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The Post-Apartheid City in the New South Africa: A Constitutional "Triomf"?

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THE POST-APARTHEID CITY IN THE NEW SOUTH AFRICA: A CONSTITUTIONAL “*TRIOMF*”?

Becky L. Jacobs[†]

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I. INTRODUCTION

In her mercilessly satiric novel *Triomf*,¹ Marlene van Niekerk recounts the oppressive daily lives of an impoverished family of White² Afrikaners on the eve of South Africa's first democratic elections. Imbued with Afrikaner history and polit-

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¹ MARLENE VAN NIEKERK, *TRIOMF* (Leon de Kock trans., The Overlook Press 1999) (1994).

² The author uses a capital “W” in White, a capital “B” in Black, etc. when referring to a South African racial category. These concepts clearly are artificial constructs, legalized in Apartheid South Africa with the Population Registration Act of 1950. This Act required that all inhabitants of South Africa be classified in accordance with their racial characteristics. These terms still are widely used in South Africa.

ics, the novel reveals the ironically tragic effect of Apartheid³ on the White underclass and ravages the myth of Afrikaner supremacy.⁴ *Triomf* also may serve as a cautionary tale for the post-Apartheid South Africa as it takes stock of its ambitious land reform program.

Triomf is widely considered to be the outstanding Afrikaans novel of the 1990s.⁵ It was first published in 1994, only

³ At the risk of appearing somewhat obvious, Professor Jacobs thought it might be useful to define what she refers to as Apartheid. The term itself is an Afrikaans word meaning "separation" or literally "aparthood" (or "apartness"). See wordiQ.com, <http://www.wordiq.com/definition/Apartheid> (last visited Oct. 28, 2006); see also Answers.com, <http://www.answers.com/topic/apartheid> (last visited Oct. 28, 2006). Its commonly understood meaning is the legally sanctioned system of racial or ethnic segregation, such as the legally sanctioned system that existed in South Africa. South Africa's Apartheid Era generally is considered to have lasted from 1948-1993. See ANNIKA BJÖRNSDOTTER TEPPÖ, *THE MAKING OF A GOOD WHITE – A HISTORICAL ETHNOGRAPHY OF THE REHABILITATION OF POOR WHITES IN A SUBURB OF CAPE TOWN* 165 (Helsinki University Press 2004), available at <http://ethesis.helsinki.fi/julkaisut/val/sosio/vk/teppo/themakin.pdf>; see also LEONARD THOMPSON, *A HISTORY OF SOUTH AFRICA 187-88* (Yale University Press 1990). Reports suggest that the first recorded use of the word Apartheid occurred in 1917 during a speech by Jan Smuts, who became the Prime Minister of South Africa in 1919. See, e.g., wordiQ.com, <http://www.wordiq.com/definition/Apartheid> (last visited Oct. 28, 2006).

⁴ The "disintegration of the fantasy of white supremacy" has been chronicled in the works of several South African writers. Shaun Irlam, *Unraveling the Rainbow: The Remission of Nation in Post-Apartheid Literature*, 103 S. ATL. Q. 698, 702 (2004). For example, in *My Traitor's Heart*, Riaan Malan examines the theme of disenfranchised Afrikaners, as does Mark Behr in *The Smell of Apples*, his 1993 tale of child abuse in the militantly masculine culture that dominated Apartheid South Africa. See *id.* (discussing RIAAN MALAN, *MY TRAITOR'S HEART* (Atl. Monthly Press 1990) and MARK BEHR, *THE SMELL OF APPLES* (Abacus 1995)).

⁵ See *With Razors in Their Tongues*, ECONOMIST, Sept. 16, 1999 (book review), available at http://www.economist.com/cities/displaystory.cfm?story_id=346212. See also Rob Nixon, *The White-Trash Bin of History*, N.Y. TIMES, Mar. 7, 2004, § 7, at 8, available at <http://query.nytimes.com/gst/fullpage.html?res=9B05EFD9133CF934A35750C0A9629C8B63>. This is a remarkable accolade considering the enormous amount of literary talent that South Africa has produced, including Nobel Prize winners Nadine Gordimer and J.M. Coetzee. Among this author's favorite novels by South African writers are MARK BEHR, *THE SMELL OF APPLES* (St. Martin's Press 1997); J.M. COETZEE, *DISGRACE* (Penguin Books Ltd. 1999); NADINE GORDIMER, *NONE TO ACCOMPANY ME* (Penguin Books Ltd. 1995) (1994); ANTJIE KROG, *COUNTRY OF MY SKULL* (Times Books 1999) (1998); ES'KIA MPAHALELE, *DOWN SECOND AVENUE* (Faber & Faber 1985) (1971); ALAN PATON, *CRY, THE BELOVED COUNTRY* (Scribner 2003) (1948); SIPHO SEPAMLA, *A RIDE ON THE WHIRLWIND* (Heinmann 1984) (1981); ZOE WICOMB, *DAVID'S STORY* (Feminist Press at the City University of New York 2001).

one or two months after South Africa's historic elections,⁶ and was skillfully translated into English by the poet Leon de Kock in 1999.⁷ With "superb historical timing,"⁸ the novel was distributed to worldwide acclaim in 2004, the tenth anniversary both of *Triomf's* first publication and of the landmark South African elections. A further coincidence of timing also arose in 2005, which marked the fiftieth anniversary of the destruction of the famed multi-racial South African community of Sophiatown in order to make way for the "Whites only" suburb of Triomf, the setting for van Niekerk's novel.⁹ The year 2005 also was the tenth anniversary of the South African Commission on Restitution of Land Rights ("Land Claims Commission"), the body charged with redressing the injustices associated with Apartheid-era land seizures such as those committed in Sophiatown.¹⁰

The seemingly serendipitous timing of these dates is particularly propitious as these dates pertain to the evolution of the "new" South Africa. In 1994, when *Triomf* first appeared, "crimes of [A]partheid served as a constant goad to a *littérature engagée*"¹¹, and themes of political violence and resistance domi-

⁶ See Louise Viljoen, *Postcolonialism and Recent Women's Writing in Afrikaans*, WORLD LITERATURE TODAY, <http://www.scholars.nus.edu.sg/landow/post/sa/viljoen/8.html> (last visited Nov. 19, 2006).

⁷ According to reviewers, author Marlene van Niekerk breathes authentic life into her characters by making use of Afrikaans racist vernacular, and translator de Kock meticulously translates this idiomatic locution. See Rachel Holmes, Amazon.co.uk.Review: *Triomf*, http://www.amazon.co.uk/exec/obidos/ASIN/0349112347/qid=1088409564/sr=1-1/ref=sr_1_2_1/202-3221472-8582244 (last visited Nov. 19, 2006).

⁸ Nixon, *supra* note 5. ("With superb historical timing, American readers have finally been provided with South Africa's only world-class tragicomic novel, the kind of book that stabs at your heart while it has you rolling on the floor. This spring is the 10th anniversary of South Africa's first democratic elections; it's also the 10th anniversary of the appearance in Afrikaans of Marlene van Niekerk's debut novel, "*Triomf*," a riotous portrait of a burned-out family of hillbilly Afrikaners struggling haphazardly to adapt to the new South Africa.")

⁹ See Thabo Mbeki, South African President, State of the Nation Address at the Second Joint Sitting of the Third Democratic Parliament (Feb. 11, 2005), available at <http://www.info.gov.za/speeches/2005/05021110501001.htm>.

¹⁰ *Id.* See also Cherryl Walker, *Misplaced Agrarianization? Reflections on Ten Years of Land Restitutions*, Soc. RES. (Sept. 2005), http://www.findarticles.com/p/articles/mi_m2267/is_3_72/ai_n15922532.

¹¹ Irlam, *supra* note 4, at 698 (discussing Rob Nixon, *Aftermaths - South African Literature Today*, 72 TRANSITION 64 (1996)).

nated South African literature.¹² Early reviews of *Triomf* naturally focused upon the novel's scathing satire of Afrikaner ideology.¹³

However, some ten years of democratic rule in the post-Apartheid "Rainbow Nation"¹⁴ have challenged not only writers, but also the world, to create a new vision of South Africa, a vision mindful of, but not shackled to, the country's painful Apartheid legacy.¹⁵ Similarly, *Triomf's* appearance in English has given the novel a new life and, perhaps, a new meaning. Not only did the novel's original Afrikaans language undergo a translation, but its rich symbolism also may be susceptible to a fresh exegesis. Just as the "concept" of South Africa now must be re-imagined to reflect the nation's present reality, the "meaning" of the novel, too, may be re-interpreted to yield more neo-teric national allusions.

Triomf's intricate allegorical narrative brutally exposes the failure of the ideology of White supremacy. It also may serve as an admonitory parable for the post-Apartheid South Africa, a reminder of the dangers inherent in creating, continually reinforcing, and sustaining societal myths and expectations of redress and redemption. Based upon her research with Jenny Whittall,¹⁶ Professor Jacobs explores van Niekerk's fictional imagery and the novel's metonymy in the context both of the Apartheid Era South Africa and of the new South Africa's constitutional promise of land reform in the post-Apartheid city.¹⁷

¹² See, e.g., SINDIWE MAGONA, *MOTHER TO MOTHER* (Beacon Press 2000).

¹³ See e.g., *With Razors in Their Tongues*, *supra* note 5.

¹⁴ See Nelson Mandela, President of South Africa, Inaugural Address of the President of the African National Congress (May 10, 1994), available at http://www.wsu.edu:8080/~wldciv/world_civ_reader/world_civ_reader_2/mandela.html. Nelson Mandela coined this term in his inaugural speech in May of 1994: "We enter into a covenant that we shall build the society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world." *Id.*

¹⁵ See Nelson Mandela, President of South Africa, Final Address to Parliament (May 10, 2004), available at <http://www.southafrica.info/mandela/mandela-10yearsaddress.htm>.

¹⁶ See Jacobs, *supra* note †.

¹⁷ This Essay certainly pays homage to the brilliant work of *Triomf's* author, but Professor Jacobs does not purport to speak for Marlene van Niekerk. *Triomf* was published in 1994, several years before many of the laws to which Professor Jacobs refers were enacted. In light of these post-*Triomf* legal developments, van Niekerk's novel appears eerily prescient. However, Professor Jacobs' analogies are

II. THE FICTIONAL LANDSCAPE

Triomf's narrative depicts in savage detail the daily life of the Benade¹⁸ family: Pop, Mol, Treppie, and Lambertus. Rather than focusing on the more widely publicized experience of Blacks, *Triomf* uncompromisingly portrays the ugliness of Apartheid racism through the prism of one family's Afrikaner perspective and exposes the stark reality in which these and other impoverished Whites existed.¹⁹ While the Benades' White status gives them few privileges, they are sustained by "notions of superiority . . . built on nothing but the detritus of another culture and the promises of betterment peddled in the weak Romanticism of blood-and-soil" nationalism by the National Party.²⁰

In the novel, the Benades occupy a decaying government-provided house at 127 Martha Street in a poor White suburb of Johannesburg optimistically named Triomf, which translates from Afrikaans to "triumph." This suburb was built upon the bulldozed ruins of the once vibrant and diverse multi-racial community Sophiatown from which hundreds of Black families were forcibly removed in the 1950s by Apartheid social engineers determined to eliminate "black spots."²¹ "Sophiatown boasted names like [Hugh] Masekela and [Nelson] Mandela amongst its cultural riches but the Benade family inhabit a far

her own. If Ms. van Niekerk were to agree or concur at all with any part of the Essay, it would only be a fortuitous coincidence. In other words, Professor Jacobs would like to provide a disclaimer for Ms. van Niekerk for the views contained herein.

¹⁸ Interestingly, and likely not accidentally, the family's surname, Benade, is a close homophone of the Afrikaans word "benede," the term for below or beneath. See Irlam, *supra* note 4, at 703.

¹⁹ "The poor whites were and are an underclass among whites, but they were still not the 'real' *lumpenproletariat*. They were trained to know their place as a working class. . . . This double bind made their position a contradictory and difficult one. They were simultaneously the dominator and the dominated, or rather constricted between them. This left little room for manoeuvring [sic]." See TEPP, *supra* note 3, at 215. "Theirs was the ungrateful task of marking the boundaries of white society." *Id.* at 245. Regardless of their status within the symbolic hierarchy of White as a racial category, these poor Whites still were "materially better off" than most non-White South Africans. *Id.* at 205.

²⁰ Holmes, *supra* note 7.

²¹ Olivia L. Zirker, Note, *This Land is My Land: The Evolution of Property Rights and Land Reform in South Africa*, 18 CONN. J. INT'L L. 621, 630 (2003). The Apartheid government referred to "pockets of Africans within the designated White areas . . . as 'black spots.'" *Id.* at 630.

from triumphant world of cheap brandy and coke, kaput cars, [damaged] fridges and broken political promises.”²²

The family's daily routine consists of watching television, drinking Klipdrift,²³ and spying on the neighbors. They also receive visits from Jehovah's Witnesses, the National Party, and on one memorable occasion a “Hotnot”²⁴ prostitute. These visitors react with revulsion to the family, who, despite their economic hopelessness, view the world with prejudice and contempt as manifested in their unquestioning racism toward Blacks, their abhorrence of the “dykes” who live across the road, and their disgust that Treppie can do no better than work at the “Chinese.”

The Benade family is an exquisitely drawn caricature of the nuclear family. Pop, his “wife” Mol, and their “relative” Treppie are actually siblings, while the grandly named Lambertus, nicknamed Lambert, is their son.²⁵ Pop, whose childhood demands and elaborately sketched lies were instrumental in the ruination of his family, now reminisces about non-existent “better days” in the past and desperately yearns for peace. In her button-less housecoat, Mol is abused and abased, finding solace in oft-repeated apocryphal tales of the glories of her Afrikaner heritage. The articulate and vicious Treppie, “a devil with a twist, a twisted devil,”²⁶ furiously vents his frustrated intellectual abilities on his family.²⁷

Epileptic Lambert, the novel's central figure, too is a caricature, a parody of the inbred Boer, the very personification of the aberrations produced by Apartheid's endogamous national-

²² Holmes, *supra* note 7.

²³ Klipdrift is a South African brandy. See <http://www.klipdrift.co.za> (last visited Nov. 19, 2006).

²⁴ “Hotnot” is a notorious racist term referring to a “Coloured” person pursuant to the Apartheid racial classification system. The pejorative term is derived from another derogatory term “Hottentot.” See South African Human Rights Comm'n [SAHRC], *Combined Report - Racism: 'Racial Integration' and Desegregation in South African Public Secondary Schools*, at 8 (Feb. 1999), available at http://www.sahrc.org.za/final_combined_school_racism_report.PDF.

²⁵ The reader is left to decide Lambert's true paternity; even the family is not certain.

²⁶ VAN NIEKERK, *supra* note 1, at 59.

²⁷ Matt Steinglass, Editorial Review, *All in the Family: A Riotous Tale of the Afrikaaner Working Class Tests the Limits of Empathy*, WASH. POST, May 2, 2004, § Book World, at T07.

ism.²⁸ He is hulking, with hands that are “skew, full of knobs,” and is “club-footed,” with “monster-toes[,]”²⁹ evoking Roger Ballen’s disturbing photographs of pale Whites from isolated Transvaal “dorps”³⁰ with their unusual physical characteristics and often menacing expressions.³¹ Lambert exists in a state of virtual suspension, balefully awaiting either a personal or political catastrophe. Lambert’s milestones, his violent outbursts and debilitating seizures, cunningly reflect the political upheaval underlying *Triomf*’s narrative. In the novel, set in the months preceding South Africa’s first democratic election in 1994, Lambert feverishly digs a hole under the floorboards of his bedroom to store the “petrol” that will allow the family to escape to the North in their ancient Volkswagen Beetle, derisively named Mol,³² in the event that “the shit starts flying”³³ after the election.

²⁸ Irlam, *supra* note 4, at 705.

²⁹ VAN NIEKERK, *supra* note 1, at 492, 513.

³⁰ Dorp, a commonly used term in South Africa, is defined as a small town or hamlet. See, e.g., <http://www.answers.com/topic/dorp> (last visited Nov. 19, 2006).

³¹ See Steinglass, *supra* note 27. Roger Ballen was born in New York in 1950, but he lives and works in South Africa. Ballen has exhibited his works internationally and is included in many notable international collections. See Roger Ballen Photography, <http://www.rogerballen.com> (last visited Oct. 28, 2006). His photography has focused on rural towns, or dorps, in South Africa and their inhabitants. *Id.* He has published these images in several books. See, e.g., ROGER BALLEEN, *DORPS: SMALL TOWNS OF SOUTH AFRICA* (Hint & Carter 1986); ROGER BALLEEN, *PLATTELAND: IMAGES FROM RURAL SOUTH AFRICA* (William Waterman Publications 1994). His more recent work explores psychological tensions through structured poses and formal compositions. ROGER BALLEEN, *OUTLAND* (Phaidon Press 2001).

³² On the “objectification” of Mol in *Triomf*, one reviewer notes:

Although this novel is not exclusively occupied with gender issues it demonstrates more eloquently than any feminist treatise could the position of women in such conditions. The objectification of Mol, the sister of Pop and Treppie and mother of their child Lambert, reaches atrocious depths. She is emotionally, verbally, physically and sexually abused, especially by her brother Treppie and her son Lambert. She is the sexual tool of all three of the men and her status as a (sex) object is underlined by the fact that their beat-up car is also called Mol. Racially she is part of a group who considers themselves superior to Blacks (her position is symbolic of the failure of the ideology of White supremacy); she is of a class looked down upon by other Whites and Afrikaners (as is evident from the reaction of the young Afrikaans couple who tries to recruit their votes for the Nationalist Party) and she is of the gender oppressed by the patriarchal system prevalent in the race and class configuration in which she finds herself.

See Vijoer, *supra* note 6.

³³ VAN NIEKERK, *supra* note 1, at 67.

The Benades have little to show for their loyalty to Afrikaner nationalism. To console one another, they often invoke the mantra that "we still have each other and a roof over our heads."³⁴ However, like the Afrikaner myths ideologically contrived by the architects of Apartheid, the Benades' rotting house is disintegrating around them. And, while the Benades do not appear to realize it, readers clearly see that Apartheid has betrayed this unappealing, but compelling family.

Marlene van Niekerk's *Triomf* is brilliant satire choked with vicious humor, but the novel is not always a comfortable read. Incest as political allegory for Apartheid's twisted logic³⁵ of racial exclusivity may give some readers the "horries."³⁶ However, the novel excavates "the suburbs of truth"³⁷ to "shine[] a harrowing and vividly colorful, often hilarious, light on . . . the hypocrisies and hopelessness of a society living under the burden of Apartheid."³⁸

III. EXCAVATING *TRIOMF*'S STRATIFIED IMAGERY AND REALITY

A. *Triomf in the Apartheid Era*

The fictional *Triomf* is engraved on the topography of a very real Johannesburg.³⁹ "As the suburb *Triomf* (in its very name) must always half-recall the history, the politics, the broken lives, underneath its boxy houses, so the novel *Triomf* is hyper-aware of the urban space beneath its narrative. It both

³⁴ See, e.g., *id.* at 126.

³⁵ See Holmes, *supra* note 7. Several other South African authors have employed incest as a metaphor for Apartheid's insular racism. For example, Andre Brink's engrossing *Devil's Valley* is set in an isolated Afrikaner community. The story is based on a community located deep within the Swartberg Range of the Cape Province. ANDRÉ BRINK, *DEVIL'S VALLEY* (Harcourt Brace 1998). In *Ancestral Voices* (original Afrikaans title *Toorberg*), a novel written in the plaasroman or farm novel tradition, Etienne van Heerden recounts a haunting story of an intergenerational Afrikaner family. ETIENNE VAN HEERDEN, *ANCESTRAL VOICES* (Viking 1992). See also Irlam, *supra* note 4, at 705.

³⁶ Van Niekerk's characters use this Afrikaner slang term, which is synonymous with the U.S. slang terms the "creeps" or the "heebie jeebies."

³⁷ Holmes, *supra* note 7.

³⁸ Steinglass, *supra* note 27.

³⁹ Shaun de Waal, *A Novel that Finds Adversity in Triomf*, Apr. 20, 1999 (book review), <http://www.chico.mweb.co.za/mg/books/9904/990420-triomf.html>.

activates an imaginary space – the realm of psychology, pathology, ideology – and inhabits an entirely physical location.”⁴⁰

The physical setting for the novel, the suburb Triomf, is situated in western Johannesburg. This district was constructed over the bulldozed debris of the cosmopolitan community of Sophiatown, a world-renowned cultural precinct. Likened to Harlem in its heyday, Sophiatown was the cultural heart of Black South Africa in the 1940s and 1950s. Nelson Mandela, the former President of South Africa and Nobel Peace Prize Winner, cut his political teeth in Sophiatown and, in his autobiography, he describes the area as having “had a special character; for Africans, it was the Left Bank in Paris, Greenwich Village in New York, the home of writers, artists, doctors, and lawyers. It was both bohemian and conventional, lively and sedate.”⁴¹ The community nurtured extraordinary talent of all varieties, intellectual, political, and artistic, including musicians Hugh Masekela, Dorothy Rathebe, and Miriam Makeba, the popular Dollar Brand band, artist Gerard Sekoto, and numerous literary contributors to *Drum* magazine.⁴² So influential was this quarter that it inspired a critically acclaimed docu-musical entitled simply *Sophiatown*, which has played to audiences worldwide.⁴³

In 1955, President D.F. Malan ordered the eviction of Sophiatown’s primarily Black residents. Armed police filled Sophiatown’s streets and bulldozers moved in and razed the district to the ground. Don Mattera’s poetry describes the horror of Sophiatown residents:

Armed with bulldozers they came to do a job nothing more just
hired killers. We gave way there was nothing we could do al-
though the bitterness stung in us and in the earth around us.⁴⁴

⁴⁰ *Id.*

⁴¹ NELSON MANDELA, *LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA* 134 (Little Brown 1995).

⁴² See Lucille Davie, *Sophiatown Land Claim Payments Top R21m*, News Archive for the Official Website for the City of Johannesburg, Mar. 24, 2003, http://www.joburg.org.za/2003/mar/mar24_sophia.stm.

⁴³ The 2003 movie, *Sophiatown*, directed by Pascale Lamche, was shown to audiences in such countries as the United States, England, and Ireland. See Program Notes – Sophiatown, <http://www.cafilm.org/mvffilms/108.html> (last visited Nov. 19, 2006).

⁴⁴ Don Mattera, *The Day They Came for Our House*, South African History Online, <http://www.sahistory.org.za/pages/classroom/pages/projects/grade9/lesson>

The famed Sophiatown district was replaced with a "Whites only" suburb named, perversely in retrospect, Triomf. Triomf was conceived as a "residential area for 'Armblankes,' poor Whites who possessed nothing beyond the nationalistic Afrikaans ideology shaped by government propaganda."⁴⁵ Poorly constructed, unimaginative houses were hastily erected to shelter the new neighborhood's White residents.

Triomf's Afrikaans author, Marlene van Niekerk, lived for a time in the Triomf suburb atop the rubble of Sophiatown. "Whilst gardening she kept digging up its remnants, just like one of the characters in her novel *Triomf*, which excavates the lives of the impoverished poor White culture that superseded it."⁴⁶ South Africa suffered a monumental cultural tragedy when Sophiatown was bulldozed in the late 1950s and the novel's "image of Lambertus tunneling through the remains is charged with racial symbolism."⁴⁷

The lost Sophiatown has attained an iconographic status, but it was not the only South African community to suffer this fate.⁴⁸ Apartheid-inspired law and policy authorized the government to eliminate so-called "black spots"⁴⁹ in order to create and enforce racially segregated residential and business areas.⁵⁰ "Land [was] the pillar of grand apartheid. Apartheid legislation [prohibited] black ownership of land in White areas. . . ."⁵¹ During the Apartheid Era,⁵² millions of Black⁵³

1/unit1.htm (last visited Nov. 19, 2006). Don Mattera is a South African poet and activist. He spent some time during his youth in Sophiatown and became an activist during the time of the Sophiatown removals. See DON MATTERA, *SOPHIATOWN: COMING OF AGE IN SOUTH AFRICA* (Beacon Press 1989).

⁴⁵ Andreas Mayer, *Misery of the Losers*, Jan. 15, 2001, available at <http://www.morgenwelt.de/futureframe/010115-afrikaans-literature.htm> ("futureframe" was the international version of a German website for science and culture).

⁴⁶ Holmes, *supra* note 7.

⁴⁷ Steinglass, *supra* note 27.

⁴⁸ See Walker, *supra* note 10. Other freehold settlements whose residents were evicted from their homes include Pretoria's Marabastad Newclare, Bantule, Lady Selbourne, and Hove's Ground, Durban's Cato Manor, and Cape Town's District Six. See, e.g., Lauren Royston, *Urban Tenure Reform in South Africa: Social Redress, Sustainable Development, or Both?* http://hq.unhabitat.org/mdg/documents/africa/Vol5_No3_urban_tenure_reform.doc (lasted visited Nov. 19, 2006).

⁴⁹ Zirker, *supra* note 21, at 630.

⁵⁰ See THOMPSON, *supra* note 3, at 193-94.

⁵¹ Heather Boyle, *The Land Problem: What Does the Future Hold for South Africa's Land Reform Program*, 11 IND. INT'L & COMP. L. REV. 665, 674 (2001).

South Africans were victims of dispossessions and forced removals based on race.⁵⁴ Sophiatown is just one of many poignant examples that endure as reminders of the suffering that Apartheid policies imposed upon South Africa's Black residents.⁵⁵

⁵² The Apartheid Era generally is considered to have lasted from 1948-1993. See TEPP, *supra* note 3, at 202.

⁵³ The Population Registration Act of 1950 required that all inhabitants of South Africa be classified in accordance with their racial characteristics. Social rights, political rights, educational opportunities, and economic status were largely determined by an individual's classification. There were three basic racial classifications under the law: Black, White, and Coloured (or mixed). "Asian" was later added as a separate classification as this group was seen as having no historical claim to the country. Classifications were assigned based upon criteria such as an individual's appearance and his or her general acceptance and social standing. For example, it defined a "white person" as one who "in appearance is obviously a white person who is generally not accepted as a Coloured person; or is generally accepted as a white person and is not in appearance obviously a white person." Obviously, because some aspects of the profile were of a social nature, reclassifications were not uncommon, and the government established an Office for Race Classification and a Board to oversee the classification process. See, e.g., THOMPSON, *supra* note 3, at 190. The Population Registration Act of 1950 complemented other similarly designed laws. For example, the Prohibition of Mixed Marriages Act of 1949 made marrying a person of a different race illegal. See Frank Berman, *South Africa: A Study of Apartheid Law and its Enforcement*, 2 TOURO J. TRANSNAT'L L. 1, 25 (1991) (discussing the history and enforcement of Apartheid law). Further, under the Immorality Amendment Act (Immorality Act) of 1957, it was a crime to display intent or interest in conducting a relationship with a member of a different race. *Id.* at 25. The South African Parliament repealed the Population Registration Act of 1950 on June 17, 1991. *Id.* at 25-26.

⁵⁴ See Lauren G. Robinson, *Rationales for Rural Land Redistribution in South Africa*, 23 BROOK. J. INT'L L. 465, 466 (1997).

⁵⁵ See Zirker, *supra* note 21, at 630. This Note describes the forced removals of the residents of Sophiatown and of the Black Batlouw people from the North West province. Like the denizens of Sophiatown, the Black Batlouw were forcibly transported by the government in military trucks from their fertile land in Putfontein to an area with dry, infertile land that was over one hundred kilometers from their original settlement. Once they arrived, the Batlouw were given tents and were abandoned, left to establish their lives in this barren environment. Their original homes in Putfontein were destroyed to make way for the new White homeowners. *Id.* Cape Town's Sophiatown-like community is District Six, which, prior to Apartheid removals, was a mixed community of free Blacks, merchants, artisans, laborers, and immigrants. This district was a lively community with close links to Cape Town's city center and its port. In 1966, it was declared a "Whites only" area, and some 60,000 people were forcibly removed to the bleak outlying plains known as the Cape Flats. Their houses in the District were bulldozed; their community was destroyed. See District Six Museum, <http://www.districtsix.co.za/frames.htm> (last visited Nov. 19, 2006). This area has only recently begun to be repopulated. It stood as a vast empty space, politically too sensitive to be redeveloped. See TEPP, *supra* note 3, at 101.

The segregationist ideology upon which the Apartheid Era land and zoning schemes were premised developed over hundreds of years and is part of the colonial history of South Africa.⁵⁶ The arrival of Jan van Reibeek and the Dutch East India Company in South Africa's Cape area in 1652 marked the beginning of European domination over the peoples of South Africa.⁵⁷ The Dutch quickly set about transporting settlers from the Netherlands and also began importing slaves from Madagascar, Indonesia, and India.⁵⁸ In 1679, the Dutch East India Company started to make land grants in the fertile valley beyond the Cape, stripping the native inhabitants of their land rights.⁵⁹ The first racially discriminatory laws were passed in the 1760s to govern a small community of emancipated Black slaves.⁶⁰ Initially, these free Blacks had the same rights as White settlers, but, by 1790, they were required to carry passes when they traveled outside of the town.⁶¹

As the British invaded and captured the Cape from the Dutch in 1795, White settlers continued to appropriate independent Black South African communities and began absorbing

⁵⁶ See generally THOMPSON, *supra* note 3, at 155. The subject of South African history, while tragic, fascinating, and inspiring, is far beyond the scope of this Essay. There are many absorbing and informative books on the subject, some of which are cited herein, and the author urges readers to explore them.

⁵⁷ *Id.* The tragic clash of cultures that characterizes this period of South African history can be illustrated by the differing perceptions of land "ownership" between the European settlers and the African tribal groups. Before colonialism, the concept of permanent, indefeasible land rights amounting to freehold estates was alien to most of Africa, particularly Sub-Saharan Africa. Hasani Claxton, Note, *Land and Liberation: Lessons for the Creation of Effective Land Reform Policy in South Africa*, 8 MICH. J. RACE & L. 529, 534-35 (2003). For example, the Xhosa believed that every man had the right to use land just as he had the right to breathe the air. Robinson, *supra* note 54, at 470. Under a tribal communal land system, land belonged to the entire community, not to individuals. When some of the African tribal chiefs welcomed the Europeans and allowed them to settle on tribal lands, the settlers mistakenly assumed that the chiefs had granted them a freehold-type title to the property. These misunderstandings caused anger and conflict. See Claxton, at 534-35.

⁵⁸ Robinson, *supra* note 54, at 469.

⁵⁹ See Zirker, *supra* note 21, at 624. The native inhabitants of the Cape were the Khoi, or the Khoikhoi, and the San. These two groups sometimes are referred to collectively as the "Khoisan." See http://encyclopedia.laborlawtalk.com/History_of_South_Africa (last visited Nov. 19, 2006).

⁶⁰ Zirker, *supra* note 21, at 625.

⁶¹ *Id.* The author notes that this pass requirement resurfaced during the Apartheid regime pursuant to the notorious statutes known as the pass laws. *Id.*

these peoples into a White-dominated economy.⁶² After the Boer War (1899-1902),⁶³ the British absorbed the Dutch colonies, granting them self-government based upon the philosophy of White franchise.⁶⁴ In 1910, the Union of South Africa was formed, combining all self-governing South African colonies into a single state. The new state quickly created legislation based on racial segregation and discrimination.⁶⁵ Indeed, an effort to maintain an economic, social, and geographic distance between the races characterized much of South Africa's twentieth century political history.⁶⁶

Geographically, although by 1910 most Black South Africans had been dispossessed of their property, the Natives Land Act of 1913⁶⁷ set the stage for complete Apartheid and territorial segregation of the races. The 1913 Act severely limited land ownership by Blacks and drove them to demarcated reserves,⁶⁸ derisively referred to as "Bantustans."⁶⁹ In the Act, Blacks

⁶² See THOMPSON, *supra* note 3, at 109.

⁶³ For the purposes of this Essay, "The Boer War" refers to the 2nd Boer War or South African War, which was fought between Great Britain and the two Afrikaner (Boer) republics, Transvaal and Orange Free State. The war began on October 11, 1899, precipitated by the Transvaal's refusal to grant political rights to the primarily English population of the region's mining areas, by the aggressive attitudes of British colonial leadership, and the presence in the Transvaal of the largest gold-mining complex in the world. The Boer War was finally concluded with the signing of the Treaty of Vereeniging in May 1902. See, e.g., GREGORY FREMONT-BARNES, *ESSENTIAL HISTORIES THE BOER WAR: 1899-1902* (Osprey Publishing 2003). The first Anglo-Boer War, known to Afrikaners as the First War of Independence, began in 1881. The Afrikaners defeated the British in this engagement and established the *Zuid-Afrikaansche Republiek* (ZAR or South African Republic). See TEPPON, *supra* note 3, at 27. The theory of the ethnogenesis of an "Afrikaner" identity, or *Afrikanerdom*, through, *inter alia*, the language movement and the work of the Dutch Reformed Church is a fascinating subject and one that exceeds the scope of this Essay. See generally F.A. VAN JAARSVELD, *THE AWAKENING OF AFRIKANER NATIONALISM 1868-1881* (Cape Town 1961).

⁶⁴ See Zirker, *supra* note 21, at 626.

⁶⁵ *Id.*

⁶⁶ TEPPON, *supra* note 3, at 15.

⁶⁷ Black Land Act 27 of 1913 (repealed 1991), available at <http://africanhistory.about.com/od/apartheidlaws/g/No27of13.htm>.

⁶⁸ *Id.*

⁶⁹ See Boyle, *supra* note 51, at 675. The term "Bantustan" derives from *Bantu*, or "people" in the Bantu languages, and from "-stan," meaning "land of" and based on Hindustan. See Wikipedia - The Free Encyclopedia, <http://en.wikipedia.org/wiki/Bantustan> (last visited Nov. 19, 2006). The homelands refer to the ten areas designated by the Apartheid government for the habitation of Black South Africans. See Robinson, *supra* note 54, at 466 n.4. These areas also

were restricted to 7% of the total area of the Union of South Africa, while Whites were granted the remaining 93% of the land.⁷⁰ The Act also prohibited land transactions between "Black(s)" and "person(s) other than Blacks" in the areas outside of the reserves.⁷¹ Prohibited transactions included sharecropping and squatting, which effectively transformed the Black South Africans who lived in rural areas outside of the reserves into wage or tenant laborers for White farmers.⁷²

The South African Parliament amended the 1913 Act with the Native Land and Trust Act of 1936.⁷³ The 1936 Act slightly increased the land available for Blacks in the reserves to a little over 13.6% of the country's surface area.⁷⁴ However, the 1936 Act further dispossessed Black South Africans by denying them direct ownership of the reserve land.⁷⁵ The statute substituted individual land ownership with ownership by the South African Development Trust, a government body that purchased land in the released areas for "Black settlement."⁷⁶

The Parliament also passed legislation that racially segregated South Africa's urban areas. A rise in White poverty rates led to an increase of urbanization in the nation. Landless White families migrated to South African cities from rural areas, and Apartheid engineers constructed spatial and legal barriers in urban spaces to fortify officially-designated racial categories.⁷⁷ Ostensibly to preserve the integrity of the White race, these poor migrants were promised housing in areas spatially and socially segregated from Blacks and other non-White groups.⁷⁸ In

are referred to as the reserves, scheduled areas, released areas, and the homelands. *Id.* Blacks derisively refer to the areas as "Bantustans" to manifest their contempt for the Apartheid government's exploitation of the tribal system. *Id.*

⁷⁰ See Black Land Act 27 of 1913.

⁷¹ *Id.*

⁷² *Id.* See also Robinson, *supra* note 54, at 472-75.

⁷³ Native Trust & Land Act of 1936, ch. II, § 6 (repealed 1991), available at <http://www.landaction.org/display.php?article=60> (discussing the historical basis for land reform in South Africa).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See TEPPPO, *supra* note 3, at 15.

⁷⁸ *Id.* Jan Hofmeyr was the first purpose-built suburb for "poor" South African Whites. It was established in 1936 in central Johannesburg. *Id.* Eventually nearly every South African town of any size had at least one such neighborhood. *Id.*

Triomf, for example, the South African Railways promised the Benade siblings housing when they first arrived in Johannesburg with their parents.⁷⁹ Laws such as the Native (Urban Areas) Consolidation Act 25 of 1945⁸⁰ restricted the rights of Blacks to acquire land in urban areas and allowed the government to remove "redundant Blacks" from urban districts that were "in excess of the reasonable labor requirements in (those areas)."⁸¹ This law, in conjunction with group of statutes known as the "pass laws,"⁸² controlled the labor flow of Black South Africans into urban areas and barred them from these areas when they were not working.⁸³

In 1948, the National Party rose to power by espousing Apartheid to lower income and middle class White South Africans like *Triomf's* Benade family.⁸⁴ During the Apartheid Era, the government regulated "virtually all areas of life—social, culture, education, commerce, politics, and residence—through a complex series of statutes to maintain separation of the races and to preserve ethnic integrity."⁸⁵ As previously mentioned, Sophiatown was a victim of the Apartheid social program, dismantled to make way for the Benades' new home in the "Whites only" *Triomf*.⁸⁶ In the novel, as Treppie watched the bulldozers destroy Sophiatown, he would deliver sardonic diatribes to his

⁷⁹ The South African Railways was one of the primary employers of Afrikaners in urban areas of the country, and it often provided housing to its workers. TEPPON, *supra* note 3, at 114. According to one scholar, by 1980, the Railways had assisted 90,000 mostly Whites to obtain houses and had provided 35,000 places in hostels for Blacks. *Id.* (citing G. H. Pirie, *Sleepers Beside Tracks: Housing in South Africa's State Railway Corporation, 1910-1980*, 64/2 S. AFR. GEOGRAPHICAL J. 144-54 (1982)).

⁸⁰ This Act superseded a similar law, the Native (Black) Urban Areas Act 21 of 1923. See, e.g., Bentley J. Anderson, *The Restoration of the South African Citizenship Act: An Exercise in Statutory Obfuscation*, 9 CONN. J. INT'L L. 295, 301 (1994) (discussing statutes passed by the government which limited the rights of Black South Africans).

⁸¹ Native (Urban Areas) Consolidation Act 25 of 1945 (repealed by the Abolition of Influx Control Act 68 of 1986). *Id.* at 310-11.

⁸² See Zirker, *supra* note 21.

⁸³ See THOMPSON, *supra* note 3, at 166. These laws and policies had the effect of reducing non-White workers to unskilled or semi-skilled laborers, the economic impact of which still lingers and challenges the new South Africa in its commitment to "substantive" equality. See *id.*

⁸⁴ Robinson, *supra* note 54, at 476.

⁸⁵ *Id.* at 477.

⁸⁶ See *supra* notes 45-55 and accompanying text.

family about the new suburb. He would tell them derisively that Triomf is "where our future lies[.]. . . where we're going to get a new start in life[.]"⁸⁷

The Apartheid future was bleak for many South Africans.⁸⁸ Between 1960 and 1983, an estimated 3.5 million Black South Africans were forcibly removed from non-Black areas by the government and White farm owners.⁸⁹ One of the Apartheid government's most effective legal tools was the Group Areas Act 41 of 1966,⁹⁰ under which "assigned races" such as Blacks, Coloureds, and Indians were dispossessed of land newly designated for Whites only.⁹¹ "As a result of this Act, entire communities were completely uprooted from their land and relocated, forcing people to leave behind not only their homes but also their social and traditional lives."⁹²

Pursuant to its policy of separate development, the Apartheid government transformed the reserves into ostensible "homelands."⁹³ The homeland concept enabled the Apartheid government to make the claim that Black South Africans were living on their "traditional" lands. The policy's ultimate goal was to deprive Blacks not only of their land, but also of their

⁸⁷ VAN NIERNECK, *supra* note 1, at 3.

⁸⁸ A note of caution: this author has attempted to create a document that does not present an overly simplistic view of Apartheid race relations. While it is not often remarked upon, there were White and Coloured South Africans who, side by side with the Black citizenry, did resist Apartheid. There also have been allegations that some Black South Africans cooperated with the Apartheid government. See, e.g., *Frontline* (PBS television broadcast Dec. 15, 1987), available at <http://www.pbs.org/wgbh/pages/frontline/programs/info/APT105.html>.

⁸⁹ See Robinson, *supra* note 54, at 477.

⁹⁰ See Anderson, *supra* note 80, at 309; see also Group Areas Act 41 of 1966, <http://www.answers.com/topic/group-areas-act> (containing a brief discussion of the act and legislative history).

⁹¹ See Group Areas Act 41 of 1966 (containing a brief discussion of the act and legislative history).

⁹² Zirker, *supra* note 21, at 630.

⁹³ See Robinson, *supra* note 54, at 477. Included as homelands under the Promotion of Bantu Self-Government Act of 1959 were Lebowa, KwaNdebele, Qwaqwa, KaNgwane, Gazankulu, and KwaZulu. See Promotion of Bantu Self Government Act 46 of 1959, § 2(a)-(f). Eight tribal groups (North and South Sotho, Swazi, Tsonga, Venda, Xhosa, Zulu, and Tswana) also were identified, each of which was forced to move into different designated homelands. Ndebele was added subsequently. *Id.* at 478.

South African citizenship via a mechanism that granted them the right to seek their "independence."⁹⁴

Laws such as these contributed to the intensifying international isolation, both political and economic, of Apartheid South Africa. Like the invisible cracks under the paint of the Benades' Triomf home, the faults in the foundations of Apartheid became increasingly visible and continued to expand. Under the weight of decades of domestic Black South African resistance and protracted international political and economic pressure, the socially constructed concept of Apartheid began to crumble and, in the early 1990s, the regime's legal pillars were pulled down.⁹⁵ For example, in 1991, the newly formed multi-racial transitional government repealed the Group Areas Act and the 1913 and 1936 Land Acts.⁹⁶ In October 1993, Mr. Nelson Mandela,⁹⁷ reverently referred to as "Madiba," and Mr. F.W. de Klerk were awarded the Nobel Peace Prize to honor their joint efforts to peacefully dismantle Apartheid.⁹⁸

⁹⁴ As many commentators have noted, the homelands did not in fact represent true political independence for Black South Africans. *See, e.g., id.* at 477. Pursuant to the Black Authorities Act of 1951, see the Promotion of Black Self-Government Act 46 of 1959 (name later changed to the Representation Between the Republic of South Africa and Self-governing Territories Act, Constitutional Laws Amendment Act 32 of 1987, § 10), the Apartheid government installed the institutions for government within the homelands and designated the chiefs. *Id.* at 478. Further, Parliament perverted the native tribal systems to advance its own purposes by conferring upon the chiefs more power than they possessed traditionally. *Id.* *See also* LAURINE PLATZKY & CHERRYLL WALKER, *THE SURPLUS PEOPLE, FORCED REMOVALS IN SOUTH AFRICA* 9, 111 (Ravan Press 1985). Also, the homelands were economically dependent on "White" South Africa. *See* Robinson, *supra* note 54, at 479.

⁹⁵ *See* Group Areas Act 41 of 1966, <http://www.answers.com/topic/group-areas-act> (containing a brief discussion of the act, its legislative history and subsequent repeal).

⁹⁶ *See* Black (or Natives) Land Act of 1913, Native Trust & Land Act of 1936, available at <http://africanhistory.about.com/od/apartheidlaws/g/No27of13.htm>.

⁹⁷ Mr. Mandela, "a near-mythic figure synonymous with the South African struggle for freedom," was released from Robben Island prison after serving twenty-seven years of a politically motivated life sentence. *See* Robinson, *supra* note 54, at 481-82. *See also* Alistair Sparks, *South Africa Frees Mandela After 27 Years: Jubilant Crowds Dance, Shout in Black Townships*, WASH. POST, Feb. 12, 1990, available at 1990 WL 2149323. For a personal account of his triumphant and moving story, see Mandela's best-selling autobiography *LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA* TAG *See* MANDELA, *supra* note 41.

⁹⁸ *See* Nobelprize.org, The Nobel Peace Prize 1993, available at <http://nobelprize.org/peace/laureates/1993/index.html>.

In 1994, while the world watched, some with fervent hope and some, like *Triomf's* Benade family, with great trepidation, the people of South Africa went to the polls. They elected the African National Congress party ("ANC") by a clear majority in South Africa's first truly democratic election, ending nearly three centuries of White rule.⁹⁹ The ANC-controlled Parliament selected Nelson Mandela to be the country's president shortly thereafter.¹⁰⁰

Triomf's emblematic narrative personalizes the failure of Apartheid for a family of Armblankes, members of the very racial category intended to benefit from its exclusionary ideology. The South African Railways' promise of housing for the Benade family in *Triomf* symbolizes all of the empty promises of Apartheid. The Benades could not endure the intolerable conditions at the "free" boarding house to which they were shunted, settling instead for a shared "semi" where they were exploited by the other residents,¹⁰¹ an allegory for the exploitation of both Black South Africans and other poor South Africans during Apartheid. The Benades' lot improved little in the purpose-built, "White only" *Triomf*. Despite their reality, the heroic Afrikaner myths into which they were inculcated both indoctrinated and exploited Whites into believing in Apartheid's promises, just as the Benades nearly came to believe in their concocted tale of Lambert's origins. "That [is] the meat of [saving] perspective . . . [It has] to be drilled into [people] so hard they'd also start thinking it was true after awhile. . . . It was all in the mind anyway."¹⁰²

The novel invokes this warped perspective again and again as the blighted characters comfort one another with their constant refrain: "They should count their blessings. They had each other. They had a roof over their heads."¹⁰³ Like a religious mantra, this admonition is recited by Pop and Mol: "They

⁹⁹ See Laurinda Keys, 'Let Us Forget the Past' Mandela, at *Election Eve Service Urges Reconciliation*, BOSTON GLOBE, May 9, 1994.

¹⁰⁰ See Nobelprize.org, The Nobel Peace Prize 1993, available at <http://nobelprize.org/peace/laureates/1993/index.html>.

¹⁰¹ VAN NIEKERK, *supra* note 1, at 133-40.

¹⁰² *Id.* at 192.

¹⁰³ *Id.* at 137.

should count their blessings and thank [the government] for giving [them] an affordable roof over [their] heads.”¹⁰⁴

But, while these hollow Apartheid blessings and promises echo in the words of van Niekerk’s characters, not all of them embrace this saving perspective. Treppie’s acerbic tirades demonstrate that he clearly understood the emptiness of the Apartheid government’s pledge. However, his family kept the faith, as did many White South Africans who blindly clung to the Apartheid message of “[t]hat which belongs together, must remain together[.]”¹⁰⁵ They continued to keep the faith notwithstanding the fact that “things . . . get broken and then fixed again. Over and over again, . . . broken and fixed again. And nothing ever gets fixed properly.”¹⁰⁶

Finally, disillusioned by broken dreams and promises, South Africans lost faith with the architects of Apartheid. Overcoming seemingly insurmountable problems, they democratically elected a new multi-racial government to fix “things.”

B. *Triomf in The Post-Apartheid City*

In *Triomf*, the apocalypse that the Benades anticipate in the wake of South Africa’s historic 1994 election never materializes. Just the opposite occurs, and “[h]eathens, Jews and Mohammedans were gathered there together [for the elections], and everyone was quite jolly, without bullet-proofing.”¹⁰⁷ Following Nelson Mandela’s selection as President, a “Government of National Unity” was formed by the country’s leading political parties, the ANC, the “new” National Party,¹⁰⁸ and the Inkatha Freedom Party.¹⁰⁹ An Interim Constitution served as South Af-

¹⁰⁴ *Id.* at 287.

¹⁰⁵ *Id.* at 139.

¹⁰⁶ *Id.* at 140.

¹⁰⁷ *Id.* at 522.

¹⁰⁸ By the late 1980s, White farmers began defecting from the National Party to the right-wing Conservative Party. See SEBASTIAN MALLABY, *AFTER APARTHEID, THE FUTURE OF SOUTH AFRICA* 148 (Random House 1992).

¹⁰⁹ The Inkatha Freedom Party was formally created in 1990 and is headed by Dr. Mangosuthu Buthelezi. A successor to the Inkatha National Cultural Liberation Movement, the organization promotes a united, non-racial democratic society. While open to all, it is publicly viewed as representing the nationalist aspirations of South Africa’s largest ethnic group, the Zulus. See Tiscali.Reference, <http://www.tiscali.co.uk/reference/encyclopedia/hutchinson/m0024327.html> (last visited

rica's main governing document until, on May 8, 1996, the South African government adopted the final Constitution.¹¹⁰

South Africa's Constitution has been hailed as one of the most impressive human rights documents ever produced.¹¹¹ Not only does the Constitution enshrine civil and political rights for the nation's citizens,¹¹² but it also enumerates a lengthy list of socio-economic rights intended to protect and assist the poor and vulnerable of South Africa and those disadvantaged by Apartheid.¹¹³ Socio-economic rights¹¹⁴ protected by this remarkable document include rights to health care, food, water, social security, education, and, pertinent to the *Triomf* narrative, property and housing.¹¹⁵

Unlike Apartheid Era land policies, the new South African Constitution bestows these property and housing rights upon all of the country's citizens. However, poor planning and low quality delivery during Apartheid endure to prolong the suffering of many South Africans. *Triomf's* topographical layering of Triomf over Sophiatown is not only a pointed metaphor for the

Nov. 19, 2006). For more information on the party and its policies, see its official Web page at <http://www.ifp.org.za/> (last visited Nov. 19, 2006).

¹¹⁰ See generally S. AFR. CONST. 1996.

¹¹¹ See, e.g., Penelope E. Andrews, *From Gender Apartheid to Non-Sexism: The Pursuit of Women's Rights in South Africa*, 26 N.C. J. INT'L L. & COM. REG. 693, 694 (2001).

¹¹² For example, the Constitution prohibits discrimination based on "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth." S. AFR. CONST. 1996, ch. 2, § 9(3).

¹¹³ Mark S. Kende, *The South African Constitutional Court's Embrace of Socio-Economic Rights: A Comparative Perspective*, 6 CHAP. L. REV. 137, 137 (2003). In this thought-provoking article, Professor Kende describes and distinguishes "first," "second," and "third" generation constitutional rights in the context of the United States and the South African Constitutions. He notes that the South African "Constitution's length and detail distinguish it from the United States Constitution[]" and concludes that "[t]he United States Supreme Court and American scholars could learn much from the South African Constitutional Court's socio-economic decisions." *Id.* at 160.

¹¹⁴ While the South African Constitution's socio-economic rights provisions have been celebrated internationally, some South African scholars have argued that they are unenforceable. *Id.* at 142 (citing D.M. Davis, *The Case Against the Inclusion of Socio-Economic Demands in a Bill of Rights Except as Directive Principles*, 8 S. AFR. J. HUM. RTS. 475 (1992); see also ERIKA DE WET, *THE CONSTITUTIONAL ENFORCEABILITY OF ECONOMIC AND SOCIAL RIGHTS* 92 (1996) (discussing the then-future Constitutional Court Justice Ackermann's objections to the inclusion of enforceable socio-economic rights)).

¹¹⁵ S. AFR. CONST. 1996 ch. 2, §§ 26(1), 27(1), 29(1).

social architecture of Apartheid,¹¹⁶ it also alludes more concretely to the living detritus caused by Apartheid property schemes. "[I]t's just rubble, wherever you dig" in the *Triomf* of the novel.¹¹⁷ The rubble figuratively denotes the unfulfilled promises, the unstable foundations of Apartheid policies, and, more literally, the inferior materials and construction techniques that were used to construct Apartheid-designed communities. These obstacles challenge the ability of the democratic government to transform the Constitution's aspirational property and housing provisions into property ownership and "concrete" housing for landless and homeless South Africans.

The Constitution provides the legal authority by which the South African government may act to address these challenges and to redress the injustices caused by colonial and Apartheid-inspired land policies, injustices such as the dispossessions experienced by Sophiatown residents in order that White families like *Triomf's* Benades could be relocated. The charter mandates that "[t]he state . . . take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."¹¹⁸ Further, its Section 25(8) states that "[n]o provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination[.]"¹¹⁹ The Bill of Rights also declares that "[e]veryone has the right to have access to adequate housing"¹²⁰ and that "[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right."¹²¹ These provisions manifest the expectation of the South African electorate that its government will eliminate the injustices resulting from colonial and repressive Apartheid-inspired social and economic laws and policies.

To effectuate these rights, other provisions of the Constitution explicitly articulate mechanisms for land reform, specifically, expropriation and legislative action. The Constitution

¹¹⁶ See Steinglass, *supra* note 27.

¹¹⁷ VAN NIEKERK, *supra* note 1, at 1.

¹¹⁸ S. AFR. CONST. 1996 ch. 2, § 25(5).

¹¹⁹ *Id.* § 25(8).

¹²⁰ *Id.* § 26(1).

¹²¹ *Id.*

provisionally authorizes the government to expropriate private property: "[p]roperty may be expropriated only in terms of law of general application . . . (a) for public purposes or in the public interest; and (b) subject to compensation, the amount, timing, and manner of payment, of which must be agreed, or decided or approved by a court."¹²² The phrase "public interest" is defined to "include[] the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources."¹²³ The Constitution further explicates the term "compensation," stating that its "amount, timing, and manner of payment [must] be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected[.]"¹²⁴

Regarding legislative action to implement land reform, Section 25(7) of the Constitution states that "[a] person or community dispossessed of property after 19 June 1913 as a result of

¹²² *Id.* § 25(2).

¹²³ S. AFR. CONST. 1996 ch. 2, § 25(4)(a). As one commentator has noted: Land reform is not unprecedented as being within the public interest for purposes of justifying government expropriation of property, at least under the constitutional jurisprudence of nations other than South Africa. In *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984), the United States Supreme Court held that a state government's exercise of its eminent domain powers to implement a fully-compensated land redistribution plan was constitutional because it was rationally related to a conceivable public purpose.

See Robinson, *supra* note 54, at 486 n.180. The facts of *Midkiff* revealed that an estimated 47% of the land in Hawaii was owned by only 72 landowners as a result of the historical concentration of land ownership by tribal chiefs and colonial settlers. See *Midkiff*, 467 U.S. at 232. Because the federal government owned an additional 49% of the land in Hawaii, nearly all of the privately owned land in the state was concentrated in the hands of only a few individuals. See *id.* The state government, exercising its power of eminent domain, created a system that condemned residential tracks of land, paid compensation to the owners, and provided the lessees with the opportunity to purchase lands. See *id.* at 234. The U.S. Supreme Court upheld this land reform system, stating that: "(t)he Hawaii legislature enacted its Land Reform Act not to benefit a particular class of identifiable individuals but to attack certain perceived evils of concentrated property ownership in Hawaii - a legitimate public purpose. Use of condemnation to achieve this purpose is not irrational." *Id.* at 245.

¹²⁴ S. AFR. CONST. 1996 ch. 2, § 25(3). This provision does not promise market value. For clarification, "all relevant circumstances, includ[e] . . . (a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation." *Id.*

past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.”¹²⁵ The Constitution’s Section 25(6) supplements this remedy by providing that “(a) person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.”¹²⁶

Acting promptly to address the Constitution’s property and housing aspirations and to advance the land reform goals set forth in South Africa’s Reconstruction and Development Programme,¹²⁷ the new government created the South African Department of Land Affairs¹²⁸ and engaged in an extensive process of public consultation on land policy issues.¹²⁹ This process culminated in a Green Paper that identified three major priorities for the nation’s Land Reform Program: (1) restitution, (2) redistribution, and (3) land tenure reform.¹³⁰ Policy gui-

¹²⁵ *Id.* at § 25(7). While the Constitution clearly acknowledges the land disposessions that occurred as a result of the 1913 Native Land Act, see *infra* Part III.B., many South Africans have criticized the June 19, 1913 date limitation. According to one analyst, “[d]uring the constitutional negotiations activists, ideologues and pragmatists argued passionately the merits of various symbolically laden years—1948, 1913, 1652—as the most legitimate cutoff point for the history of land dispossession that the restitution program should cover; this issue continues to simmer in political debate today.” Walker, *supra* note 10.

¹²⁶ S. AFR. CONST. 1996 ch. 2, § 25(6). See, e.g., Robinson, *supra* note 54, at 487.

¹²⁷ The Reconstruction and Development Programme 1994 (“RDP”). The RDP is a policy framework document adopted shortly after the ANC came to power in 1994 which sets forth the principles that were to guide the new government’s action. See RDP White Paper (September 1994), http://www.polity.org.za/html/govdocs/white_papers/rdpwhite.html?rebookmark=1. Hereinafter, except as expressed in quotations, the more typical U.S. spelling will be used for the word “Program.”

¹²⁸ A complete analysis of the administrative processes involved in South Africa’s land reform efforts and the allocation of powers and responsibilities among national, provincial, and municipal levels of government exceeds the volume of this Essay. For more information on details such as these, see D. L. CAREY MILLER & ANNE POPE, LAND TITLE IN SOUTH AFRICA (Juta & Co, Ltd. 2000).

¹²⁹ See Boyle, *supra* note 51, at 674 n.81 (discussing the process culminating in the publication of the Green Paper).

¹³⁰ *Id.* at 678-81.

dance pertaining to each of these areas then was translated into enabling legal mechanisms.¹³¹

For example, restitution is the focus of the aptly named Restitution of Land Rights Act 22 of 1994.¹³² Pursuant to this legislation, which is the foundation of South Africa's Land Reform Program, victims of land dispossession resulting from racially discriminatory legislation or practice on or after 1913 were given set time frames in which to lodge a claim for the restoration of their rights.¹³³ The Act further provided for the establishment of a Land Claims Commission and a Land Claims Court to investigate and adjudicate claims and established the criteria for investigating individual claims.¹³⁴

While acknowledging the slow pace of delivery, the South African government asserts that it is making headway on its restitution commitment. Indeed, the rate at which land claims are being processed has increased dramatically in recent years. Consider that less than 4,000 claims were settled in the first five years of the program, yet over 50,000 were settled in the second five years.¹³⁵ By March 2005, the official figure for settled restitution claims stood at 57,908.¹³⁶ While the budget for land reform had always been quite small, the 2005 allocation to the Department of Land Affairs rose to 0.92% of the national

¹³¹ *Id.* at 678-79 (discussing the legislative framework of South Africa's Land Reform Program).

¹³² The Restitution of Land Rights Act 22 of 1994, available at <http://land.pwv.gov.za/restitution/BACKGROU.RES.htm>. Amendments to this Act appear in the Restitution of Land Rights Amendment Bill, 2003 (as certified by the State Law Advisers on July 29, 2003).

¹³³ The Restitution of Land Rights Act 22 of 1994. The restitution strategy provided for a three-year period for filing claims and a five-year period for the Commission and the Courts to finalize all claims. A ten-year period was established for the implementation of all court orders. *See id.* Accordingly, claims for restitution were required to be lodged by December 1998. By the deadline, 63,455 claims had been filed. However, as claim forms sometimes encompassed several claims, the number increased to 68,878. *See* Claxton, *supra* note 57, at 546. Pursuant to the Land Rights Act, the target to finalize restitution claims was 2005. However, as many analysts had predicted, this deadline proved too optimistic and, in February 2005, the South African Land Affairs Minister, Thoko Didiza, acknowledged that "it will take an additional two years to redress the injustices of land seized under apartheid." Walker, *supra* note 10. The Commission is working toward a new deadline of March 31, 2008. *Id.*

¹³⁴ The Restitution of Land Rights Act 22 of 1994.

¹³⁵ Walker, *supra* note 10.

¹³⁶ *Id.*

budget, with restitution awarded nearly 70% of that augmented percentage.¹³⁷ Payments to land reform beneficiaries reached a high of 1.012 billion Rand (approximately \$169 million USD) in 2003, an increase of 80% from the previous year.¹³⁸

Interestingly, approximately 80% of the restitution claims filed related to urban areas.¹³⁹ Pertinent to *Triomf*, former Sophiatown residents who were displaced in favor of the fictional Benades and the “real” new residents of the “Whites only” Triomf have been paid some 21 million Rand (\$3,437,000 USD) since June 2000.¹⁴⁰ Data from the South African Department of Land Affairs indicate that 544 claims were paid only approximately 40,000 Rand (\$6,500 USD) each.¹⁴¹ The Department arrived at the 40,000 Rand figure as an estimate of the current average value of a lot in present-day Sophiatown, estimated by an area real estate agent to be approximately 50,000-60,000 Rand.¹⁴² However, lots in the neighborhood with houses reportedly have been selling for approximately 200,000 Rand.¹⁴³ As one might imagine, Sophiatown restitution claimants dispute these “official” values and are unhappy with the low valuation of their claims,¹⁴⁴ particularly as calls have been made to create a Sophiatown Heritage Precinct to revive the rich history of the

¹³⁷ *Id.*

¹³⁸ See The Commission on Restitution Homepage, <http://land.pwv.gov.za/restitution/Default.htm> (last visited Nov. 19, 2006); see also Land Claims Policy to be Reviewed, Aug. 2, 2005, http://www.southafrica.info/ess_info/sa_glance/social_delivery/update/land-claims-280704.htm. Data for 2004-2005 still are being analyzed. One hectare is equal to 2.47 acres. To convert hectares into acres, see **Conversion Calculator**, http://www.eddisons.com/pages/home_page/conversion_calculator/default.aspx (last visited Nov. 19, 2006). As of January 2006, one South African Rand was equal to approximately 0.162832 USD, or one USD is equal to 6.14130 Rands. To perform precise, up-to-the-minute exchange rate calculations, see XE.com, <http://www.xe.com/> (last visited Nov. 19, 2006).

¹³⁹ See Dr. Siphso Sibanda, *Land Reform and Poverty Alleviation in South Africa* (June 2001), <http://www.sarpn.org.za/documents/e0000008/index.php>.

¹⁴⁰ See Lucille Davie, *Sophiatown Land Claim Payments Top R21m*, News Archive for the Official Website for the City of Johannesburg, Mar. 24, 2003, available at http://www.joburg.org.za/2003/mar/mar24_sophia.stm.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* It appears that claimants may be justified in disputing the low valuations. An internet search of properties for sale in the Triomf suburb indicate that 3-4 bedroom homes list for 450,000 Rand to 850,000 Rand. See Real - Estate - South - Africa.com, <http://www.real-estate-south-africa.com/SearchCS.prs?&Prov=gauteng&City=> (last visited Oct. 28, 2006).

suburb as well as to enhance the tourist trade in Jo'burg.¹⁴⁵ One wonders how the Benade family and their Sophiatown/Triomf home would fare under this system of restitution.

As the number of settled restitution claims increases, so too does criticism of this form of "checkbook restitution."¹⁴⁶ For many land reform activists, cash settlements do not provide adequate redress for the injustices suffered as a consequence of Apartheid Era land schemes. To these reformers, redistribution, the second component of the South African land reform scheme, is the only appropriate recompense. Unlike restitution, which remedies specific injustices, redistribution is intended to redress the collective grievances arising from South Africa's long history of land dispossession.¹⁴⁷ Redistribution aims to provide the poor with access to land for agricultural, residential, and other productive uses in order to secure their tenure and improve their livelihoods.¹⁴⁸ While rural agricultural properties have been the primary targets for redistribution, this land reform component will impact the rural and urban poor, labor tenants, farm workers, and new entrants to agriculture and is intended to enable "previously disadvantaged people"¹⁴⁹ to buy land with the help of a settlement or land acquisition grant.¹⁵⁰ Whereas restitution requires proof on a case-by-case

¹⁴⁵ See Lucille Davie, *City Wants to Revive the Spirit of Sophiatown*, News Archive for the Official Website for the City of Johannesburg, Feb. 2, 2004, available at http://www.joburg.org.za/2004/feb/feb2_sophiatown.stm.

¹⁴⁶ See Walker, *supra* note 10.

¹⁴⁷ See Boyle, *supra* note 51, at 680.

¹⁴⁸ *Id.* See also Andre Groenewald, Panel Presentation, *Property and the Role of Land-Based Cultural Heritage – Global and National, South Africa's Land Reform Programme*, 5 SCHOLAR 195, 196-97 (2003).

¹⁴⁹ The term "previously disadvantaged person (or individual)" was intended to encompass all victims of Apartheid. The use of the acronym derived from the term now has become part of the nation's slang: "We need to consult a PDI."

¹⁵⁰ The typical redistribution project goes through five phases: (1) Making an Application, (2) Planning for Settlement, (3) Approval and Land Transfer, (4) Detailed Planning and Implementation, and (5) Development and Support. See Boyle, *supra* note 51, at 680. Redistribution of land is ranked in priority in accordance with criteria established in a Green Paper written by the Department of Labour in February 1996. *Id.* Priority is given to the "most critical and desperate needs" and to the marginalized and women. See *id.* Next in priority are projects "where the institutional capacity exists to implement quickly and effectively." *Id.* Also relevant to prioritization is the viability and sustainability of the projects. See *id.* Finally, the government will give priority in order to ensure a diversity of land redistribution projects. *Id.*

basis, eligibility for redistribution requires only that one be a Black South African.¹⁵¹

Two principal statutory vehicles implement the redistribution process: the Provision of Land and Assistance Act 126 of 1993¹⁵² and the Development Facilitation Act 67 of 1995.¹⁵³ The Provision of Land and Assistance Act provides for the designation of land for settlement purposes and for the rendering of financial assistance for the acquisition of land and secure tenure rights. The second legislative measure, the Development Facilitation Act, was enacted to increase the speed at which land was made available for development projects.¹⁵⁴ To complement the redistribution legislation, a range of additional financial resources, such as the planning grant and facilitation and dispute resolution services, have been established.¹⁵⁵ Land redistribution has taken several forms, including group settlement with some production, group production, on-farm settlement of farm workers, and farm worker equity.¹⁵⁶ However, a high proportion of these redistribution projects have been plagued with serious problems.¹⁵⁷ Because the program is largely market-based, land can be relatively costly and unavailable in small grant-sized parcels. Therefore, people wishing to acquire land with the grant are forced to form groups and to pool their grants in order to acquire land.¹⁵⁸ These groups sometimes prove to be too large and unmanageable, particu-

¹⁵¹ Cf. Michael Aliber, *What Went Wrong? A Perspective on the First Five Years of Land Redistribution in South Africa, with Homily for the Next Five*, (June 2003), available at http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/wrongsa.rtf.

¹⁵² The Provision of Land and Assistance Act 126 of 1993, available at <http://www.info.gov.za/gazette/acts/1998/a26-98.pdf>.

¹⁵³ The Development Facilitation Act 67 of 1995, available at <http://www.polity.org.za/html/govdocs/legislation/1995/act95-067.html?rebookmark=1>.

¹⁵⁴ See *id.*

¹⁵⁵ Dr. Sipho Sibanda, *Land Reform and Poverty Alleviation in South Africa* (June 2001), available at <http://www.sarpn.org.za/EventPapers/Land/20010604Sibanda.pdf>. (paper presented at the SAPRN conference on Land Reform and Poverty Alleviation in South Africa, discussing the South African land redistribution program during the 1990s).

¹⁵⁶ *Id.*

¹⁵⁷ Aliber, *supra* note 151, at 2.

¹⁵⁸ See Sibanda, *supra* note 155, at § 3.

larly considering the poor post-transfer support in the early days of the redistribution program.¹⁵⁹

Further, many South Africans are frustrated that only approximately 3.3% of South African land has changed hands: a mere 3.5m hectares (8.65m acres) out of a total 86m hectares (212.51m acres) had been redistributed to 168,000 households.¹⁶⁰ This percentage seems insignificant if one considers the most commonly quoted target for redistribution of White-owned land to Blacks: 30% of the nation's land.¹⁶¹ If delivery continues at this rate, only 4.6% of the land will have been redistributed by 2015, the date set by the government for achieving its 30% redistribution goal.¹⁶²

Responding to these problems, the current government has committed to taking "concrete steps to ensure that housing development contributes to eliminating the duality of living spaces inherited from [A]partheid."¹⁶³ These steps include a review of its willing-buyer willing-seller policy, a review of the land acquisition models, and an investigation of the possible manipulation of land prices.¹⁶⁴

Despite these difficulties, redistribution is the component of South Africa's land reform strategy in which the most substantial delivery has been recorded.¹⁶⁵ The provinces are driving one of the major urban tenure reform initiatives - a process of large-scale privatization of public rental stock by which units are being transferred to occupants.¹⁶⁶ The nation has celebrated several high profile community restoration projects. For example, evicted residents of Cape Town's District Six, "the his-

¹⁵⁹ Aliber, *supra* note 151, at 3.

¹⁶⁰ See Walker, *supra* note 10. See also Dispatch from South Africa, Apr. 14, 2004, PBS Homepage, The Online Newshour - Questions & Answers, available at <http://www.pbs.org/newshour/bb/africa/land/q-n-a.html>; Shaun Benton, *Land Claims Policy to be Reviewed*, Aug. 2, 2005, available at <http://www.southafrica.info> (follow "Essential Information" hyperlink; then follow "About South Africa" hyperlink; "Social Development" hyperlink; then follow "Land Polices under Review" under "Social Development Update" hyperlink).

¹⁶¹ RDP, *supra* note 127.

¹⁶² See Sibanda, *supra* note 155, at 6.

¹⁶³ See Thabo Mbeki, South African President, State of the Nation Address at the Joint Sitting of the Parliament (Feb. 3, 2006), available at <http://www.info.gov.za/speeches/2006/06020310531001.htm>.

¹⁶⁴ *Id.*

¹⁶⁵ Groenewald, *supra* note 148, at 197.

¹⁶⁶ Royston, *supra* note 48.

toric representative of a non-racial Cape Town and a non-racial South Africa," are beginning to return to the area as part of a government-funded reclamation program.¹⁶⁷

However, while Blacks do return to the Benades' fictional Triomf in van Niekerk's novel,¹⁶⁸ former Sophiatown occupants apparently have not received redistributed tracts in their "real life" old neighborhood. This provoked one commentator to retort, in response to President Mbeki's 2005 "State of the Nation" invocation of the Sophiatown disposessions, that:

The President did not mention that those removed from Sophiatown, hundreds of whom lodged land claims, have not had their land returned. While the validity of their claims was undeniable the government decided that "restoration of the land was not feasible . . . and alternative land within the same magisterial district was not available" and therefore they offered only financial compensation to the claimants. . . . "[A] once vibrant community, forcibly removed by apartheid, is now relegated to the scrapheap of history by flat-rate household payments that will do little more than meet the current household needs of the dispossessed." If the removal of Sophiatown sent a message in the strongest terms that "South Africa did not belong to all who live in it and

¹⁶⁷ See Thabo Mbeki, South African President, Address at the District Six Land Claims Celebration (Nov. 26, 2000), *available at* <http://www.info.gov.za/speeches/2000/0011271010a1004.htm>. See also District Six Residents Return Home, Feb. 11, 2004, <http://iafrica.com/news/sa/301888.htm> (last visited Nov. 19, 2006). As discussed in note 55, District Six was a mixed community of freed slaves, merchants, laborers, and immigrants close to the Cape Town city center and was home to nearly 1/10th of the city's population. See District Six Museum, <http://www.districtsix.co.za/frames.htm> (last visited Nov. 19, 2006). The District was razed by the Apartheid government to create a White area. The forced removals began in 1968 and continued until about 1982. In total, more than 60,000 people were evicted and relocated to the Cape Flats area, some thirty kilometers (30 km), or eighteen (18) miles, outside of Cape Town. *Id.* The District Six resettlement success was hard won. The Restitution of Land Rights Act included a clause that allowed local authorities to apply to the Land Claims Court to exclude land restoration as a settlement option in localities where this was deemed not in the public interest, and the Cape Town Metropolitan Council attempted to use this provision to subordinate land claims to their redevelopment plans for the strategically located District Six site. However, after a fierce political battle, District Six has begun its more claimant-centered resettlement process. See Walker, *supra* note 10. District Six is probably the most prominent example, but there are other interesting redistribution projects in a number of South African urban areas, including central Port Elizabeth, the large East Bank and West Bank settlements in East London, and the Kipi and Burlington housing projects in Durban. *Id.*

¹⁶⁸ VAN NIEKERK, *supra* note 1, at 522.

was a "triumph for white supremacy," what does the failure to return those removed signify? What is the unequivocal message sent by the government of today when those dispossessed receive no land and the settlement of Triomf remains in place?¹⁶⁹

Tenure reform,¹⁷⁰ the third element of South Africa's Land Reform Program, is probably "the most complex and neglected area" of the program and may be the most significant in the context of Triomf-inspired urban claims.¹⁷¹ The fundamental goals of tenure reform are to provide people with secure tenure, to prevent arbitrary evictions, and to accommodate diverse forms of land tenure, including types of communal tenure.¹⁷² Proponents of tenure reform believe that it is essential if people are to invest in the land and use it in a sustainable manner.¹⁷³

Over the past decade, new legislation has been enacted to protect the interests of farm workers and labor tenants living on other people's land. For example, the Interim Protection of Informal Land Rights Act 31 of 1996¹⁷⁴ was passed to secure the rights of individuals with "informal" land rights, primarily in the former homeland areas, while more comprehensive legislation was being prepared.¹⁷⁵ This measure ensured that holders of informal land rights were recognized as stakeholders in land transactions and development projects that involved the land on which they lived. The Land Reform (Labour Tenants) Act 3 of 1996,¹⁷⁶ the Extension of Security of Tenure Act 62 of 1997,¹⁷⁷ and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹⁷⁸ also have been implemented to

¹⁶⁹ Marc Wegerif, *President Skips Land*, NKUZI TIMES, Feb. 25, 2005, available at http://www.nkuzi.org.za/news_letter.htm.

¹⁷⁰ For a discussion of the conceptual misunderstandings pertaining to tenure amongst the African tribes and European settlers, see Claxton, *supra* note 57, at 534-35.

¹⁷¹ See *id.* at 547.

¹⁷² Groenewald, *supra* note 148, at 199.

¹⁷³ *Id.*

¹⁷⁴ Interim Protection of Informal Land Rights Act 31 of 1996, available at <http://www.info.gov.za/acts/1996/a31-96.pdf>.

¹⁷⁵ See *id.*

¹⁷⁶ The Land Reform (Labour Tenants) Act 3 of 1996, available at <http://www.polity.org.za/html/govdocs/legislation/1996/act96-003.html?rebookmark=1>.

¹⁷⁷ The Extension of Security of Tenure Act 62 of 1997, available at <http://www.info.gov.za/gazette/acts/1997/a62-97.pdf>.

¹⁷⁸ The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, available at <http://www.info.gov.za/gazette/acts/1998/a19-98.pdf>.

protect vulnerable rural and peri-urban farm workers and labor tenants from arbitrary evictions and to provide mechanisms for the acquisition of long-term tenure security. Additional legislation, such as the Communal Property Associations Act 28 of 1996,¹⁷⁹ creates legal mechanisms by which non-governmental groups and organizations may acquire, hold, and manage property under legally secure tenure, recognizing Black South African notions of communal land ownership.¹⁸⁰

These tenure-related laws have not proven to be the panacea for which the government had hoped. Although there appear to be no accurate statistics available, the South African government believes that there has been an increase in illegal evictions and a decrease in legal evictions.¹⁸¹ While there are indications that the country's commercial farmers are beginning to support black economic empowerment in the sector,¹⁸²

¹⁷⁹ The Communal Property Associations Act 28 of 1996, <http://www.info.gov.za/gazette/acts/1996/a28-96.htm>. A new and separate Communal Land Rights Bill was published in Government Gazette No. 23740, General Notice 1423, Aug. 14, 2002. See South Africa Department of Land Affairs, <http://land.pwv.gov.za/home.htm> (last visited Nov. 19, 2006).

¹⁸⁰ In response to these laws, Communal Property Associations and Communal Trusts were created in several areas to manage and allocate land. However, in its 1999 review, the South African Department of Land Affairs questioned the ability of trusts to hold and manage land. Claxton, *supra* note 57, at 548. "Furthermore, critics argue these communal systems are highly susceptible to corrupt tribal leaders and politicians as they lack mechanisms to hold leaders accountable to land users." *Id.* Experience appears to support these arguments. As Apartheid was winding down, the National Party transferred ownership of land to tribal leaders for the benefit of the tribe. As a result, "in places such as the former Lebowa homeland, corrupt tribal leaders were able to create what was essentially a feudal fiefdom." *Id.* Author Claxton cites an Oxfam publication for the proposition that deals were brokered directly between chiefs, the Lebowa cabinet, and the national government, without popular consultation, and that these deals resulted in widespread abuse and corruption by the chiefs. Ben Cousins, *The New Land Law: A Return to the Apartheid Era?* Nov. 2001, www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/newlaw.rtf. In theory, Claxton writes, the land belongs to the whole "tribe;" in practice it is operated as a feudal fiefdom. The rule of law has been replaced by a rule of fear. Claxton, *supra* note 57, at 548.

¹⁸¹ See Sibanda, *supra* note 156, at § 3.2.

¹⁸² Fair Price for Land Reform (Dec. 8, 2004) (quoting Agri SA deputy president, Bully Bothma, who said at the organization's congress that it would actively seek to assist black farmers and that it has the support of most of the country's farmers. "We have so many things in common now, I think it's time that all the farmers in South Africa speak with one voice."), <http://www.southafrica.info> (follow "Doing Business" hyperlink; then follow "Economy" hyperlink; then follow "Policies" hyperlink; then follow "Fair price for land reform" under "More Stories" hyperlink).

political opposition to tenure reform still exists among those with vested interests in maintaining the *status quo*. For example, organized agriculture remains firmly opposed to the tenure reform legislation.¹⁸³ Conversely, farm tenants clamor for the passage of legislation granting all farm dwellers ownership rights.¹⁸⁴ The situation is so volatile that a group of conflict resolution specialists, The International Crisis Group, has warned of increased rural violence if the government fails to accelerate land reform.¹⁸⁵

The new legal rationalization is challenged by the inherited maze of laws, as well as by the overlapping and often conflicting claims to individual plots of land by owners, occupants, and tenants.¹⁸⁶ The results are stark. While 58% of South African households, or approximately 4.8 million households do have secure tenure, some 9% of households or 780,000 homes still live under "traditional," informal, inferior, and/or officially unrecognized forms of tenure.¹⁸⁷ Further, in contrast to the housing

¹⁸³ See PBS.com, Online Newshour, *South Africa's Land Programs*, Apr. 14, 2004, available at http://www.pbs.org/newshour/bb/africa/land/gp_safrica.html. (citing Andries Botha, land issues spokesman for the opposition Democratic Alliance, who contends that the new laws will encourage violent Zimbabwe-style land invasions).

¹⁸⁴ To learn more about organized land rights organizations in South Africa, see the Land Research Action Network Homepage, <http://www.landaction.org> (follow "Country Studies" hyperlink under "Research"; then follow "South Africa" hyperlink) (last visited Nov. 19, 2006). The South African Land Research Action Network ("LRAN") is a "network of researchers and social movements committed to the promotion and advancement of the fundamental rights of individuals and communities to land, and to equitable access to the resources necessary for life with human dignity." *Id.* One prominent land rights organization is Nkuzi, Nkuzi Development Organization, <http://www.nkuzi.org.za/IndEx.html> (last visited Nov. 19, 2006). Another recognizable land rights organization in South Africa is the Landless People's Movement ("LPM"), an organization considered to be one of the more radical land rights groups in South Africa. The LPM is an independent grassroots movement of landless individuals. LPM contends that "landlessness = racism" and it has offered public support for the controversial land redistribution tactics of Zimbabwe's Robert Mugabe. See National Land Committee, Press Statement, Aug. 15, 2001, available at, http://library.circlealpha.com/library/race_racism/landless.html. South Africa's official position on Mugabe's "kleptocracy" has been criticized by at least one observer as an "utter failure of moral leadership." See Irlam, *supra* note 4, at 697. For more information regarding the LPM, see Memorandum to President Thabo Mbeki, Nov. 13, 2003, available at <http://www.landaction.org/display.php?article=136>.

¹⁸⁵ See Fair Price for Land Reform, *supra* note 182.

¹⁸⁶ Royston, *supra* note 48.

¹⁸⁷ *Id.*

provided to the Benade family in *Triomf*, dilapidated though it was, a further 18% of all South African households, or 1.5 millions households comprising 7.4 million people “live in squatter conditions, backyard shacks, or overcrowded conditions in existing formal housing in urban areas with no formal tenure right over their accommodation.”¹⁸⁸

Conditions such as these have forced suffering South Africans into the country’s courts in order to secure their rights to property and housing, as promised in the Constitution and the government’s Land Reform Program. For example, in what has been described as the “seminal socio-economic rights case in South Africa,”¹⁸⁹ the Constitutional Court of South Africa analyzed the right to housing. The facts of *Government of the Republic of South Africa v. Grootboom*¹⁹⁰ are heartbreaking. Mrs. Grootboom was part of a group of 390 adults and 510 children living in an informal settlement or shantytown known as Walacedene, not far from Cape Town.¹⁹¹ These settlements are appallingly common in South Africa’s urban and peri-urban areas and they often lack running water, electricity, sewage, and garbage removal services. To improve their circumstances, the group moved onto nearby vacant land. Although the property was earmarked for low-cost housing, it was privately owned and the owner obtained an eviction order.¹⁹² The occupants were forcibly evicted, their shacks were bulldozed and burnt, and their possessions destroyed.¹⁹³ When they could not return to their original settlement, they moved to a nearby municipal sports field and erected flimsy temporary structures.¹⁹⁴ The

¹⁸⁸ *Id.*

¹⁸⁹ Kende, *supra* note 113, at 142.

¹⁹⁰ *Government of the Republic of South Africa v. Grootboom* 2000 (11) BCLR 1169 (CC) ¶ 4-12. (S.Afr.), available at http://www.law-lib.utoronto.ca/Diana/TAC_case_study/Grootboom.pdf. This case has been subjected to much scholarly analysis. For just a few of the many articles that mention this seminal case, see generally Michael J. Dennis & David P. Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate The Rights To Food, Water, Housing, and Health?*, 98 AM. J. INT’L L. 462 (2004); Mark Tushnet, *Social Welfare Rights and the Forms of Judicial Review*, 82 TEX. L. REV. 1895 (2004); Gerald L. Neuman, *Human Rights and Constitutional Rights: Harmony and Dissonance*, 55 STAN. L. REV. 1863 (2003).

¹⁹¹ *Grootboom* 2000 (11) BCLR 1169 (CC) ¶ 4 n.2.

¹⁹² *Id.* ¶ 4.

¹⁹³ *Id.* ¶ 10.

¹⁹⁴ *Id.* ¶ 11.

plastic sheeting comprising their new "homes" exposed them to winter rains and cold temperatures, but the municipality declined to provide any assistance.¹⁹⁵ The group obtained legal counsel and brought suit charging that the government failed to comply with the constitutional right to housing.¹⁹⁶ They asked the Court to order the state to provide them with basic shelter. They based their argument on their constitutional right of access to housing¹⁹⁷ and the children's right to shelter.¹⁹⁸

The Cape High Court ordered the government to provide the applicants with basic shelter.¹⁹⁹ The case was then taken on appeal to the country's Constitutional Court, which ruled for the settlers based upon the right to housing contained in Section 26 of the Constitution.²⁰⁰ Initially, the Court addressed whether socio-economic rights were justiciable, declaring that the budgetary implications of socio-economic rights do not bar their justiciability.²⁰¹ The Court next explained the importance of socio-economic rights enshrined in the South African Constitution and acknowledged the nexus between the realization of socio-economic needs and the exercise of civil and political rights.²⁰² As noted South African scholar Pierre De Vos eloquently summarizes: "Starving people may find it difficult to exercise their freedom of speech. . . ."²⁰³

The Court rejected the concept that government is required to provide a "minimum core" level of housing or other similar socio-economic rights in order to satisfy constitutional requirements, instead asking "whether the measures taken by the

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* ¶ 13; see also S. AFR. CONST. 1996 ch. 2, § 26(2).

¹⁹⁸ *Grootboom* 2000 (11) BCLR 1169 (CC) ¶ 13; see also S. Afr. Const. 1996 ch. 2, § 28(1)(c).

¹⁹⁹ *Grootboom* 2000 (11) BCLR 1169 (CC) ¶ 16.

²⁰⁰ *Id.* ¶ 17.

²⁰¹ *Id.* ¶ 20.

²⁰² *Id.*

²⁰³ Kende, *supra* note 113, at 143 (citing Pierre de Vos, *Pious Wishes or Directly Enforceable Human Rights?: Social and Economic Rights in South Africa's 1996 Constitution*, 13 S. AFR. J. HUM. RTS. 67, 71 (1997)). For Professor de Vos' thoughtful examination of the *Grootboom* case, see Pierre de Vos, *Substantive Equality After Grootboom: The Emergence of Social and Economic Context as Guiding Value in Equality Jurisprudence*, in *EQUALITY LAW: REFLECTIONS FROM SOUTH AFRICA AND ELSEWHERE* 52-69 (Saras Jagwanth & Evance Kalula eds., Juta 2002).

state to realise the right afforded by Section 26 are reasonable.”²⁰⁴ The Court concluded:

To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right If the measures . . . fail to respond to the needs of those most desperate, they may not pass the test.”²⁰⁵

The Court declared that the government is obliged “to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing.”²⁰⁶ This programme must include measures such as an accelerated land settlement programme to provide relief for people “who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations.”²⁰⁷

It went on to conclude that the housing scheme in the Cape Metropolitan area did not satisfy constitutional requirements as it failed to make reasonable provision for people in desperate need, but the Court did not compel the government to take any specific action to address this failure.²⁰⁸ Thus, while the Court’s holding forced compliance with the Constitution, it gave the government discretion on how to comply with the law.²⁰⁹

The decision of the Constitutional Court in the *Grootboom*²¹⁰ case “has been hailed as a great victory for the homeless and landless people of South Africa.”²¹¹ However, its promise has failed to live up to the expectations of litigants and housing reform advocates,²¹² reflecting the general sense of

²⁰⁴ *Grootboom* 2000 (11) BCLR 1169 (CC) ¶ 33.

²⁰⁵ *Id.* ¶ 44.

²⁰⁶ *Id.* ¶ 99.

²⁰⁷ *Id.*

²⁰⁸ *Id.* ¶ 60-66.

²⁰⁹ *Id.* ¶ 66-69.

²¹⁰ *Grootboom* 2000 (11) BCLR 1169 (CC).

²¹¹ Kameshni Pillay, *Implementing Grootboom: Supervision Needed*, ESR REVIEW, July 2002, available at http://www.communitylawcentre.org.za/ser/esr2002/2002july_grootboom.php#grootboom.

²¹² Implementation of *Grootboom* essentially transformed a settlement agreement between the parties into a court order. Under this order, the government agreed to provide the Grootboom community with temporary accommodation, sani-

public dissatisfaction with the progress of land reform in South Africa.²¹³ Land reform was one of the main promises made by

tation, basic services, and running water. *See id.* This settlement order reportedly was implemented to a limited extent. Funds were made available to the community for basic shelter, and the community used the money to buy rudimentary building materials. "Ten water taps were installed and twenty toilets were also erected on the sports field." *Id.* However, there is no drainage on the sports field, resulting in standing stagnant water. Members of the community have alleged that the municipality has not serviced the toilets, has not maintained the taps, and has not provided other basic services such as garbage removal. *Id.* *See also* Siri Gloppen, *Social Rights Litigation as Transformation: South African Perspectives*, (Chr. Michelsen Institute Development Studies and Human Rights, Working Paper 2005: 3), available at <http://www.cmi.no/pdf/?file=/publications/2005/wp/wp2005-3.pdf>.

²¹³ This Essay does not attempt to analyze or assess the success or failure of South Africa's Land Reform Program. If the reader is interested in such critiques, there are many sources of information, both official and unofficial. *See, e.g.*, South Africa Department of Land Affairs, <http://land.pwv.gov.za/home.htm> (last visited Nov. 19, 2006). *See also* Ben Cousins, *Does Land and Agrarian Reform in South Africa Have a Future? And, If So, Who Will Benefit?*, in *AT THE CROSSROADS: LAND AND AGRARIAN REFORM IN SOUTH AFRICA INTO THE 21ST CENTURY* (Capetown: University of Western Cape 2000), available at http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/safuture.rtf; Dr. Susie Jacobs, *Livelihoods, Security and Needs: Gender Relations and Land Reform in South Africa*, 6 J. INT'L WOMEN'S STUDIES 1, n.1 (2004), available at http://www.fmra.org/index_uk.html (follow "Batch of Documents" hyperlink; then follow "Africana sub-sahariana" under "Regione" hyperlink; then follow "Livelihoods, Security and Needs: Gender Relations and Land Reform in South Africa" hyperlink). Impatient South Africans are beginning to call publicly for the government to follow the lead of Zimbabwe's controversial land reform/nationalization program. Zimbabwe's actions have drawn worldwide condemnation generally, but even more so recently in the wake of its Operation Murambatsvina. *See, e.g.*, Exec. Summary and Recommendations, *Zimbabwe's Operation Murambatsvina: The Tipping Point?*, Int. Crisis Group, Africa Report N°97 (Aug. 17, 2005), available at <http://www.crisisgroup.org/home/index.cfm?id=3618&l=1>. Operation Murambatsvina (Shona for Operation Drive Out The Trash) is also referred to by the Zimbabwe government as the more benevolent-sounding Operation Restore Order, which it claims is a crackdown against illegal trading and illegal housing in urban areas of the country. *See* UN Homepage - UN News Centre, *Zimbabwe's Evictions Carried out with 'indifference to human suffering,' UN Envoy says*, July 22, 2005, available at <http://www.un.org/apps/news/story.asp?NewsID=15117&Cr=zimbabwe&Cr1=#>. Human rights organizations and Zimbabwe opposition political parties counter that it is an attack against the urban-based opposition. *Id.* The Operation has sparked an international political and media outcry. *Id.* South African groups such as the Landless People's Movement have become increasingly active. Though still small and unevenly organized, such groups and individuals have spearheaded isolated invasions of state-owned and White-owned land. While the nation's law explicitly forbids unlawful occupations of land, *see supra* text accompanying note 178 (discussing The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998), the South African government primarily has refrained from criticizing the events in Zimbabwe. This has unnerved some South Africans

the ANC when it came to power in 1994 and the issue permeates South African culture, including not only political discourse,²¹⁴ but also popular expressions of culture. For example, song lyrics offer love and support for “squatters”²¹⁵ and a musical group phonetically named Skwatta Kamp attracts both listeners and critical recognition.²¹⁶ Music is not the only medium incorporating land and property themes. Several literary works by Nobel Laureate J.M. Coetzee examine the prominent role of “land” in South African literature and culture.²¹⁷ The acclaimed television series, *Yizo Yizo*,²¹⁸ dramatizes life in a township and Guy Willoughby’s prize-winning play, *Church Full of Light*, deals with land possession.²¹⁹

who fear that this silence implies the government’s tacit approval of a lawless and violent Zimbabwe-style program in their own country. See Anthony C. LoBaido, *Zimbabwe-Style Land Grab in South Africa? ANC Government Moves Closer to Confiscating White-Owned Farms*, WorldNetDaily, Sep. 15, 2002, available at http://www.worldnetdaily.com/news/printer-friendly.asp?ARTICLE_ID=28944. This Essay deliberately does not address the horrors that reportedly have been unleashed in Zimbabwe, preferring instead to focus on South Africa’s positive model. For more details of the Zimbabwe experience, see Boyle, *supra* note 51.

²¹⁴ Land reform statistics and stories appear nearly every day in South African newspapers and are too numerous to cite herein. One need only search superficially to locate relevant reports. Popular newspapers include The Cape Times, The Star, The Mail & Guardian, The Sowetan, and the Cape Argus, to name just a few. For a more complete listing, see South Africa Newspapers, <http://www.onlinenewspapers.com/sa.htm> (last visited Nov. 19, 2006).

²¹⁵ In a song entitled *Boipatong*, a reference to the infamous 1992 massacre of some 45 residents of the Boipatong Township, the late, great Brenda Fassie (1964–2004), belovedly called Mabrr, offers love and support to township occupants: “These are the people that have no food, no shelter, and nowhere to go But it’s not easy, oh no. They call them squatters. Look what they go through. They don’t deserve this, no, no. Ooh, Boipatong, we give you hope and sympathy. Ooh, Boipatong, may your loved ones rest in peace.” BRENDA FASSIE, *BOIPATONG* (Narada 2004).

²¹⁶ See [africagateway.com](http://www.africagateway.com/article383.html) – Announcements, <http://www.africagateway.com/article383.html> (last visited Nov. 19, 2006).

²¹⁷ See J.M. COETZEE, *BOYHOOD: SCENES FROM PROVINCIAL LIFE* (Viking Penguin 1997); J.M. COETZEE, *WHITE WRITING: ON THE CULTURE OF LETTERS IN SOUTH AFRICA* (Yale Univ. Press 1988).

²¹⁸ *Yizo Yizo* translates from a Zulu word as “the way it is” or “the real thing.” This series was first aired on South African Broadcasting Corporation, Channel 1 (SABC 1) in 1999 and was the most-watched and most controversial, program in the history of South African television. See, e.g., Chris McGreal, *Reality TV*, The Guardian, Jan. 22, 2002, available at <http://education.guardian.co.uk/egweekly/story/0,5500,636911,00.html>.

²¹⁹ See Guy Willoughby, *Church Full of Light: Kereke ya Lesedi* (2003).

Notwithstanding this political and public awareness, the land reform process has proven to be complex and slow-moving, creating conditions under which the relevance of *Triomf's* metaphorical narrative persists. Not wholly dissimilar from Afrikaner mythology, post-Apartheid South Africa gave birth to its own creation and identity folklore with an array of heroic figures and inspirational parables and tales. This belief system connects the previously disconnected citizens of the Rainbow Nation and inspires them to trust in the promise of the post-Apartheid system. Many South Africans have faith in the Constitution, including its promises of property and housing, despite the limited progress in the reform program. Their hopes are sustained by positive developments, such as the restitution payments received by some former Sophiatown residents for their displacement by families exemplified by the fictional Benades. These citizens now have new housing and they can "count their blessings."²²⁰

However, care must be taken that these "creation myths" do not evolve into a desperate pseudo-history analogous to the much-maligned self-justifying "Romanticism of blood-and-soil nationalism"²²¹ upon which the myth of Afrikaner racial superiority was based.²²² Like the heroic epic of Afrikaner Voortrekkers conquering the wilderness on the Great Trek and developing a fierce attachment to the "land," many South Africans are constructing their own deep connections to the "land" constitutionally promised to them. To avoid tragic displacements and migrations, such as those suffered by Sophiatown's Black residents as well as by Whites such as the parents of the Benade siblings, South African leaders must heed the failures of the country's history of land dispossessions and its misguided agrarian and rural policies. In *Triomf*, Lambert's malfunctioning refrigerators, objectifying South Africa's urban problems, are juxtaposed against the flowering watermelon, an image as-

²²⁰ VAN NIEKERK, *supra* note 1, at 137.

²²¹ Holmes, *supra* note 7.

²²² See, e.g., VAN JAARSVELD, *supra* note 63, at 189. One scholar, Anne McClintock, compares the "celebrated" unity of the Afrikaners, particularly the re-enactment of the '*die Tweede Trek*,' or the second trek in 1938, to the symbolism of the Nazi doctrine *Brut und Boden*, or blood and soil. ANNE MCCLINTOCK, *IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEST* 370-71 (Routledge 1995).

sociated with a bucolic, rural existence. South Africa's Land Reform Program confronts this urban/rural dichotomy, attempting to provide redress in both geographical spheres. But, as in *Triomf*, tensions still percolate, and past grievances plague the reform process.

Yet, South Africans have much to celebrate. Unlike the fantasy tales concocted by Mol and Pop in *Triomf*, the historical circumstances and events that led to the creation of this "new" nation inspired the world and need no exaggeration, distortion, or hyperbolic reconstruction. However, there is danger associated with constantly recounting and exalting a creation myth based upon identity politics and resistance struggles.²²³ Individuals may continue to identify with various narrative types in South Africa's creation myths - resistance hero, White oppressor, Black oppressed - perpetuating rather than destroying Apartheid's racial and political hierarchy.²²⁴

One might hope that the Rainbow Nation's vision of an inclusive identity does not devolve into mere myth. A new vocabulary has emerged to refashion the identities of the nation's "African" citizens in terms of unity, racial harmony, and reconciliation. While *Triomf* readers may be tempted to invert the novel's metaphorical topographical layering of a White society upon the remnants of the beleaguered Black majority in the context of the post-Apartheid South Africa, the new South Africa is taking pains to construct a stable foundation for its future. Instead of bulldozing its Apartheid past and layering the Black majority atop the residuum of White rule, South Africa is seeking to construct a new social order in which race is invis-

²²³ See MICHAEL LAMBK & PAUL ANTZE, *Introduction, Forecasting Memory, TENSE PAST. CULTURAL ESSAYS IN TRAUMA AND MEMORY* (Michael Lambek & Paul Antze eds. 1996).

²²⁴ *Id.*

ble²²⁵ to, in effect, refute George Calpin's contention that *There are No South Africans*.²²⁶

The process of building an inclusive national identity is a complex one, fraught with peril. There is a delicate balance between nationalism and multiculturalism.²²⁷ On the one hand, within this new social order, South African leaders must take care to avoid replicating the conditions instantiated by *Triomf's* incest allegory. Not unlike the incestuous consequences of Apartheid racial exclusivity, there may be negative outcomes associated with institutionalized integration. The application of facially neutral policies may compound the economic inequalities suffered by Blacks and other disadvantaged groups under Apartheid. For example, the creation of new housing schemes on the margins of urban areas in order to alleviate poverty and homelessness amongst Blacks may serve to exacerbate the spatial, economic, and social segregation that they suffered during the Apartheid Era. While well-intentioned, the development of such purpose-built communities inadvertently re-enacts the Native (Urban Areas) Consolidation Act²²⁸ and other laws deliberately formulated to segregate Blacks from the White population and to exclude them from inner cities. Further,

²²⁵ It is not without irony that, at least in the context of social stigmatization, Armblankes like *Triomf's* Benade family may fare better in the Rainbow Nation than they did under the exclusionary Apartheid system purportedly designed for their benefit and with which many of them were ideologically aligned. *But see* TEPPPO, *supra* note 3, for a discussion of the extensive state support designed for the "upliftment," or rehabilitation, of poor Whites before and during the Apartheid Era and the end thereof in the early 1990s. (The term "upliftment" originates from the Afrikaner word *opheffing*, which translates as "to lift up.") According to this commentator, "[f]rom an economic perspective, the poor whites . . . can easily be defined as the losers in the new South Africa." *Id.* at 202. A so-called poor White resident of a *Triomf*-like "White only" neighborhood in the Cape Town area expressed his increasing disillusionment and marginalization in the new South Africa with seeming resignation: "The old and the new government ignored us." *Id.* at 227.

²²⁶ *See* G.H. CALPIN, *THERE ARE NO SOUTH AFRICANS* (Thomas Nelson & Sons 1941). In this text, Calpin argued that there was no true national identity in the country for its White population, the English and the Afrikaners.

²²⁷ *See, e.g.,* Nicola de Jager, *South Africa: An Emerging National Identity*, 5 CTR. INT'L POL. STUD. ELEC. BRIEFING PAPERS (Univ. of Pretoria 2005), available at <http://www.up.ac.za/academic/cips/E%20Update/05-2005%20South%20Africa-%20An%20Emerging%20National%20Identity.pdf>.

²²⁸ *See* Anderson, *supra* note 80, at 302 (discussing the Native (Urban Areas) Consolidation Act as part of a series of acts which limited the rights of Black South Africans).

competition amongst various disadvantaged groups for scarce public resources may prolong or even intensify historic racial tensions/divisions. In order to fulfill its vision of racial equality, South Africa must move beyond a "formal" equality to a "substantive" equality that seeks to redress systemic social and economic disparities.²²⁹

This fragile identity-building process may also have the potential to undermine the very foundations of South Africa's hard-won democratic system. The body polity may suffer from societal and cultural homogeneity, the possible reductive product of a contrived national identity. The formulation of sound policy demands that diverse opinions and values be weighed thoroughly, from which the collective compromises of citizenship can emerge. Democracy is strengthened by and thrives on the robust dialogue engendered by a multitude of disparate voices. A Foucauldian normalization of the nation's public discourse²³⁰ may limit the maturation of the fledgling South African democracy, creating an atmosphere of political dealignment that discourages, rather than promotes, public participation.²³¹

Conversely, forced assimilation also may sow discontent within ethnic or racial communities seeking to preserve their cultural traditions. The pursuit of substantive equality does not require, nor should it result in, the destruction or sublimation of unique cultural identities. The *Triomf* narrative embodies this tension. Government programs may provide material benefits for recipients, such as the Benades' housing, Klipdrift, car, and refrigerators. The post-Apartheid Land Reform Program is designed to distribute such material benefits. Yet a society is not simply the sum of its material goods. As South Africa strives to improve the material condition of its multicultural population, it also has recognized the value of preserving the ethnic and cultural plurality of its citizens. Consider, for

²²⁹ See Pierre de Vos, *The Promotion of Equality and Prevention of Unfair Discrimination Act and Socio-Economic Rights*, ESR REVIEW, May 2004, available at http://www.communitylawcentre.org.za/ser/esr2004/2004may_unfair.php (discussing the procedural and substantive rights created under the Act). Comparisons to our nation's response to the Civil Rights Movement are inescapable.

²³⁰ Cf. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

²³¹ See generally BRUCE MIROFF, RAYMOND SEIDELMAN & TODD SWANSTROM, *THE DEMOCRATIC DEBATE: AN INTRODUCTION TO AMERICAN POLITICS* (2d ed. 1998).

example, Section 6 of the 1996 Constitution, which guarantees the promotion of and respect for the country's eleven official languages: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa, and isiZulu.²³² The Constitution also explicitly mentions the Khoi, Nama, and San languages, sign language, all languages commonly used by communities in South Africa (including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu Urdu), and other languages used for religious purposes in South Africa (including Arabic, Hebrew, and Sanskrit).²³³ In the shadow of the synthesized construct of the South African citizen, an "identity awareness" infuses the post-Apartheid South Africa. Much is lost when vibrant communities such as Sophiatown are sacrificed in the name of material advancement; numerous groups are reclaiming their community identities in an effort to prevent further such cultural losses.

These declarations of cultural independence are evident in the post-Apartheid South Africa. To quote one scholar, "[a]fter nearly five decades of [the] violently coercive nomenclature [of the Population Registration Act of 1950's four racial categories], it should not surprise us that South Africans of all ancestries are currently engaged in a sustained project of renaming themselves."²³⁴ For example, the "Coloured" community now vigorously repudiates this artificially unified identity and is rediscovering its many pre-Apartheid micro-communities.²³⁵ The Muslim "Cape Malay" community, the Khoi, and the San also are reasserting their individual identities.²³⁶ In contrast, some vocal Afrikaners have begun to complain of the loss of Afrikaans as a *kultuurtaal* and of its new status as a vernacular or dialect.²³⁷

²³² S. AFR. CONST. 1996, ch. 1, § 6.

²³³ *Id.*

²³⁴ Irlam, *supra* note 4, at 699.

²³⁵ *Id.*

²³⁶ *Id.* at 699-700.

²³⁷ See, e.g., Dan Roodt, *Reaching Out to Afrikaners*, <http://www.praag.co.za/opstelle23.htm> (last visited Oct. 28, 2006). This article states that 70% of Afrikaner respondents in one poll stated that they believe they are being discriminated against in the new South Africa and that over 85% of those polled believe that their language is being discriminated against. *Id.* The article appears on a self-proclaimed Pro-Afrikaner website styled Praag. This site, published primarily in Afrikaans, is highly critical of the ANC. See <http://www.praag.co.za/> (last vis-

South African memes, including its literature, reflect the emergence of this new “culture of introspection and ‘separate development[.]’”²³⁸ No longer constrained by the aesthetic imperative of Apartheid, scholars, artists, and writers, including *Triomf*’s van Niekerk, have begun to explore their own cultural identity within the context of a shared national consciousness.

ited Oct. 28, 2006). Mr. Roodt’s views are quite controversial. In fact, a fellow Afrikaner, Johan Pienaar of Stellenbosch, reportedly lodged a complaint against Mr. Roodt with the South African Human Rights Commission (“HRC”) for “intellectual racism that encourages racial tension.” Karen Breytenbach, *HRC to Investigate Complaint of Racism against Dan Roodt*, CAPE TIMES, Mar. 4, 2005, available at http://www.amren.com/mtnews/archives/2005/03/hrc_to_investig.php. The complaint encompasses some 44 essays and 147 articles published on the Praag website that purportedly imply that Blacks are more prone to violence than members of other races. According to a spokesperson for the HRC, Nazma Dreyer, the complaint has been assessed and a legal officer assigned to review a complaint of violation of human dignity. *Id.* Mr. Roodt has vigorously refuted the charges and the complaint has generated a vigorous public debate in South Africa over the distinction between and limits of expression versus hate speech. *Id.* Again, comparisons to developments in the United States are obvious.

²³⁸ Irlam, *supra* note 4, at 698. Professor Irlam remarks upon the irony of this trend:

One striking paradox to which the literature of the New South Africa bears abundant witness is the emergence of a culture of introspection and “separate development.” Given the loaded history of that phrase in South Africa, some explanation is essential. Where the apartheid regime sought to divide and rule and to foster the separate development of racial groups, it provoked instead only a more tenacious unification of all the opposition forces; in the early 1980s the United Democratic Front became one of the strongest expressions of this united political opposition. This broad coalition of forces (uniting close to six hundred different organizations) provided the beam of light raking through apartheid’s moral darkness The New South Africa has instead ushered in an era of identity mongering and separate development on a scale that South Africa’s old bosses incessantly promoted at an ideological level while violently thwarting in practice. Thus, the past ten years have witnessed a renewed circling of the wagons as South Africa’s diverse communities turn inward and away from one another, each striving to preserve the assets it possesses.

Id. at 698-99. Professor Irlam also remarks upon an orientation amongst Afrikaner writers to distance themselves from the defining agendas of Apartheid by focusing on disempowered Afrikaners who were themselves victimized and exploited by the Nationalist elite. He reflects that some may consider this trend to be a salutary gesture of inclusion, while some might question the motives of exculpation and excuse. *Id.* at 701-02.

Bishop Desmond Tutu captures this paradoxical aspiration for a new national identity²³⁹ in his Foreword to the Final Report of South Africa's Truth and Reconciliation Commission:

Ours is a remarkable country. Let us celebrate our diversity, our differences. God wants us as we are. South Africa wants and needs the Afrikaner, the English, the coloured, the Indian, the black. We are sisters and brothers in one family - God's family, the human family . . . Let us move into the glorious future of a new kind of society where people count, not because of biological irrelevancies or other extraneous attributes, but because they are persons of infinite worth created in the image of God. Let that society be a new society - more compassionate, more caring, more gentle, more given to sharing - because we have left "the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice" and are moving to a future "founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex."²⁴⁰

Existing in the ragged remains of the Apartheid legacy, many diverse South Africans still are waiting for the government to put form to the constitutional future. Just as the suburb Triomf was built upon the rubble of Sophiatown, the infrastructure of

²³⁹ E.D. Hirsch, the founder and chairman of the nonprofit Core Knowledge Foundation and a Professor Emeritus of Education and Humanities at the University of Virginia, has written about this "multicultural" conundrum in the context of curriculum reform in U.S. elementary schools. Professor Hirsch, author of the acclaimed *Cultural Literacy: What Every American Needs to Know*, describes two quite distinct conceptions of multiculturalism. The first conception, the universalistic view of Herman Melville, might be called "cosmopolitanism." E. D. Hirsch, Jr., *Toward a Centrist Curriculum: Two Kinds of Multiculturalism in Elementary School*, Core Knowledge Foundation (1992), available at <http://www.coreknowledge.org/CK/about/articles/centrst.htm>. An advocate of cosmopolitanism contends that ethnicity is not one's essence. *Id.* While ethnicity may be an important defining part of an individual's identity, it is only one of dozens of other social and temperamental determinants. *Id.* The other conception of multiculturalism, which could be labeled as ethnocentrism or "ethnic loyalism," is a particularistic vision that stresses loyalty to one's local culture. *Id.* For an ethnic loyalist, the very idea of ethnicity defines the essence of a person. *Id.* These distinct conceptions require one to ask whether one defines oneself as belonging to a particular "ethnos" or as belonging to a broad "cosmopolis." *Id.* Professor Hirsch's Core Knowledge Foundation has developed a specific core curriculum for the early grades based upon the Melvillian, cosmopolitan approach to history and literature.

²⁴⁰ DESMOND TUTU, *Foreword*, TRUTH AND RECONCILIATION COMMISSION FINAL REPORT, § 1, ch. 1, ¶ 91 (2003), available at <http://www.info.gov.za/otherdocs/2003/trc/>.

the new South Africa is being constructed on the detritus left in the wake of ruinous Apartheid policies. Like *Triomf's* Lambert, the government's Land Reform Program must tunnel through the wreckage of Apartheid to store supplies of good will and to lay strong foundations for the future.

IV. CONCLUSION

The excavation of *Triomf's* stratified imagery reveals the complicated texture of South Africa's reality. In the context of the Apartheid Era South Africa, the novel's rich narrative brutally lays bare the failure of the ideology of White supremacy. In a post-Apartheid context, *Triomf* may contain an admonitive message for the new South Africa. The architects of Apartheid promised their White constituents prosperity, but the reality did not sustain their vision. The ANC-led government also has promised a new future for its constituents, including a more equitable distribution of land ownership and a system of land management to eliminate past injustices, to alleviate poverty, and to contribute to economic growth. Like Pop, Mol, Treppie, and Lambert Benade, South Africans strongly support their leaders and have faith in their covenants.²⁴¹

Also like the Benade family, many South Africans now have new housing and they can "count their blessings. They ha[ve] each other. They ha[ve] a roof over their heads."²⁴² One can hope, however, that comparisons to *Triomf* might end here. In the novel, the Benades have no jobs, no future, and no hope; their bleak lives are anything but triumphant.²⁴³ *Triomf* is filled with cynical and disturbing allusions to the failure of

²⁴¹ In his 2006 State of the Nation address, South African President Thabo Mbeki proudly reported that the South African people appear to be highly optimistic about their future and the future of the country. See Thabo Mbeki, South African President, State of the Nation Address at the Joint Sitting of the Parliament (Feb. 3, 2006), available at <http://www.info.gov.za/speeches/2006/06020310531001.htm>. The President based his remarks upon a recent Gallup International poll reporting that South Africa has three times more optimists than pessimists. *Id.* The President also mentioned the results of a recent domestic poll conducted by Markinor which reported that 65% of South Africans believe that the country is going in the right direction, that 84% think that the country holds out a happy future for all racial groups, and that 71% believe that government is performing well. *Id.*

²⁴² VAN NIEKERK, *supra* note 1, at 137.

²⁴³ See *With Razors in Their Tongues*, *supra* note 5.

Apartheid ideology. The novel viciously insinuates the consequences of racial exclusivity with the Benades' incestuous history and its damaged product, Lambert.²⁴⁴ Also obvious is the racial symbolism of Lambert burrowing through the detritus of the Sophiatown. Another example is Mol's fear that sinkholes have made the ground under Johannesburg hollow, which echoed the doubts of many South Africans about the structural integrity of the foundations of Apartheid. The family's crumbling home and the damage that the hulking, disfigured Lambert inflicts upon it in his intermittent bursts of violence eloquently evoke the disintegration of the foundations of Apartheid. Many of the novel's symbols also pertain to the post-Apartheid South Africa.

Triompf's imagery is not, however, all bleak. The novel contains numerous promising allusions and some things even get "fixed properly" in the story of the Benades. The reader believes that all is possible when Treppie and Lambert repair the decaying refrigerators in their yard, making them "run[] as smoothly as a healthy heart, without a hitch."²⁴⁵ The amazing repair also reaffirms the faith of the novel's characters, as evidenced when Lambert exclaims that "[n]o one must ever come and tell him not to expect miracles."²⁴⁶ These metaphors too apply equally to the old and the new South Africa.

In one poignant scene, the novel reminds its characters and readers that hope can grow and even thrive in the most unexpected places. After a satisfying braai, or barbeque, the Benade family discards an uneaten watermelon on a rubble heap in the yard. While the watermelon "went rotten, right there on top of the heap[,]"²⁴⁷ the family later notices that the heap was full of "big, green leaves with watermelons sticking out like bums in the sun."²⁴⁸ The new South Africa was born of such seeds of hope, discarded, yet clinging to life in the infertile soil of Apartheid and bursting forth virtually unattended.

Another penetrating allusion is particularly relevant to the new South Africa's Land Reform Program. The Benades ob-

²⁴⁴ Steinglass, *supra* note 27.

²⁴⁵ VAN NIEKERK, *supra* note 1, at 400.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 521.

²⁴⁸ *Id.*

serve that there are very few trees in Triomf. "They first have to grow all of the way through Sophiatown's rubble. . . . [Y]ou have to dig six feet under Triomf's tar before you find the old topsoil. In between there's just rubbish. It takes a tree three years to find the soil. . . . And even then it's a struggle."²⁴⁹ In spite of this struggle, some trees did take root, and, like the Benades' discarded watermelon, they persevered and survived even the most daunting odds. Land reform activists and implementers should heed this parable of the watermelon. While the reform program might be proceeding at a seemingly glacial pace, they must persist, patiently excavating through the Apartheid legal and structural debris and sinking deep roots into the country's social fabric.

To prevent life imitating art, the South African government must be mindful of the lessons woven into the narrative of *Triomf*. Housing and/or land ownership alone are not sufficient to eradicate poverty. A holistic approach is required to vitiate Apartheid's lingering legacy, an approach that not only embraces land reform, but also incorporates social, infrastructure, and institutional reforms. Government programs may provide material benefits to recipients, but a nation's diverse cultural identities should not be sacrificed on the altar of materialism or to the nation's resolve to forge an inclusive national identity. The Constitution may aspire to guarantee a material standard of living, but it can never adequately provide restitution for, redistribution of, or resurrection of cultural treasures buried in the reform process. Encouragingly, this progressive Constitution envisions such an integrated approach and encourages the coordinated efforts of both government and civil society.

One can only hope that South Africa's land reform efforts will succeed and will breathe new life into the country's post-Apartheid cities. The land reform policy is designed to maintain a collective sense of belonging rather than the unsustainable exclusionary promises of Apartheid. South Africans pray that the government's "new" program is not merely a reconstituted promise from the past and that it disproves Treppie's misanthropic pronouncement in *Triomf*: "And they call it new! It's not new, it's the same old rubbish recycled under a new name.

²⁴⁹ *Id.* at 287.

But the rubbish itself is a brandless substance. Nameless horror in sackcloth of hair[.]”²⁵⁰ Despite its cynical tone, *Triomf* reminds us that “there was another town” under the rubble of the Triomf suburb, a community where Blacks “didn’t live under plastic and cardboard.”²⁵¹ This locale, Sophiatown, was a “‘place you could look up to’, with its ‘grey-blue haze’ of fire-smoke ‘against a saffron sky’[]. . . ‘and the shapely blue gum trees’ all over the place.”²⁵² While this vision of Sophiatown is just a memory now, its foundations still exist on the very real streets of Triomf. And, based upon the Rainbow Nation’s land reform mechanisms, its former residents are staking their claims to, and the government is fulfilling, the promises etched in the country’s Constitution.²⁵³ While its growth is slow, the South African Land Reform Program, with its constitutional roots, is like Triomf’s trees and the Benades’ watermelon – ripening and maturing triumphantly through the debris of Apartheid.

²⁵⁰ *Id.* at 361.

²⁵¹ *Id.* at 439.

²⁵² *Id.* at 362.

²⁵³ See *supra* Section III.B.