dynamic and constantly subject to incomplete description of its rights to cultural property is a structural silence within law's discourse of right and

³² Barkan and Bush (2002), p 2.

³³ Barkan and Bush (2002), p 15. See also Lowenthal (1998), p 238, claiming: 'Identity is succored more by a quest for lost heritage than by its nurture when regained.'

³⁴ Coombe (1997), pp 75ff.

³⁵ On the intertwined genealogies of notions of authorship and original genius, and individualist rights in intellectual property, see Rose (1993); Woodmansee and Jaszi (1994); Saunders (1992).

³⁶ Notions of cultural property and heritage evolved together in the eighteenth and nineteenth centuries with the reification of nation and race, although in sometimes complex ways. See Barkan (2002); Lowenthal (1998).

³⁷ Coombe (1997), p 84. For examples of these assumptions in operation, and the difficulties they create for the dynamism of culture, see Torres and Milun (1995); also Scher (2002); Jonker (2003); Jonker (2004).

justice: law's inexpressible subject. In this view, the Prestwich Place Committee failed because it invoked a hybrid and dynamic identity that often intended to open up rather than determine questions about genealogies and notions of descendancy. It might be argued, then, that it was the inexpressibility of this open-ended conception of identity that could be found at the basis of law's inability to come to the aid of the group.

But this silence wells from deeper discourses than the legal: descriptions of hybridity at any level are fated to be fraught with tautology and vagueness. More usefully, perhaps, critique needs to shift from questioning the responsibility of law — the question of to whom does the law respond — and towards another, prior questioning of the source of law, the founding myths that are responsible for law. A creative legal activism then invests itself in the potential not to find but to found responsibility. This potential exists in the role of memory and the presence of the past in the very constitution of the law, at the time of the law's constitutional mo(nu)ment. A work of excavation of these memorial foundations would allow activism not to approach the law as found, but to find how its responsibilities might be reactivated.

III

If the struggle centred on Prestwich Place has seemed uncanny, then perhaps it is because its will to reimagine identity has recalled vestiges of the open-ended cultural formations of District Six, the location of Cape Town's most notorious forced removals.³⁸ District Six's multicultural community has increasingly been imagined as a vibrant pre-apartheid identity, source of a cultural dynamism that was destroyed by apartheid's racial classifications, their attendant cultural stereotypes and supposed biological aggregates. An area on the eastern outskirts of the city centre, the District was, from early colonial days, a vital manifestation of Cape Town's existence as a port city. All kinds of people lived, worked and loved there: immigrants from Europe, the Caribbean and the Americas, slaves and freed slaves of Southern African and Southeast Asian origin. Recent descriptions of Cape Town that narrate the city's history as a locus of creolisation³⁹ identify District Six, as place and as community, as an important catalyst for processes of cultural contact and exchange and the formation of novel, hybrid identities. District Six also had a reputation for intense and vibrant artistic, intellectual and political activity, and is often summoned to represent the uniqueness and vibrancy of cultural life in Cape Town before removals — much as Sophiatown does for the Witwatersrand.⁴⁰ If apartheid's metaphor of apart-ness made of it a primarily

³⁸ For a social history of forced removals in Cape Town, see Western (1981); on memory and oral histories of forced removals in Cape Town, see Field (2001). On forced removals more generally in South Africa, see Platzky and Walker (1985).

³⁹ For example, Denis-Constant Martin (1999); Zimitri Erasmus (2001).

⁴⁰ Sophiatown was destroyed by forced removals shortly before District Six. The area was rebuilt as low cost housing for whites and renamed Triomf ('Triumph').

spatial ordering,⁴¹ then District Six was ‘not of South Africa in its apartheid guise, but a place apart’.⁴²

Truly the District did not fit into apartheid’s vision of urban planning,⁴³ for between 1966 and 1982 its 60 000 residents were methodically removed to townships on the margins of the metropolis. Their houses were bulldozed to the ground, so that today the only remnants of the once vibrant community are the churches, mosques and synagogues which stand painfully alone on the otherwise empty land. The barren landscape that remained would become a ‘monumental emptiness’,⁴⁴ an icon of the remembrance of forced removals.

In the mid-1980s, after removal had been completed, District Six became the object of remembrance, and of what may be described as practices of memory as resistance. These practices — humble acts and gestures such as the writing of poetry, the staging of plays, the painting of murals and graffiti, the gathering of ex-residents around dinner tables — were persistent and self-consciously resistant, and finally imprinted the District on to the popular imagination as one of the key symbols of the injustices of forced removals, as well as of the struggle not to forget. ‘Remember District Six!’ begins one struggle text, reminding us that the urge to remember became a key mode of cultural resistance during the most turbulent years of apartheid.⁴⁵

Remember Dimbaza.
Remember Botshabelo/Onverwacht,
South End, East Bank,
Sophiatown, Mukuleke, Cato Manor.
Remember District Six.
Remember the racism
Which took away our homes
And our livelihood
And which sought
To steal away our humanity.
Remember also our will to live,
To hold fast to that
Which marks us as human beings:
Our generosity, our love of justice
And our care for each other.
Remember Tramway Road,
Modderdam, Simonstown.

⁴¹ The insight is Peter Andersen’s.

⁴² Soudien (2001), p 115 (emphasis in original).

⁴³ Although urban segregation is less a product of apartheid spatial ordering than its precursor. Mid-century urban planning of Cape Town was modeled on an appropriation of European modernism, its project of reconstruction, and the ideas of Le Corbusier. See, for example, Angelini (2003), p 9; Mabin (1998), p 270.

⁴⁴ Delport (2001), pp 36–37.

⁴⁵ One need only think of the fighting title of Don Mattera’s *Memory is the Weapon* (1987), or indeed Bloke Modisane’s description of Sophiatown (1986).

These practices of memory were an important part of the formation of an activist grouping called the Hands Off District Six Campaign, which won an important victory during the 1980s when it was able to exert enough pressure to prevent the intended redevelopment of the District. Much of the area therefore still stands empty, an 'open wound'⁴⁶ between mountain and sea that disturbs the city's natural beauty. It is a powerful marker of destruction and memory that meets the eye of every commuter entering Cape Town's central business district. Preventing development on the land fulfilled both strategies of resistance of the Hands Off campaign. First, the land remained visually scarred — a powerful symbol of memory as resistance. At the same time, it remained physically empty, waiting for a time when those who had been removed would be able to return.

With the arrival of freedom in 1994, return became a real possibility, in line with the new government's land restitution program. The District Six Beneficiary Trust, which has administered the land claim for ex-residents of the District, and now manages the process of return, grew out of the initial activist campaign. The Hands Off campaign also gave birth to another program for change, one that continued to work with practices of memory, such as oral history collections and the production of creative work, and that resulted in the establishment of a District Six Museum.⁴⁷

These two programs, of restitution on the one hand and memorialisation on the other, share origins institutionally, historically and even conceptually. Yet, with the achievement of return, one can begin to discern a divergence. Those involved in the legal program have been concerned with the meeting of requirements of the legislation, and such matters as the establishment of a social contract between residents (aiming, amongst other things, to define and limit rights to use and transfer property in the area). The Beneficiary Trust's program is an entirely necessary one, and a victory that is in line with the initial activist agenda. Yet it is a process that, through its reliance on modes of legality, must engage in the discourses of proprietorship and patrimony. Thus, who is entitled to restitution? What does this right entail? Who is an ex-resident? Who is the descendant of an ex-resident? Who belonged to the community of District Six, and who will belong to a reconstituted community? Justice is understood, in this language, in terms of right, inclusion and exclusion.⁴⁸

The program of memorialisation, on the other hand, can read the signification and significance of the site in a different way. The museum, and related practices of memory, use the District as a text from which to read an alternative history of the city and reimagine possibilities for citizenship and identity. In this work of memory, the history of District Six is not simply one

⁴⁶ Layne and Till (2005), evoking other incomplete memorials and memorials under construction such as Berlin's Topography of Terror.

⁴⁷ For the history of the District Six Museum Foundation, see Rassool and Prosalendis (2001), pp 3–20 and generally.

⁴⁸ For a recent account of the tortuous seven years of political wrangling that resulted, *inter alia*, from such questions, see Coombes (2004), pp 144–47.

of the material dispossession of individual residents, but related to a much wider cultural dispossession, a legacy of social engineering that has curtailed the cultural imaginary of the city and is thus intrinsically related to the city's contemporary geography and its persistent racial stratification. The museum's work, at its most productive, involves itself not only with the commemoration of a discrete community of the District, but with questions about race and citizenship in the city generally, about the reimagination of the built environment generally, and about what indigeneity and creolisation might mean in the city generally.⁴⁹ While the Beneficiary Trust's legal activities work within a reconstituted civic sphere, the museum continues to ponder the renewal and reconstitution of that civic sphere.

This divergence between projects of restitution and memorialisation has practical implications for the redevelopment of the District. The Beneficiary Trust, in managing the return of ex-residents, discusses the establishment of utilitarian housing schemes and the possibility of a social compact amongst residents. The District Six Museum, on the other hand, discusses the possibility of establishing memorial parks and other public spaces and places for civic activity. The two approaches are not contradictory — indeed, both have been complementary in arriving at the recent slogan of *Hands On District Six!*⁵⁰ Yet there is a politics to be found in the choices made necessary by budgetary and spatial constraints as the processes of cultural and physical restitution unfold. What is immanently at stake is whether the District is primarily a place for the 'direct descendants' of those who were forcibly removed, for a diaspora more widely conceived, for all who have been deprived of civic access to the city, or even for all the people of the city.⁵¹

Annie Coombes characterises the District Six Museum's memory work — for example, its psychogeographic tours through the city's haunted spaces — as a 'Freudian archaeology',⁵² and archaeology has literally been practised at the site of the District's destruction.⁵³ Most interesting, though, is the

⁴⁹ This characterisation of the museum's work is taken from the author's personal experience as an employee. An introduction to the methodology of the Museum is given in Coombes (2004), pp 116–48; see also the essays collected in Rassool and Prosalendis (2001).

⁵⁰ This name was given to a conference held by the District Six Museum in May 2005, and coinciding with the return of some of the families. The continued use of this metaphor of the hands gives rise to interesting questions about the tangible and the intangible, especially in the context of heritage discourses which tend to distinguish between the two. The complementarity of the projects of memorialisation and restitution have so far worked to refuse this distinction.

⁵¹ These issues were raised persistently at the Hands On District Six! conference, and are inherent in the museum's wish that the site be classified as a 'Grade I' national heritage site within the meaning of the NHRA.

⁵² Coombes (2004), p 133.

⁵³ For example, Malan and Soudien (2002). On the different archaeologies of the site, see especially Shepherd (1998), pp 227–36.

archaeology of the site's hauntologies⁵⁴ that took place with the District Six Public Sculpture Project, in which the empty space was (re)populated with sculptures and public artworks by 96 artists.⁵⁵ Through such memorial imaginings, characterised by a creative engagement with hauntings as much as by physical and literal archaeologies, emerge the traces with which the contemporary city's memorial and constitutional topographies are formed and inscribed.

IV

The Prestwich Place Committee had originally been named the Hands Off Prestwich Street Ad Hoc Committee, recalling the stridency of the Hands Off District Six Campaign. Indeed, a number of Hands Off District Six's members were instrumental in formulating the Prestwich Place campaign, and both organisations arose from what has been called 'a *crisis* of authority, of the right to speak'.⁵⁶ This crisis of political representation is also the crisis of reimagination, the necessity of being creative in the face of the old racial identities, which continue to crowd out the social and political imagination. Both the campaign for District Six and that for Prestwich Place battle against these fixed and restrictive delineations of identity, as well as against amnesia.

Their work of reimagination is a backward-looking, or memorial, work of the imagination that arises from the potentiality of a 'short-circuit between imagination and memory'.⁵⁷ For example, the popular, if romanticised, narrative of District Six is one which trumps official, bureaucratic or statistical narratives because of its 'power of reinvention and renewal ... It matters not therefore that the details of a story are wrong. *What matters is the right to remake*'.⁵⁸ Without condoning the excesses of reimagination, what is at stake is a creative element in the work of recognition and identification. This contiguity of the work of memorialisation and of imagination gives us a clue as to why memory became such a vital element of the liberation struggle's optimism, and has enduring potency after 1994. It also suggests how one might approach what was earlier named the 'constitutional moment' of the law.

The successes of the struggle for District Six are indicative. Even as the everyday legality of apartheid rule determined and produced stratified racial identities through the minutiae of segregation, it was the imagination of District Six, its image held in memory, that located it as an important site for struggle, for reimagining law and hoping for a new legal compact. This creative struggle for memory would make of District Six a constitutional

⁵⁴ Being more or less faithful to, but perhaps out of joint with Derrida (1994), the 'hauntology' is used here to describe a discursive haunting: discourses of the spectral that are themselves spectral, a haunting of the rhetoric of haunting.

⁵⁵ Soudien and Meyer (nd).

⁵⁶ Layne (2004) (emphasis in original).

⁵⁷ Ricoeur (2004), p 5.

⁵⁸ Soudien and Meltzer (2001), p 69 (emphasis added).

monument, in the sense that it is the remembrance of such sites and events that inform a new constitutional regime's vision of justice and legality.

Indeed, the apartheid past is explicitly memorialised in the fundamental laws of the new dispensation.⁵⁹ The epilogue or 'postamble' of the Interim Constitution had conceived of the founding document as not a rupture but a 'historic bridge' between the apartheid past and a future of reconciliation and reconstruction.⁶⁰ The final version of the Constitution, perhaps hoping that we had crossed this bridge, urged us to look backwards before looking forward:

We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our
diversity.⁶¹

The constitutional jurisprudence of these early years has been, at least at first, appropriately monumental. Thus the judges of the Constitutional Court have on occasion placed equality at the centre of the Constitution 'in the light of our own particular history',⁶² while urging an understanding of equality that goes beyond formal equality because of the memory of the inegalitarian past;⁶³ they have reflected on the respect for diversity that arises because 'reconciliation so as to overcome the strife and division of the past' underpins the constitutional order;⁶⁴ and they have read the right to life as being 'influenced by the recent experiences of our people in this country. The history of the past decades has been such that the value of life and human dignity have been demeaned.'⁶⁵ And so on, like a lodestar guiding from behind. This memorial jurisprudence has perhaps its finest moment in Judge Albie Sachs' historical exegesis of the values informing the right to life, in that nigh inaugural case of constitutional reform, *S v Makwanyane*:

59 On this 'constitutional entrenchment of memory', see Fagan (1998); the constitution 'regulates the future conduct of government, of course, but it also contains a number of unusual provisions which are best explained as deliberate attempts constantly to remind the interpreter of the constitution of the unequal society that forms the backdrop to the text' (p 250).

60 Epilogue of the *Constitution of the Republic of South Africa Act 200 of 1993* (the 'Interim Constitution').

61 Preamble to the *Constitution of the Republic of South Africa Act 108 of 1996* (the 'Final Constitution', hereafter referred to as the Constitution).

62 Dissenting judgment of Kriegler J in *President of RSA v Hugo* (1997) 4 SA 1 (CC) at 74.

63 Goldstone in *Hugo*, at 41.

64 Per Sachs in *S v Lawrence*; *S v Negal*; *S v Solberg* 1997 10 BCLR 1348 (CC) at [147].

65 *S v Makwanyane and Another* 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) at 218.

Constitutionalism in our country also arrives simultaneously with the achievement of equality and freedom, and of openness, accommodation and tolerance. When reviewing the past, the framers of our Constitution rejected not only the laws and practices that imposed domination and kept people apart, but those that prevented free discourse and rational debate, and those that brutalised us as people and diminished our respect for life.⁶⁶

Here, then, is the constitutionalism not of the ‘historical bridge’ but of the rupture, one that exchanges death for life. The past is dead, long live the constitutional memorial, viva! But what of the dead? Especially when they arise at awkward moments?

Furthermore, what would the role of imagination and the memorial be beyond the transition of 1994–96 — and indeed, following the ten-year honeymoon period of constitutional transformation? Has the jurisprudential influence of memory, the constitutional topography of transition, been exhaustively mapped by the cartographies of the Constitution and post-Constitutional legal texts? This is the question to which legal and ethical debates arising from the Prestwich Place and a larger post-1994 landscape of cultural memory are made to respond.

Prestwich Place captures a certain political *zeitgeist*, to admit a pun in bad taste. Aside from national and global resonances alluded to earlier, similar claims also animate a more expansive landscape of unnamed burials that has begun to emerge over recent years in the Cape.⁶⁷ Most recently, a dispute has erupted over the Tana Baru, parts of which had fallen into the hands of private owners who wish to develop the land. A fatwa has been issued by the Muslim Judicial Council (MJC) forbidding development of the land,⁶⁸ although there have previously been varying opinions issued by Islamic universities.⁶⁹ The key issue remains the significance of what is not so much intangible but buried sacred heritage, even as gentrification in a rapidly growing city threatens not just burial sites but the rest of the surrounding culturally significant area, the

⁶⁶ *S v Makwanyane and Another* 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) at 391.

⁶⁷ An overview is given by Murray (2004); see also Malan (2004b); Malan et al. (2002).

⁶⁸ Muslim Judicial Council Fatwa Committee, fatwa, issued 8 March 2005; see also Marianne Merten, ‘Muslim Council issues Fatwa Against Property Development’, *Mail & Guardian*, 1 July 2005.

⁶⁹ For example, the opinion of Azhar University Dispensation Committee, issued 14 November 1979, which states that building is allowed where remains have ‘disintegrated’. See also the opinions contrary to the MJC fatwa mentioned in Marianne Merten ‘Muslim Council Issues Fatwa’, *Mail & Guardian*, 1 July 2005.

Bo Kaap.⁷⁰ Similar development has been prevented by legal action at the Oudekraal *kramats*.⁷¹

At 'The Woods', an area next to St Cyprian's School and at the foot of Table Mountain, a protracted dispute evolved between 1998 and 2000 when oral histories conflicted with archaeological evidence about the significance of the site. The school wished to develop the area, yet members of the MJC claimed that beneath the earth lay the sacred burial site of Sayed Abdul Malik. While the archaeologist employed by the school failed to find evidence of the *kramat*, customs and oral histories attested to traditional significances of the place to worshippers.⁷² A negotiated agreement to embark on a heritage project at the site was finally reached, yet elsewhere other events continue to question the claims of archaeology and other methods of historiography. This year, a *sangoma* (traditional healer) alleged she could identify the burial sites of chiefs on Robben Island after dreaming about them in the Eastern Cape.⁷³ In Simons Town, a search for the *kramat* of seventeenth century political exile from Sumbawa has been prompted by the sighting of his ghost, and has provoked debates about the merits of archival evidence and oral histories that are equivocal about whether he had ever arrived in the Cape.⁷⁴

Like the dead, these sites of burial and exhumation proliferate, typically causing controversy and contestation on their surfacing. But Prestwich Place makes a particularly eloquent cartographer of the topography of transition because of the magnitude of the space implicated, its historical significance, its location in the heart of the city (at least in terms of property values), and the time of its emergence, as if an omen, shortly prior to the sometimes violent confrontations over space and identity that would take place in Cape Town in the year 2005. Addressed by claims to place/space, memory and justice, Prestwich Place is a site located at the intersection of discourses of cultural property, urban planning and transitional justice.

Yazir Henri and Heidi Grunebaum, two activists involved with the Prestwich Place struggle and with broader landscapes of memory in the Western Cape, argue that the discovery of the Prestwich Place burial ground disrupts a post-Truth and Reconciliation Commission (TRC) reality in which 'mourning ... has become both depoliticised and increasingly psychologised'.⁷⁵ The TRC was established after South Africa's first democratic election in order to provide some sense of closure for the

⁷⁰ John Reed 'Booming Real Estate Prices Cloud the View from the Top', *Financial Times*, 29 July 2005.

⁷¹ *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 3 All SA 1, also reported as 2004 (6) SA 222 (SCA).

⁷² Unpublished papers of Abdulkader I Tayob, Mary Patrick, Anthony Haggie and Auwais Rafudeen, on file with the Cultural Sites and Resources Forum, University of Cape Town.

⁷³ Personal conversation with Tim Hart, March 2005.

⁷⁴ Unpublished papers and correspondence of Ebrahiem Manuel, on file with the Cultural Sites and Resources Forum, University of Cape Town.

⁷⁵ Henri and Grunebaum (2004).

traumatised national psyche.⁷⁶ Yet focus on individual memory and trauma has placed the project of truth and reconciliation in a therapeutic paradigm even as experiences of ongoing hurt and marginalisation bring the past into the present, exceeding discourses of memory as trauma and exacerbated by the lack of reparations.⁷⁷

For Grunebaum and Henri, the claiming of Prestwich Place is an act of memory that disrupts the official amnesia of 'nation-building-as-reconciliation'.⁷⁸ By this, they refer to how the TRC (as Grunebaum has said elsewhere) has underwritten a discourse of reconciliation which discerns 'admissible from inadmissible forms of historical consciousness and representations in the domains of the public'.⁷⁹ The TRC's establishment was a product of negotiated settlement, and marked by compromise. The moral calculus of transition was a simple if relatively novel one: retribution would be foregone in exchange for the truth about apartheid's violent history. A public process opening out into catharsis, the narration of grief and, hopefully, remorse and forgiveness would then clear the path to reconciliation.

Yet if the TRC has been unable to achieve enduring reconciliation, it is because, as Mahmoud Mamdani pointed out in 1997, its hearings and report narrated apartheid as a history of the few, of perpetrators and individual victims, rather than as a history of the many, of beneficiaries and shared victimhood.⁸⁰ What has been left out — the violence of the everyday and the continuities of the colonial past — is 'unfinished business' in the words of Terry Bell and Dumisa Ntsebeza.⁸¹ In Cape Town, this structural legacy is visible in the planning of the urban built environment and experienced through the popular racial imaginary. Derrida would later warn that forgetting was the very purpose of the TRC,⁸² but it is from Mamdani and other critics that we can learn the specific terms upon which this forgetting happened.

The TRC became like the archive of which the postcolonial theorist Achilles Mbembe warns:

Archiving is a kind of interment, laying something in a coffin, if not to rest, then at least to consign elements of that life which could not be destroyed purely and simply. These elements, removed from time and from life, are assigned to a place and a sepulchre that is perfectly

⁷⁶ This psychotherapeutic metaphor is apt, given, for example, the psychobiographical introspection of Antjie Krog's description of the proceedings of the TRC in her *Country of My Skull* (1999). See also the account by psychologist Gobodo-Madikizela (2003). Psychotherapy also informed the comment of Albie Sachs, made before the establishment of the TRC, when he had encouraged the establishment of something named the 'commission of truth and repair'! See Sachs' comments recorded in Borain et al. (1994), p 129.

⁷⁷ Colvin (2002).

⁷⁸ Colvin (2002).

⁷⁹ Grunebaum (2004).

⁸⁰ Mamdani (1996, 2000).

⁸¹ Bell and Ntsebeza (2001).

⁸² Derrida (2002); see also Rassool et al. (2000).

recognisable because it is consecrated: the archives. Assigning them to this place makes it possible to establish an unquestionable authority over them and to tame the violence and cruelty of which the 'remains' are capable, especially when these are abandoned to their own devices.⁸³

Mbembe's words echo those of others who have described the TRC as a 'paradox ... of history's simultaneous exhumation and burial'⁸⁴, and are at the same time a striking reminder of Prestwich Place and the *revenants* who emerge, uncalled, from the absences and silences of the state's archives. If there is an ethical fulcrum upon which these issues turn, it is how we deal with our past.

The critiques of the TRC and its approach to transitional justice then also provide a framework within which to understand the articulation of sites such as District Six and Prestwich Place. These sites, and the broader emerging cultural landscape that they represent, are claimed as the 'unfinished business' of transitional justice, markers on a cartography of incomplete political transformation. Occupying central and prominent spaces in the city, as well as places of desire in the plans of development capital, these places speak to the continuity of racial stratification and the haunting presence of the past. They prompt us to think about forms of descendancy, genealogies of proprietorship and histories of citizenship, and remind us that we need to reconceptualise received ideas of identity, belonging and the civic. But mostly what these sites present to us are archaeological potentialities, places where excavation might unearth the relationships between the memory of the past and the juridical self.

V

Across the history of Prestwich Place, and the genealogy of its silences, falls the shadow of law. The juridical has been implicated right since the beginning of this place, with the uncovering of the burials at Prestwich Place and their swift inclusion into the framework of new heritage legislation. Indeed, before this was another beginning, marked by the deaths of those buried at Prestwich Place, and the exclusion of their dead bodies, by the law and from the law. And before this even was the beginning that takes place through the inscription of the geo-graphical ends of the colonial city. The end of the colonial city would be prescribed by the boundary, the frontier, the first inscription of the law, the graphic line between citizen and subject, inhabitant and alien/native. The frontier along Buitengracht Street and Bree Street, marking the western end of the city and beyond which lay the 'menace of wild animals [and] the depredations of marauding Hottentots',⁸⁵ would come to prescribe the (dis)location of the informal burials of the city's slaves, freed slaves and poor,

⁸³ Mbembe (2002), p 22.

⁸⁴ Rassool et al (2000), p 116.

⁸⁵ Murray (1964), p 3.

who were excluded from burial grounds within city walls. Already the uncanniness of this location has been suggested; here too is the imprint of 'bare death', a thanatopolitics by which colonial sovereignty prescribed the fate of the body even after the end of bare life.

Recall also that the scene of territorial inscription is the location of the origin of the law:

The primordial scene of the *nomos* opens with a drawing of a line in the soil. This very act initiates a specific concept of law, which derives order from the notion of space. The plough draws lines — furrows in the field — to mark the space of one's own. As such, as ownership, the demarcating plough touches the juridical sphere.⁸⁶

Here is law, inscribed, archived, graphic, at the scene of the impression. Peter Fitzpatrick relates this primordial law of spatial order to occupation, the condition of the origins of law during imperial expansion;⁸⁷ it is certainly consistent with the history of the frontier and the establishment of European law at the Cape.⁸⁸

This description of *nomos* and beginning returns us to the archival inscription, to the *hypomnēsis* of the memorial, and hints at the relationship between law and memory. Derrida reminds us of the etymological roots of archive in *arkhē*, the beginning, but signifying not one beginning but two: at once commencement and commandment. The *arkhē* institutes 'two orders of order: *sequential* and *jussive*'.⁸⁹ This bifurcation has its roots in Plato's distinction between two notions of action: *archein* (beginning) and *prattein* (achieving). Greek thought had regarded these as conjoined elements of action; Plato distinguished them so that action became two separate gestures: beginning and completion.⁹⁰ The beginning has sovereignty over the remains, and the one who begins the action guards and governs it, as an architect or a patriarch. Here is a primordial explanation of chronological order, of the rule of what is prior and past; of *arkhē*, and of the intimacy of the archive and sovereignty.⁹¹

Insofar as this provides grounds to believe that the archive in some way documents the force and extent of law, we might also ask about the juridical function of the silences which haunt the archive. First, why does the figure of the phantom come so quickly to the archive? It is as if the archive is the

⁸⁶ Cornelia Vismann, quoted in Fitzpatrick (2001), pp 91–92.

⁸⁷ Fitzpatrick (2001), pp 92, 146ff.

⁸⁸ The history of European law at the Cape, and of sovereignty, begins not with a doctrine of *terra nullius* as was mistakenly claimed by jurists in the mid-twentieth century, but with the extension of jurisdiction over the inhabitants of the Cape. See Du Bois and Visser (2001). This is a territorial, geographical, basically nomological gesture prior even to ownership and sovereignty.

⁸⁹ Derrida (1995), p 1.

⁹⁰ This is Arendt's interpretation of the *Statesman*; see Arendt (1959), pp 199–200.

⁹¹ See also Mbembe (2002) on this intimacy of archive and sovereignty.

habitual place of the phantom, its haunt. Here it is necessary to understand how haunting exists beyond its rhetorical invocation. The archival inscription (the impression of the plough, the frontier's circumscription, the memorial circumcision)⁹² is nomological and *topological*. The archive not only records a beginning, of an order both chronological and juridical, but it is a place. The genealogy of the concept reminds us of the *arkheion*, in ancient Greece the place of domicile of the archive and also of the archons who presided over it.⁹³ But the archive's relation to place is structural rather than merely historical. As *hypomnēsis*, it is a memory aid, a memorial, a writing — not living memory, but always exterior.⁹⁴ (So strong is the necessity to give the archive a place that we even talk of that ideal dematerialised archive, cyberspace, in topographical terms).

Archival technology is one way to inscribe place in space; another way to make place is a most basic and non-technological gesture — it is to inhabit (to make of it a haunt). This is a gesture of embodied memory rather than of *hypomnēsis*. Inhabiting is an intimate, corporeal gesture relating place and memory, the most primordial version of which is the inhabiting of the body.⁹⁵ We *inhabit* because 'habit is too worn a word to express this passionate liaison of our bodies, which do not forget, with an unforgettable house'.⁹⁶ Inhabiting and haunting share as their basis this wearing (out) of habit, the repetition of the spatial gesture.⁹⁷ There is a symmetry, too, in this relation: the corporeality of the inhabitant is reflected in the incorporeality of the phantom. We can imagine then that haunting is *an excess of inhabiting* — that it is habit inscribed in place but without inscription, viewed without the limit between tangible and intangible, inscription and memory, or (as Socrates would have it) the living and the dead.

Here we might also briefly remind ourselves that Prestwich Place is only one place amidst a landscape of places of memory, and that the struggles that have begun to unfold across this haunted cultural landscape of death and burial reveal a politics of inhabiting, as has been glimpsed in the first chapter. Contestation of these places does not typically consist of crude political grasps at space, but instead claims to space *as* place, gestures that are imbued with memory and the desire of habit and inhabiting.

Habit is a corporeal form of memory — the *mémoire-habitude* as Henri Bergson's phenomenology names it.⁹⁸ Like Freud's repressed memory, which is not remembered but repeated unconsciously, the habit is something that we forget into the body:

⁹² Derrida (1995), pp 20ff.

⁹³ Derrida (1995), p 2.

⁹⁴ See also Derrida (2002).

⁹⁵ Ricoeur (2004), pp 41–43.

⁹⁶ Bachelard (1994), p 15.

⁹⁷ The haunted house is a silly but evocative metaphor that conjoins inhabiting and haunting, if only because 'haunting implies place, a habitation, and always a haunted house': Derrida (1995), p 86.

⁹⁸ Bergson (1950).

the patient does not *remember* anything of what he has forgotten and repressed, but *acts* it out. He reproduces it not as a memory but as an action; he *repeats* it, without, of course, knowing that he is repeating it.⁹⁹

The seemingly forgetful habit is thus a gesture of incomplete forgetting or, in its pathological sense, incomplete mourning, and so can be related to the secret, the crypt-ic, what the body has encrypted. The habit that is not acted *out* but borne *inside*, worn inside perhaps, like a vest of the mind, a secret. Here psychoanalysis continues to be a useful tool for excavation, specifically the work of Nicolas Abraham and Maria Torok, whose reformulation of Freudianism includes an occupation with the idea of the psychic tomb and the transgenerational secret.¹⁰⁰

In their work, they describe the family secret as in fact being passed down to descendants, but encrypted and entombed — here is one plausible theory of what might be called a ‘grave in the mind’.¹⁰¹ The psychic tomb is then a sort of silence of the unconscious, undecipherable, a transgenerational secret or phantom. According to Abraham and Torok’s thesis of introjection, in order for mourning to be completed, the psychic tomb must be *named*.

Hopefully these ideas tend towards rescuing the phantom and haunting from their excessively rhetorical use. There is in them also the beginning of an idea of embodied authority, of an archive-without-writing,¹⁰² of habit, inhabiting, and haunting that encompasses the corporeal and the spectral (but not the *hypomnēsic*). Here is the idea of an archive without *arkhē*, without commencement, and an authority without commandment. This archive-without-writing gives a different view of what is at stake at Prestwich Place. There is a well-established connection between the monument and the constitution: the founding myth is the common gene pool of sovereign power and remembrance. The archive-without-writing is a counterpart to this, a silent heritage, a genetics even, not in a bio-ontological sense, but in a genealogical sense; an archive not of beginnings and inscriptions but of births and relations, reproducing itself corporeally and spectrally (but not by any *hypomnēsis*). Here is a very different response to ‘direct descendancy’, one that looks instead for phantoms, ‘virtual archives’.¹⁰³

What is at stake finally is an attempt to re-imagine descendancy in a way that goes beyond the legislative language of ‘direct descendancy’. Here is the

⁹⁹ Freud (1914), p 145.

¹⁰⁰ Abraham and Torok (1994).

¹⁰¹ This phrase was overheard at the Institutions of Public Culture Workshop, University of Cape Town, 7–9 July 2005. A participant explained that in some South African cultures one need not visit a grave in order to respect the ancestors, who are always present; one instead carries a ‘grave in the mind’.

¹⁰² This name tries to further evoke what Derrida has called a ‘*prosthesis of the inside*’ (Derrida 1995, p 19), or what might be better described as a *hypomnēsic* technology of the mind. What this irony further invokes is, of course, Socrates’ ‘writing in the soul’ (Plato *Phaedrus* 276a).

¹⁰³ See Derrida (1995), p 64, describing the Freudian unconscious.

potential for an archaeology of transition: the work of naming as a work of re-imagination, a way of making the archive speak the unspeakable, and of mourning the unnamed dead.

References

Secondary Sources

- Nicolas Abraham and Maria Torok (1994) *The Shell and the Kernel*, vol. 1, trans Nicholas T Rand, University of Chicago Press.
- Yvette Abrahams (1996a) 'Miscast' 43 *Southern African Review of Books* (July / August).
- Yvette Abrahams (1996b) 'Yvette Abrahams Responds' 43 *Southern African Review of Books* (July / August).
- Allessandro Angelini (2003) 'Spaces of Good Hope: Inscribing Memory, Territory and Urbanity in District Six, Cape Town', Isandla Institute Dark Roast Occasional Paper no. 13.
- Hannah Arendt (1959) *The Human Condition*, Doubleday Anchor.
- Gaston Bachelard (1994 [1964]) *The Poetics of Space*, trans Maria Jolas, Beacon Press.
- Elazar Barkan (2002) 'Amending Historical Injustices: The Restitution of Cultural Property — An Overview', in Elazar Barkan and Ronald Bush (eds), *Claiming the Stones/Naming the Bones: Cultural Property and the Negotiation of National and Ethnic Identity*, Getty Research Institute.
- Elazar Barkan and Ronald Bush (eds) (2002) *Claiming the Stones/Naming the Bones: Cultural Property and the Negotiation of National and Ethnic Identity*, Getty Research Institute.
- Terry Bell and Dumisa Buhle Ntsebeza (2001) *Unfinished Business: South Africa, Apartheid and Truth*, Redworks.
- Henri Bergson (1950) *Matter and Memory*, trans Nancy M Paul and W Scott Palmer, Allen & Unwin.
- Alex Boraine, Janet Levy and Ronel Scheffer (eds) (1994) *Dealing with the Past: Truth and Reconciliation in South Africa*, IDASA.
- Michael F Brown (2003) *Who Owns Native Culture?*, Harvard University Press.
- Christopher J Colvin (2002) "'Brothers and Sisters, Do Not be Afraid of Me": Trauma, History and the Therapeutic Imagination in the New South Africa', in Katharine Hodgkin and Susannah Radstone (eds), *Contested Pasts: The Politics of Memory*, Routledge.
- Rosemary J Coombe (1997) 'The Properties of Culture and the Possession of Identity: Postcolonial Struggle and the Legal Imagination', in Bruce Ziff and Pratima V Rao (eds), *Borrowed Power: Essays on Cultural Appropriation*, Rutgers University Press.
- Annie E Coombes (2004) *History After Apartheid: Visual Culture and Public Memory in a Democratic South Africa*, Wits University Press.
- Cultural Sites & Resources Forum (2003) 'Prestwich Place. Exhumation of Accidentally Discovered Burial Ground in Green Point, Cape Town. Public Consultation Process 9 June to 18 August 2003', report prepared by Dr Antonia Malan, Cultural Sites & Resources Forum, for South African Heritage Resources Agency & the Developer.

- Peggy Delport (2001) 'Signposts for Retrieval: A Visual Framework for Enabling Memory of Place and Time', in Ciraj Rassool and Sandra Prosalendis (eds), *Recalling Community in Cape Town: Creating Community in Cape Town*, District Six Museum Foundation.
- Jacques Derrida (1994) *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International*, trans Peggy Kamuf, Routledge.
- Jacques Derrida (1995) *Archive Fever: A Freudian Impression*, trans Eric Prenowitz, University of Chicago Press.
- Jacques Derrida (2002) 'Archive Fever', seminar presented at the University of the Witwatersrand, Johannesburg, August 1998, transcribed by Verne Harris and published in Carolyn Hamilton, Verne Harris, Jane Taylor, Michele Pickover, Graeme Reid and Razia Saleh (eds), *Refiguring the Archive*, David Philip.
- Francois du Bois and Daniel Visser (2001) 'Der Einfluss des Europaischen Rechts in Sudafrica' 2 *Jahrbuch fur Europaische Geschichte* 47.
- Martin L Engelbrecht (2002) 'The Connection between Archaeological Treasures and the Khoisan People', in Cressida Fforde, Jane Hubert and Paul Turnbull (eds), *The Dead and Their Possessions: Repatriations in Principle, Policy and Practice*, Routledge.
- Zimitri Erasmus (ed) (2001) *Coloured by History/Shaped by Place: New Perspectives on Coloured Identities in Cape Town*, Kwela.
- Edouard Fagan (1998) 'The Constitutional Entrenchment of Memory', in Sarah Nuttall and Carli Coetzee (eds), *Negotiating the Past: The Making of Memory in South Africa*, Oxford University Press.
- Sean Field (ed) (2001) *Lost Communities, Living Memories: Remembering Forced Removals in Cape Town*, David Philip.
- Warren S Fish (2002) "'Ndi nnyi ane a do dzhia marambo?" — "Who Will Take the Bones?": Excavations at Matoks, Northern Province, South Africa', in Cressida Fforde, Jane Hubert and Paul Turnbull (eds), *The Dead and Their Possessions: Repatriations in Principle, Policy and Practice*, Routledge.
- Peter Fitzpatrick (2001) *Modernism and the Grounds of Law*, Cambridge University Press.
- Sigmund Freud (1914) 'Remembering, Repeating and Working-through', in Sigmund Freud, *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, vol 12, trans and ed James Strachey, Hogarth Press and the Institute of Psychoanalysis.
- Pumla Gobodo-Madikizela (2003) *A Human Being Died that Night: A Story of Forgiveness*, David Philip.
- Heidi Grunebaum (c 2004) 'Invisible Synchronicities, the "New" and the Politics of Time', unpublished paper.
- Yazir Henri and Heidi Grunebaum (2004) 'Re-historicising Trauma: Reflections on Violence and Memory in Current-day Cape Town', unpublished paper.
- Julian Jonker (2003) 'Own/Other: Negotiating Cultural Ownership and Social Identity in the Post-colonial State', in Herman Wasserman and Sean Jacobs (eds), *Shifting Selves: Post-apartheid Essays on Mass Media, Culture and Identity*, Kwela.
- Julian Jonker (2004) 'Making Culture Public: Author, Authority and Intellectual Property in the Living Archive' 30 *South African Museums Association Bulletin* 45.
- Antjie Krog (1999) *Country of My Skull*, Random House.
- Valmont Layne (2004) 'Towards a Politics of the Emerging Community Museum Sector in South Africa', presented at the 68th South African Museums Association Conference, Cape Town, 1–3 June.

- Valmont Layne (2005) 'Towards a National Heritage Site: District Six as a National Site of Forced Removals', presented at the Hands On District Six Conference, Cape Town, 25–28 May.
- Valmont Layne and Karen Till (2005) 'Keynote Lecture on Memorialisation, World Heritage, and Human Rights', presented at the Hands On District Six Conference, Cape Town, 25–28 May.
- Martin Legassick and Ciraj Rassool (2000) *Skeletons in the Cupboard: South African Museums and the Trade in Human Remains 1907–1917*, South African Museum and McGregor Museum.
- David Lowenthal (1998) *The Heritage Crusade and the Spoils of History*, Cambridge University Press.
- Alan Mabin (1998) 'Reconstruction and the Making of Urban Planning in 20th-century South Africa' in Hilton Judin and Ivan Vladislavić (eds), *Blank ...*, David Philip.
- Antonia Malan and Crain Soudien (2002) 'Managing Heritage in District Six, Cape Town: Conflicts Past and Present', in J Schofield (ed), *The Archaeology of Twentieth Century Conflict*, Routledge.
- Antonia Malan, Noëleen Murray and Ulrike Rivett (2002) 'Managing Heritage — Mapping 'Sacred Sites' in Cape Town: A Collaborative Approach', paper presented at the Southern African Association of Archaeologists Biennial Meeting, Cape Town, 7–10 July.
- Antonia Malan (2004a) 'Skeletons in our Cupboards: Publicly Contested Sites and Implications for Archaeology in Cape Town', paper presented at the Southern African Association of Archaeologists Conference, Kimberley, 31 March.
- Antonia Malan (2004b) "'Noises off ...': Claiming a Central Role in Reinterpreting South African Cities' *Architecture South Africa*.
- Mahmood Mamdani (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press.
- Denis-Constant Martin (1999) *Coon Carnival: New Year in Cape Town*, David Philip.
- Mahmood Mamdani (1996) 'Reconciliation Without Justice' 46 *Southern African Review of Books*.
- Mahmood Mamdani (2000) 'A Diminished Truth', in Wilmot James and Linda van de Vijver (eds), *After the TRC: Reflections on Truth and Reconciliation in South Africa*, David Philip.
- Zola Maseko (1998) *The Life and Times of Sara Baartman*, First Run/Icarus Films.
- Zola Maseko (2003) *The Return of Sara Baartman*, First Run/Icarus Films.
- Don Mattera (1987) *Memory is the Weapon*, Ravan Press.
- Achille Mbembe (2002) 'The Power of the Archive and Its Limits', in Carolyn Hamilton, Verne Harris, Jane Taylor, Michele Pickover, Graeme Reid and Razia Saleh (eds), *Refiguring the Archive*, David Philip.
- Achille Mbembe (2004) 'Aesthetics of Superfluity' 16 *Public Culture* 373.
- William Bloke Modisane (1986 [1963]) *Blame Me on History*, AD Donker.
- Marischal Murray (1964) *Under Lion's Head*, AA Balkema.
- Noëleen Murray (2004) 'On Remembering and Forgetting: Sites of Memory in Post-apartheid Cape Town' *Architecture South Africa*.
- Tshimangadzo Israel Nemaheni (2002) 'The Reburial of Human Remains at Thulamela, Kruger National Park, South Africa', in Cressida Fforde, Jane Hubert and Paul

- Turnbull (eds), *The Dead and Their Possessions: Repatriations in Principle, Policy and Practice*, Routledge.
- Neil Parsons and Alinah Kelo Segobye (2002) 'Missing Persons and Stolen Bodies: The Repatriation of "El Negro" to Botswana', in Cressida Fforde, Jane Hubert and Paul Turnbull (eds), *The Dead and Their Possessions: Repatriations in Principle, Policy and Practice*, Routledge.
- Laurine Platzky and Cherryl Walker (1985) *The Surplus People: Forced Removals in South Africa*, Ravan Press.
- Ciraj Rassool, Leslie Witz and Gary Minkley (2000) 'Burying and Memorialising the Body of Truth: The TRC and National Heritage', in Wilmot James and Linda van de Vijver (eds), *After the TRC: Reflections on Truth and Reconciliation in South Africa*, David Philip.
- Ciraj Rassool and Sandra Prosalendis (2001) *Recalling Community in Cape Town: Creating Community in Cape Town*, District Six Museum Foundation.
- Paul Ricoeur (2004) *Memory, History, Forgetting*, trans Kathleen Blamey and David Pellauer, University of Chicago Press.
- Mark Rose (1993) *Authors and Owners: The Invention of Copyright*, Harvard University Press.
- David Saunders (1992) *Authorship and Copyright*, Routledge.
- Philip W Scher (2002) 'Copyright Heritage: Preservation, Carnival and the State in Trinidad' 75 *Anthropological Quarterly* 453.
- Nick Shepherd (1998) *Archaeology and Post-colonialism in South Africa: The Theory, Practice and Politics of Archaeology after Apartheid*, PhD thesis, University of Cape Town.
- Crain Soudien and Renate Meyer (eds) (nd) *The District Six Public Sculpture Project*, District Six Museum Foundation.
- Crain Soudien (2001) 'District Six and Its Uses in the Discussion about Non-racialism', in Zimitri Erasmus (ed), *Coloured by History/Shaped by Place: New Perspectives on Coloured Identities in Cape Town*, Kwela.
- Crain Soudien and Lalou Meltzer (2001) 'District Six: Representation and Struggle', in Ciraj Rassool and Sandra Prosalendis (eds), *Recalling Community in Cape Town: Creating Community in Cape Town*, District Six Museum Foundation.
- MW Swanson (1977) 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900–1909' 18 *Journal of African History* 387.
- Gerald Torres and Kathryn Milun (1995) 'Stories and Standing: The Legal Meaning of Identity', in Dan Danielsen and Karen Engle (eds), *After Identity: A Reader in Law and Culture*, Routledge.
- Sameer Vasta (2003) 'Is History Repeating Itself at Prestwich?' *Muslim Views*, November.
- Michael Weeder (2003) 'A Vital Link to Our Unknown Past' *Cape Times*, 5 September.
- John Western (1981) *Outcast Cape Town*, Human & Rousseau.
- Martha Woodmansee and Peter Jaszi (eds) (1994) *The Construction of Authorship: Textual Appropriation in Law and Literature*, Duke University Press.
- Nigel Worden, Elizabeth van Heyningen and Vivian Bickford-Smith (1998) *Cape Town: The Making of a City*, David Philip.

Cases

- Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 3 All SA 1, also reported as 2004 (6) SA 222 (SCA).

President of RSA v Hugo 1997 (4) SA 1 (CC)

R v Abduroof 1906 23 SC 451.

S v Lawrence; S v Negal; S v Solberg 1997 10 BCLR 1348 (CC).

S v Makwanyane and Another 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC).

Legislation

Constitution of the Republic of South Africa Act 200 of 1993 (South Africa).

Constitution of the Republic of South Africa Act 108 of 1996 (South Africa)

National Heritage Resources Act 25 of 1999 (South Africa).