

STRANGERS IN A STRANGE LAND
UNDESIRABLES AND BORDER-CONTROLS IN COLONIAL
DURBAN, 1897-c.1910

By

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Note on Text and Punctuation

The style of narrative employed in the following dissertation makes ample use of quotations from numerous primary sources, for both flow and historical texture. This occasionally means that words or phrases are cited which may touch sensitive 21st century ears. I by no means imply a pejorative use (see footnote 10, chapter 1). Double inverted commas refer to direct quotations that can be traced to specific correspondence, referenced immediately and accordingly, or otherwise obvious from the narrative context in which the quoted text appears. Single commas refer to words, phrases or ideas that are more general in nature, not attributable to a single source, but still requiring historicizing. Finally, certain spelling forms – especially of Asian names – remain as they appear in the archive.

ABSTRACT

This dissertation investigates the regulation of cross-border mobility and the formation of Natal, and nascent South African, immigration policy in the late colonial period. Natal's immigration technologies were at the very vanguard of a new global migration regime based on documentation and rigorous policing of boundaries. Essentially a thorough examination of the workings of the pre-Union Immigration Restriction Department (1897-c.1910), I offer a historical analysis of state capacity to regulate and 'embrace' immigration along Natal's formative borders and points of entry, focusing on the port-town of Durban, whose colonial urban profile forms a subsidiary focus of the project. This involves going beyond a mere study of policy and legislation – instead I have made a close and historically attentive study of the actual mechanisms of regulation and inclusion/exclusion and where these routinely failed, were subverted or implicated in economies of fraud and evasion. Through this, I build upon and deepen legal studies of immigration restriction by considering the practical and, to some degree, lived experience of restriction.

I lay the groundwork by contextualizing the specific contours of 'undesirability' in turn of the century Durban. I point to a number of moral panics and a sense of crisis that engulfed officials in the town, referring in turn to merchant and 'passenger' Indians, war-time refugees, maritime labourers and poor whites, amongst others, moving to and through a regional and Indian-Ocean economy. I then turn to the 'technologies of exclusion' in two streams: 'paper-based' technologies of pass regimes, domicile certificates and education/language tests, and secondly more explicit forms of confinement, surveillance and patrol through police-guard systems and detention policies. An important aspect of the question that I consider turns on the growing capacity of the state to arrest and intern during and following the South African war. By the end of the war in 1902, progress would in practice be underwritten by a new climate of professional, technical and managerial agency that also percolated through state bureaucracies. 'Technological' and bureaucratic proficiency provided a legitimate and unproblematic guise for highly politicized state intervention and forms the origins of the 20th century South African immigration administration.

Contents

Abbreviations	vi
List of Illustrations, Maps and Graphs	vii
Chapter 1	
Introduction	11
South Africa	12
Durban and Natal	15
Undesirables	21
Numbers and Key Questions	24
Theoretical Foundations	33
Methodological Outline	37
Structure of Dissertation	40
Chapter 2	
The Line of Perfect Safety: Indian Immigration and Legal Innovation	43
Introduction	44
A Model City for the Continent? 1846-1897	45
An Abyss of Degradation	52
Unrelaxing Vigilance	56
Calling a Spade a Shovel	59
Conclusion	65
Chapter 3	
Moths to a Candle: Crisis, City and Restriction	67
Introduction	68
The Poor That Are With Us: Refugees	73
Citizens of No Country: Maritime Labour	84
Contaminating Influences: Undesirables	92
Conclusion	101

Chapter 4	
Paper Trails: Documentary Controls on Immigration	103
Introduction	104
Precedents	107
An Element of Uncertainty: Literacy Tests	116
A Battle of Wits: Domicile Certificates	128
Through the Back-Door: Temporary Passes	145
Conclusion	154
Chapter 5	
From Pillar to Post: Port Policing, Confinement and Excarceration	157
Introduction	158
Port and Harbour	160
Containment and the Port	165
The Strongest Weapon?	168
A New Era	172
Another New Era	178
Conclusion	186
Chapter 6	
Conclusion	188
A Whip Hand: 1910-1938	189
Past and Present	191
Future	194
Appendix:	195
Immigration Restriction Act 1897	196
Bibliography	201
Primary Sources	202
Secondary Sources	205
Unpublished Papers	221

Abbreviations

APR	Annual Police Report
ARIRD	Annual Report of the Immigration Restriction Department
BPP	British Parliamentary Papers
CPU	Colonial Patriotic Union
CO	Colonial Office
Col. Sec.	Colonial Secretary
CP	Confidential Print
CSO	Colonial Secretary's Office
DBP	Durban Borough Police
DUC	Durban Uitlander Committee
EPA	European Protection Agency
ILP	Identification Labour Passport
IR Act	Immigration Restriction Act
IRD	Immigration Restriction Department
IRO	Immigration Restriction Officer
KCC	Killie Campbell Collections
MLA	Member of the Legislative Assembly
MJPW	Minister of Justice and Public Works
MPR	Monthly Police Report
NAD	Native Affairs Department
PAR	Pietermaritzburg Archives Repository
PIRO	Principal Immigration Restriction Officer
PRO	Public Record Office
PWD	Public Works Department
SAB	South African Archives Bureau
SS	Steamship
TBD	Durban Archives Repository
TSC	Tonga Sugar Company

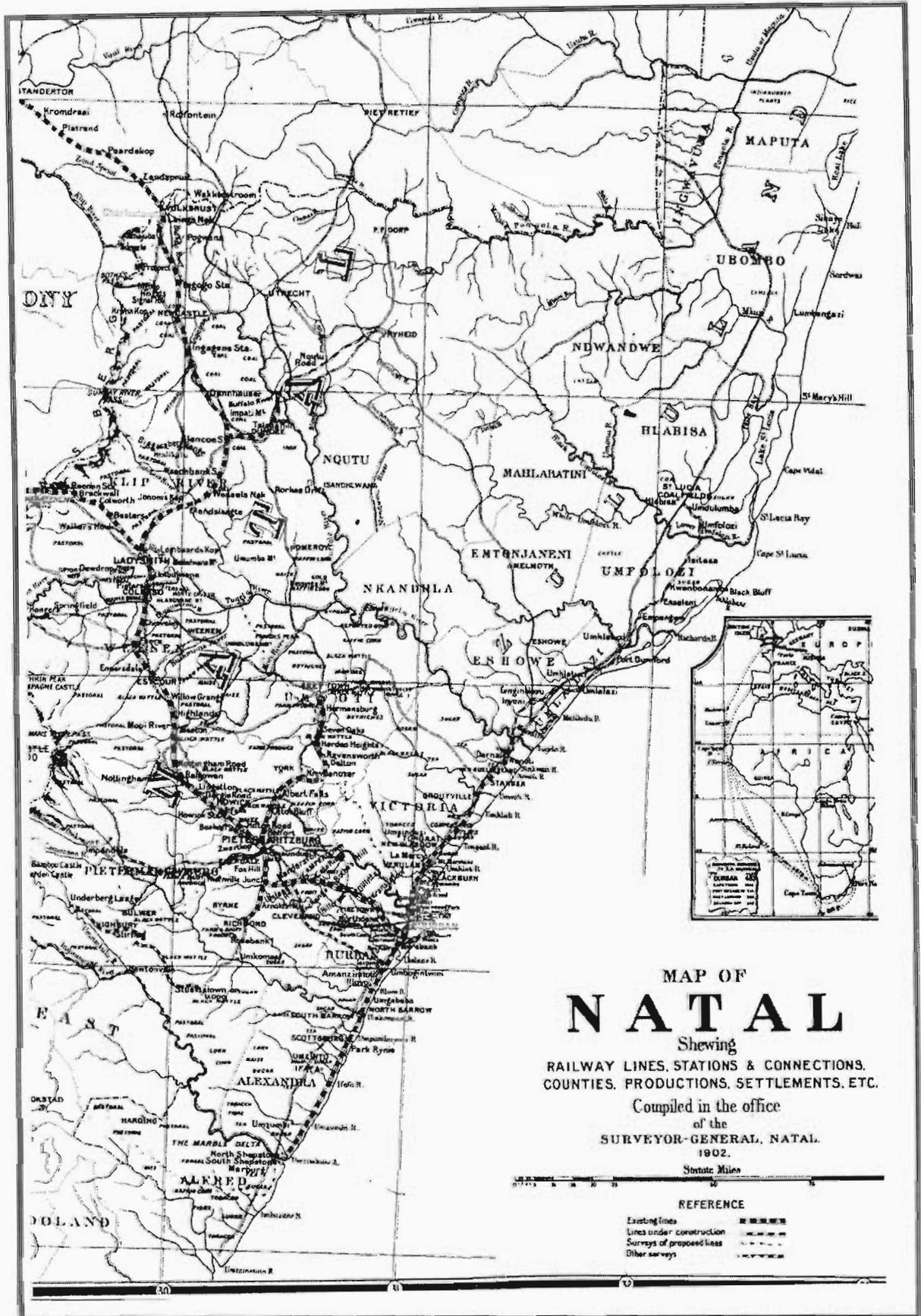
List of Maps, Tables, Illustrations

Maps

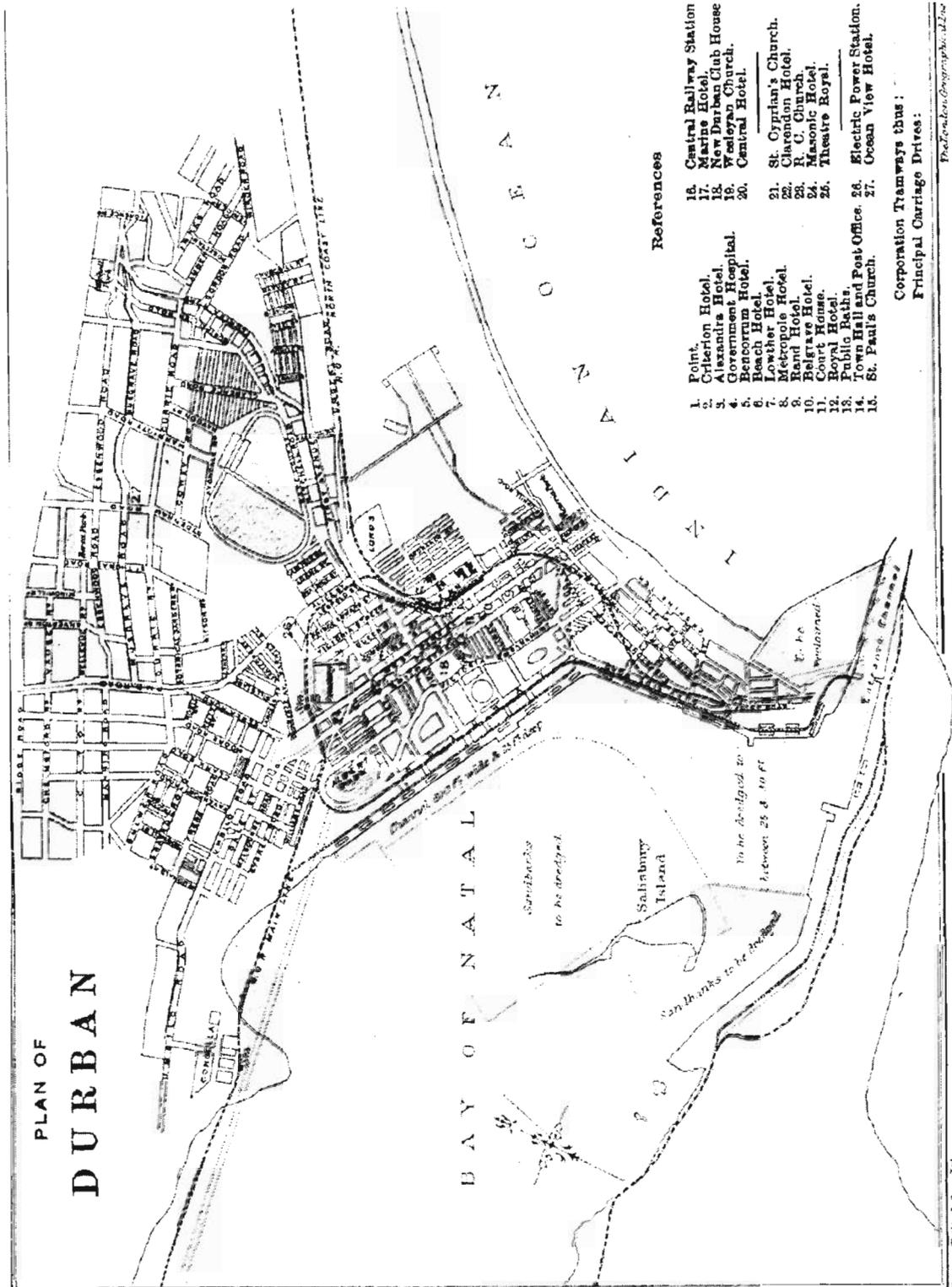
1. South Africa, c. 1900	viii
2. Natal, c. 1900.	ix
3. Port Natal, c. 1900	x
4. Durban, 1906.	163

Tables and Illustrations

Figure 1. Population Statistics, Colony of Natal, 1852-1909	27
2. Passengers Examined at Durban, 1897-1909	28
3. Passage Workers at Durban, 1897-1902	28
4. Maritime Labour at Durban, 1905-1909	29
5. Restricted Passengers by Region, 1897-1909	29
6. Crews, Passage-Workers and Extra Hands at Durban by region, 1897-1909	30
7. Asiatic Immigration Protests, Durban, 1897	57
8. Asiatic Immigration Protests, Durban, 1897	58
9. Harry Smith, c. 1910.	64
10. Permit to Return to South Africa, 1901	80
11. Arrests for Criminal and Borough By-Law Offences in Durban, 1897	94
12. Arrests for Criminal and Borough By-Law Offences in Durban, 1902	95
13. Educational Test, 1897	121
14. Certificate of Domicile, 1897	131
15. Illegal Certificate of Domicile, 1907.	136
16. Cases of Fraudulent Certificates, 1903-1908	139
17. Embarkation Pass	148
18. Visiting Pass	151



Map 2. Colony of Natal, 1902. Source: C.W Harrison (ed.), *Natal: Illustrated Official Railways Guide and General Handbook* (London: 1903). With special thanks to Nellie Sommers and Mthunzi Zungu at the Killie Campbell Collections, Durban.



Map 3. Port Natal, c. 1900. Source: C.W Harrison (ed.), *Natal: Illustrated Official Railways Guide and General Handbook* (London: 1903).

Chapter 1

Introduction

South Africa

South Africa. If the country owes its name to the apparently objective, almost inconspicuous terms of a mere geographic unit, to be *South African* rests on more ramshackle, disputed, at the very least profoundly contingent foundations. After almost two centuries or more of legally, economically and politically bifurcated society, it is not un-sober to reflect on how uncertainties around what it is to be *South African*, its qualities and responsibilities, animate contemporary politics and cultural production.¹ As revisionist energies, in the frontlines for more than two decades in the struggle against an iniquitous labour-economy, have ebbed with the turn of 21st century, so new and important questions must emerge out of the celebratory fog of an overlong post-1994 honeymoon. Central - perhaps even *the* central - problems for South Africa and wider regional and global conversations are those of rights-based citizenship and its corollary of migration.² But this apparently novel concentration of awareness on questions of who or what qualifies for legitimate inclusion (and by implication, exclusion) into the social body and how this should be regulated and executed, far from being the sole purview of a new democratic order, stretches back more than a century, as I demonstrate in the chapters that follow. What follows, in its most uncluttered formulation, is an enquiry into the origins of what it meant to legally belong at a time when the region was awash with global human population movements and the very concept of South African, fluid, mutable, undefined, was starting to harden, ice on a lake.

It is perhaps not always appreciated that South Africa, as a clearly bounded and manifest nation-state, has existed at the very earliest only since the Union Government was formed in 1910. Even then it took a decade or more before *de facto* centralization and

¹ See, for example, the seminal address by Thabo Mbeki, then Deputy-President, at the opening of the National Assembly Debate on “Reconciliation and Nation-Building” (Cape Town, 29 May 1998) which articulated a concept of ‘two nations.’ Although hardly unfamiliar to thinking South Africans, the speech did float the question of a more inclusive and common post-Apartheid South African identity, and brought into much wider currency the challenges - theoretical as well as administrative - to citizenship that South Africa currently faces. The speech is at <http://www.anc.org.za/ancdocs/history/mbeki/1998>. Themes interrogating the spheres of identity and belonging have also become increasingly recurring – even saturating - in recent South African literature. There would be too many to list individually, but influential are works by Antjie Krog. See especially *A Change of Tongue* (Johannesburg: Random House, 2003).

² For an concise synopsis on the relationship between migration and manifold other social pressures, including food security, HIV/AIDS, skills development, trade and urbanization, amongst others, see Jonathan Crush, Sally Perbady and Vincent William, “International Migration and Good Governance in the Southern African Region” (South African Migration Project Migration Policy Brief No. 17, 2006), available online at <http://www.uqcnisu.ca/samp/sampresources/samppublications/policybriefs/>. See also *Development Southern Africa* 27 (2), 2007. Special Issue: Perspectives on the Migration-Development Nexus in Southern Africa. The issue includes the most recent analyses of ‘brain-drain,’ migration and poverty-reduction, the gendering of migration flows, remittances and rural impact and the links between mobility and HIV.

unification of policy could be said to have been practically achieved, and again not until the declaration of the republic in 1961 was there a final, formal break from empire. Yet, the *idea of South Africa*, its intellectual underpinnings and its normative conceptions of citizenship had been in existence for several decades prior to the 1910 watershed, the defining parameters emerging, for one recent writer, out of a vibrant discursive interchange between writers, intellectuals, politicians and imperial and colonial savants connected with the region in the second half of the 19th century, most acutely between c. 1870 and the 1890s.³ In his scrutiny of the *longue durée* of white ‘South Africanism,’ Saul Dubow points to the parliamentary and legal inheritances of a Cape Anglo-Dutch elite who engaged in a “charged, albeit crude, conversation about the desirable ethnic and cultural composition of white society and authority,” and out of this peculiarly hybrid tradition emerged the basic institutional framework and intellectual lineaments of South Africa’s 20th century future;⁴ all but the most explicitly discriminatory of these have remained largely unquestioned.

In the first decades (and beyond) of Union, the new political landscape was to be delineated by precocious socio-economic progress, overtures toward autonomy (without quite forsaking imperial loyalties) and heavy-handed racially discriminatory policies. Yet the Anglo-Dutch marriage in 1910, if that is what it can be called, was an accursed and complex one; it followed a fractious, fraught courtship that had more than once drawn blood, most notoriously during, and in the events leading up to, the South African War of 1899-1902.⁵ Perhaps it was only the very failure of Anglo-Imperial fantasies in the post-war Transvaal that made compromise possible, indeed, necessary in maintaining a racial status-quo.⁶ Though divisive sentiments would never erode, by 1910 political tensions

³ Saul Dubow, *A Commonwealth of Knowledge. Science, Sensibility and White South Africa 1820-2000* (Oxford: Oxford University Press, 2006). Ch. 3.

⁴ Dubow, *Commonwealth*. p. 147; Martin Channock argues for the centrality of the first decades of the 20th century in embedding a uniquely colonial-South African bureaucratic, official and policing tradition, that moves beyond the performance of juridical statutes to what he terms a more diffuse ‘legal culture’ that permeated, and continues to permeate, South African institutions. See Martin Channock, *The Making of South African Legal Culture, 1902-1936. Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001).

⁵ Charles Van Onselen asks us to think anew “the making and remaking of white South African political identities in the two decades that culminated in the formation of Union in 1910” that “mark deep and profound shifts in the very foundations of white society.” Charles Van Onselen, “The Modernization of the Zuid-Afrikaanshe Republic: F.E.T. Krause, J.C Smuts and the Struggle for the Johannesburg Public Prosecutors Officer, 1898-1899” in *Law and History Review* 21 (3), 2005: p. 525.

⁶ Politics between 1898 and 1905 remain some of the most laden with complexity. Denoon puts the failure of Milnerian ideals down a number of interlocking factors: the failure of immigration land-schemes, the disunity of the Uitlander population, the controversies and misjudgements over Chinese Indenture, the personal limitations of Milner and his administrators, and ultimately the development of Afrikaner nationalism and the effective loss, just four years after the war, of the Transvaal to the Het Volk party. See Donald Denoon, *A Grand Illusion. The Failure of Imperial Policy in the Transvaal during the period of Reconstruction*

between Anglo and Dutch had in a short space of time mollified to create a conceptual whiteness for a new country founded on racial – as in colour-coded - hierarchies. It was in this first decade of the century, where this study is concentrated, that a new consensus ideology emerged to paper over latent ethnic (between ‘Boer and Briton’) strains, one that placed whiteness, and certain forms of that whiteness, in the ascendant house viz. the ‘African native,’ the ‘Inscrutable Asiatic’ and even the ‘Jewish Peruvian,’⁷ amongst others. I am concerned in the pages that follow with where, and above all *how*, the lines of extra-territorial exclusion were drawn in the face of increased population movements over the turn of the century.

The institutionalisation of a new ‘national tradition’ in the early 20th century was spurred, for Dubow, by less apparent interventions than the explicitly political or legal fusions inherent in Roman-Dutch law or a matured Cape Parliamentary system. The amelioration of the tensions between the taut liberal and republican opposition came from the ostensibly apolitical and neutral forces of a developing and organised scientific community. This provided an umbrella under which Anglo and Dutch, liberal and republic, imperial and colonial nationalist, might find a common grounding and, indeed, a common purpose. The influence of race-science – social-Darwinism and eugenics – was paramount, providing the rubric for the racialisation of politics in the South African context and leading ultimately to the strategies of racial segregation which do not need extensive elaboration here.⁸

The quickening impulse for a national purpose in South Africa resonated, and was in fact deeply enmeshed through the common experience of the War, with a metropolitan crisis.⁹ In Britain, the ‘shock of the war’ and calls for *national efficiency* sparked vital reforms in public and political life that also coloured the perceptions of colonial administrators. Back in South Africa, deep fixations over *contamination* of racial, political and economic order were central to the establishment of normative social

(London: Longman, 1973) and David Torrance, *The Strange Death of the Liberal Empire. Lord Selborne in South Africa*. (Buffalo: McGill-Queen’s University Press, 1996.)

⁷ The etymology of the term ‘Peruvian’ is not directly, if at all, linked to the South American country of the same name. ‘Peruvians’ were generally thought of, throughout the Atlantic world, as a low-brow, undesirable and often criminal class of Jews of eastern European or Russian provenance. Perhaps the most intuitive etymological explanation is that the term is a compound of ‘Polish’ and ‘Russian,’ though there are several more explanations. See the long note on pp. 537-538 in Charles Van Onselen, *The Fox and the Flies. The World of Joseph Silver, Racketeer and Psychopath* (London: Jonathan Cape, 2007).

⁸ See Saul Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919-1936* (London: MacMillan, 1989), especially pp. 21-45.

⁹ See Geoffrey Searle, *The Quest for National Efficiency: A Study in British Politics and Political Thought 1899-1914* (Oxford: Blackwell Press, 1971). pp. 34- 106.

boundaries to be regulated and managed by a thoroughly new-fangled Immigration Bureaucracy that had already begun in Natal in 1897. The 15 years immediately following, which this study considers in some detail, were foundational in the emergence of social boundaries and state capacity to regulate and patrol such borderlines through an 'exact science' of expert administration and technologies of rule to systematically define a new social body; the intense struggles between state and 'undesirable alien'¹⁰, to cast crude terms, activated the innovation of technologies of exclusion whose legacies remain deeply etched in the contemporary migration order.

Dubow initially traces the radials of the South Africanist spirit (or spectre?) from the hub of Cape Town, before shifting the axis slightly to include that of the Witwatersrand after the discovery of gold.¹¹ This is hard to dispute, but there is, in any work interrogating notions of citizenship, an obligation to consider the mechanistic and bureaucratic regulators of that citizenship, and here Dubow's work might be developed, thus my consideration here with the Immigration bureaucracy. Moreover, it behoves a serious examination of mobility into the colony of Natal between 1897 and 1910, partly because of that Colony's geographical location at the eastern edge of a nominal South Africa, and partly because it is, after all, where the first formative and influential Immigration Restriction legislation was enacted and was something of pioneer in its enforcement; by 1913 new uniform legislation repealed all immigration statutes of the pre-Union colonies, but the basic premises of that act were not revolutionary, merely fortifying and streamlining existing procedures. With this in mind, then, let us rapidly re-focus and turn to the city of Durban in the 1890s, whose bricolage of tin, wood and brick huddled around the Bay of Natal.

Durban and Natal

By the last decade of the 19th century, the east coast of the southern African sub-continent was notable for at least two things. The Colony of Natal, after a protracted and

¹⁰ Because of the amorphous and diverse motives of those who constitute the class of 'undesirables' or 'aliens,' finding the right terminology is difficult. Even the seemingly neutral 'immigrant,' which I use frequently, is not wholly satisfactory because it obscures differing and complex processes of mobility. Because my overall argument is concerned with precisely those who were excluded/prohibited and are generally seen in a dialectical relationship with authorities, I will retain these terms, though I obviously do not mean to imply a pejorative use. I will not continue to burden the reader with scare-quotes. It is also worth noting the epistemological difficulty around native/alien in the South African context. I make a general assumption, born out below, that Natal's 'nativist' early settlers exercised sovereign rights over the territory and did not apparently find distinctions between themselves and 'aliens' ironic even if they were well aware of their short tenure in the region.

¹¹ Dubow, *Commonwealth*, p. 193.

often convoluted struggle with the imperial authorities in London, had been granted the status of Responsible Government. Importantly, the call for greater decision making independence had come largely in response to the exigencies created by the peculiarly multi-racial composition of the region and the challenges this presented to a colonial order.¹² While the new arrangement did not imply an absolute independence from the metropole, it did mean that for the first time that the mastery of the region was in the hands of a settler administration, with important implications for the consolidation of a generally British but specifically colonial polity. The second development was more specific. In the economic realm, the region's principal port-town, Durban, was becoming a regional hub, a point of entry, to the broader southern African gold-centered economy. The 'frontier' days of the preceding decades were giving way to a new urbanized environment. This had much to do with the solving of complex engineering problems that opened up Durban's notoriously restricted harbour, whose sandbar had hindered the accessibility of ships and, by implication, the flow of goods from an imperial and Indian-ocean economy. The first successful designs on dredging the harbour-mouth were conceived in 1887, and by the early years of the 20th century the problems had effectively been overcome. Some measure of this impact can be gleaned from a crude statistical consideration of the value of goods entering the town through its maritime trade. In 1887, when the engineer Edward Innes first proposed his solutions to the harbour question, the value of goods passing inwardly through the harbour stood at just over a £1 million. By Union in 1910, the value had grown by an astonishing 1074%.¹³ Likewise, the total population, in the three years between 1894 and 1897 spurted by 30%, a decade after that, in 1907, the figure was 99% up on the 1894 tabulation (See figure 1, p. 27). In Durban itself, the 1899 tally of 41,259 jumped, by 1911, all of 120% to around 100,000.¹⁴

Of course not all arrivals arrived by ship and many crossed from Zululand, but it is nevertheless hard to overlook an association between the port and colony. In this context, it remains a strange and confounding fact that despite the enormous importance of Durban's harbour since the dredging of the sandbar, and despite a number of competent

¹² For Durban's settler elite, see Anna Christina Bjorvig, "Durban 1824-1910: The formation of a settler elite and its role in the development of a colonial city" (PhD. diss., University of Natal, 1994).

¹³ Government of South Africa, *Official Yearbook of the Union of South Africa, 1910-22*, p. 785. Cited in E.H. Brookes and C. de B. Webb, *A History of Natal* (Pietermaritzburg: University of Natal Press, 2nd Edition, 1987), p. 252.

¹⁴ The 1899 figure is mentioned in Johan Wasserman (ed.), *A Warrior's Gateway: Durban and the Anglo-Boer War, 1899-1902* (Pretoria: Protea Book House, 2002). Introduction; the 1911 figure is from Government of South Africa, *Union Year Book No. 6 (1910-1922)*, cited in Brookes and Webb, *A History of Natal*, p. 248

technical histories detailing the process, a history of the *population movements* through and around the port is a rare thing. I explore the proposition that Durban's port is a conduit which funnels disparate, global population movements into a concentrated, specifically urban space that intensifies anxieties and administrative exertions at regulation and exclusion. Anchoring my project will be settler fixations with the port-space and criminality (and the way in which this is coloured and complicated by ideas of race, class and disease), and a growing capacity to arrest and intern at the point of cross-border movement. Immigration exclusion and the sentiments that give rise to it, are not, of course, only urban phenomena, but Durban acted as the principal point of entry for Natal and a crucially important one for the inland towns, mines and cities of the highveld to which it was a deceptively lush foretaste. It was also the only space where restriction was viable in practice and its harbours and piers became the foci of administration – there was nothing, indeed, to stop intrepid border hoppers crossing overland from Portuguese East Africa or further up and down the coast; alas figures, or even knowledge, of such occurrences is scanty to the point of non-existent. While the political centre of Natal remained 90km inland in the more slow-paced and stately Pietermaritzburg, it was the voices of Durban – administrators, unions, journalists and settlers - that were most strident and audible on the question of immigration.

I thus see the gradually industrializing, urban space of turn-of-the-century Durban in the light of Frederick Cooper's concept of the *gatekeeper-state*, that is, that the colonial state counterbalances its inherent weaknesses by routinising and exerting greater authority at the only place it can: the point of entry to its hinterlands.¹⁵ Through this, it may be possible to point to continuities between early 20th century fixations with multi-ethnic/mixed-races spaces, and similar Apartheid-era imperatives to engineer such urban spaces.

My analysis kicks off at the very end of the 19th century and continues into the first decade of the 20th in which so many of the foundations for South Africa's modern history are firmly rooted. I trace the shifting position of what can be broadly, if a little esoterically, termed as 'strangers' or 'outsiders,' the 'surplus population' as the Durban Superintendent of Police defined them at the time.¹⁶ I hypothesize that both a swollen 'surplus' population and efforts at quasi-military administration of exclusion are both results of increased

¹⁵ See Frederick Cooper, *Africa since 1940: The Past of the Present* (Cambridge: Cambridge University Press, 2002). Ch. 7.

¹⁶ Superintendent Richard Alexander is cited in Ros Posel, "'Continental Women' and Durban's 'Social Evil,' 1889-1905" in *Journal of Natal and Zulu History* 12 (1989): pp. 1-14.

population movements in Durban immediately prior to, during and following the South African War. Research is pegged primarily on a systematic study – the first as far as I can tell - of the correspondence of the Immigration Restriction Department (IRD) in colonial Natal. This department came into existence in 1897 and later became absorbed into a broader South African administrative apparatus of the same name in the post 1910 period. Supplementary explorations are made of public discourses of the print media, reports of municipal authorities (particularly Police Report Books), and charitable organizations as well as the Confidential Print of the Colonial Office.

I am concerned with immigration restriction and exclusionism in practice, rather than detailed legislative history, although I do provide extensive legal context throughout and particularly in the first chapter. I consider the pre-occupation and anxieties of settler ‘nativism’ in understanding how immigrants provoked a hostile and defensive reaction to established inhabitants. I intend to do a number of things. Firstly, to situate the presence of undesirables in Natal within a broader literature on mobility regulation whose spokes touch on the United States, Britain, Continental Europe and India. While I seek to understand the reasons and conditions behind exclusion, most important, and forming the bulk of the dissertation, is how this is carried out in practice – a Foucauldian demarcation of governmentality - that is, a historically specific economy of power employed to regulate individuals and populations through institutional governance and the imperative to *know* such populations. This will entail a consideration of the technologies of exclusion, be they the ‘paper walls’ that precede the modern idea of the passport, or more tactile instruments such as confinement, water Police, and detention-ships that follow in the immediate post-war period. Parallel to this must be a consideration of colonial order-building in the face of growing insecurities produced by greater population movements during, and as a legacy of, the broader structural environment of war and post-war economic boom and recession.

With this in mind, my project seeks to build a deeper conceptualization of what ‘Aliens’ and ‘Undesirables’ meant in turn of the century Durban: how the meaning of such designations shifted and changed, how efforts to embrace and manage such peoples intensified over time and how an analysis predicated on simplified racial categories may actually obscure broader processes in how the state conceives of and manages movement. An important addition to the study of governmentality will be to interrogate the different dimensions of the relationship between government and population – it is tempting to

review colonial rule as top-down, without consideration of internecine and administrative conflicts, differences of opinion and the mediation of various non-state intermediaries such as private companies and even translators, ships captains and the like. Where immigration restriction did exclude some, it empowered and was profitable to precisely those undesirables theoretically debarred. This tension, of where the state is paradoxically 'captured' by its subjects, is the ultimate point I want to make. This is inspired in part by another of Frederick Cooper's interventions. Cooper argues for a reconfiguration of colonial studies that move away from simplistic and uni-linear teleologies that mark the colonial state as inert and monolithic.¹⁷ Lastly, the problems of social upheaval and war excited the development of documentary regulations and the resources to physically confine mobility (of which the concentration camp, which I do not consider in detail, was one). These remained responses to specific military contingencies, but they suggest the consolidation of significant new discourses in dealing with the problem of mobile and 'surplus' populations.

The promulgation of the 1897 Immigration Restriction Act which created the IRD has received some scholarly attention¹⁸ and it is rightly pointed out that it was passed through the colony of Natal's Legislative Assembly as a hurried response to the unchecked immigration of Passenger Indians that culminated in the now famous events of late 1896 and early 1897 when the imminent landing of two ships from Bombay produced a flurry of agitation that threatened – and indeed did – result in violence. The Immigration Restriction Act (IR Act) is seen as a culmination of settler racism and working-class agitation in excluding passenger Indian immigrants to curtail a competitive threat. Further, 1897 also marks the beginning of the 'Natal Formula' later adopted in other self-governing dominions of the Empire which made use of the literacy test. . This test, it is argued, effectively allowed the colonies to fulfil a racist law by sheathing it in an

¹⁷ See Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005).

¹⁸ See Robert Huttenback, *Racism and Empire: White Settlers and Coloured Immigrants in the British Self-governing Colonies, 1830-1910* (Ithaca: Cornell University Press, 1976); Surendra Bhana and Joy Brain, *Setting Down Roots: Indian migrants in South Africa 1860-1911* (Johannesburg: Witwatersrand University Press) Ch. 6; Jeremy Martens, "A Transnational History of Immigration Restriction: Natal and New South Wales, 1896-97" in *Journal of Imperial and Commonwealth History* 34 (3), 2006: pp. 323-344; Jonathan Klaaren, "Migrating to Citizenship: Mobility, Law and Nationality in South Africa, 1897-1937" (Ph.D. diss., Yale University, 2004), Ch. 1-4; Edna Bradlow, "Immigration into the Union 1910-1948: Policies and Attitudes" (PhD. diss., University of Cape Town, 1978), part 1. Adam McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders, 1834-1930*. In progress/forthcoming 2007/8. With special thanks to the author for a pre-publication look at the manuscript.

‘educational’ context, and thus easing its passage through an imperial legal landscape that, in theory, promoted equality amongst all subjects of the British Empire. Historians have thus viewed the IR Act specifically as a tool for the exclusion of Passenger Indians. My project does not seek to wholly contradict these valuable insights, but neither does it seek to rewrite them.

If any criticism of the extant historiography on immigration restriction of Natal can be made, it is that the analysis of Immigration Restriction, despite some nuanced turns, remains overall a little one-dimensional. I have not seen any work to date that actually makes use of the richest store of material available on the question – the voluminous IRD papers housed at the Pietermaritzburg Archives. I differ from previous works in that I do not take the passing of the Act in 1897 to be the culmination of the colony’s unease over outsiders, but rather only the beginning. Crucial in this regard is the 1903 amendment, ‘to place closer restrictions on immigration.’ Further, the accepted wisdom that the IR Act was to police Passenger Indian immigration needs some revision. As we will see below, some brief – and crude – number crunching underlines the point: IRD statistics record that between 1897 and 1909, approximately 122 000 people were restricted from entering the colony (this includes the 63 000 Chinese en-route to the Transvaal Mines – in Natal the Chinese found themselves in the anomalous position of being allowed *through* the colony but not *in it*). Of these, less than 30% were designated as ‘Indian.’ Further, the presence of so-called ‘poor-whites’ and undesirable Europeans complicates the narrative that immigration restriction applies only to Indians. I am interested in overcoming the tendency for writing specifically racialised histories of immigration into Natal and South Africa. Rather than ‘writing in chords,’ I review the Immigration Restriction saga by considering not so much biographical ‘communities’ of immigrants – which tend, in any event, to exude a certain parochialism when not seen as part of more complex whole - but rather to see the IRD as a dynamic interlocutor in the debates around an emerging South Africanism in the Dubowian sense discussed above. The IRD was both a bureaucratic receptacle for *and* an active contributor to a border-culture that defined the boundaries of a new, single South Africa.

It is commonly known that borders in Africa, as purely territorial demarcations, were generally and initially consolidated with 1885’s Berlin conference.¹⁹ I am interested

¹⁹ For the enduring salience of borders in African political-cultures, despite their ‘arbitrary’ origins, see Jeffrey Herbst, “The Creation and Maintenance of National Boundaries in Africa,” in *International Organisation*, 43 (4), 1989: pp. 673-692. Herbst argues that borders in Africa have in fact been remarkably

in borders as *social* differentiation; it is on population movement across such apparently arbitrary constructions that I focus, and in the ways in which mobile social geographies have been imagined and patrolled. Out of this schema comes the realization that common to all migrants entering Natal in the early 20th century was necessary familiarity with a pliable set of documentary and policing technologies that regulated arrival, entry and prohibition. Even those not initially subject to examination – first class European passengers, for example – were still part of this new regime even in their official exemption from it. These considerations around administrative technologies of migration are important, as the *bureaucratic* position of migrants and refugees within contemporary South Africa demand historical perspective.²⁰

In short, this thesis focuses much, though not exclusively, on the harbour and Durban as a port-city, that is, as a gateway to both the Colony of Natal, and as a principal conduit in the journey to the Transvaal Republic, then as now the economic centre of the region. As mentioned, a number of technical histories of the port have been written, but little meaningful social history of the area has yet been constructed. I intend, through this thesis, to add a corrective to this gap in the historiography of the city by examining the movements of *people* through the port and its immediate environs. This entails a consideration of settler governmentality and the various anxieties that a varied, voluminous and mobile population presented to a newly-tasked administration weary of the multi-ethnic polity of the region. Compounding these anxieties was the comparatively novel situation of newly urbanizing environment in the city of Durban and the social and economic fall-out after the end of the South African War.

Undesirables

I should at the outset be quite clear that this project does not intend a summation or review of *all* immigration into the colony. I am concerned here with what Zygmunt Bauman has characterized as ‘superfluous’ or ‘redundant’ population, the “unintended and unplanned ‘collateral casualties’ of [global] economic progress” and the particular social problems these are seen to represent.²¹ In my particular migration context, these

slow to change, if at all, in postcolonial decades and that they perform essential, ‘rational’ functions for political elites.

²⁰ For the contemporary aspect, see Jonathan Crush (ed.), *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (Queen’s University: IDASA, 1998) and the special issue of *Africa Today*, 28, 3 (2001), Special Issue: Evaluating South African Immigration Policy After Apartheid.

²¹ Zygmunt Bauman, *Wasted Lives. Modernity and its Outcasts*. (Cambridge: Polity Press, 2004), p. 39.

are those who movements were initiated by structural conditions of a globalised economy but who could not be absorbed by the regional and local, specifically Durban, economy. As such consideration of indentured labour or other assisted immigration schemes – which make up an important narrative in the region’s history - must be discarded for this specific project. These include the large numbers of Indian (occasionally via Mauritius) indentured workers – at first as labourers in sugar-cane fields and then in more diverse contexts as domestic servants, interpreters and low-skilled artisans - who arrived under schemes not abolished until the 2nd decade of the 20th century. This was regulated through the separate Indian Immigration Board and the Protector of Immigrants. I must also neglect, despite its obvious resonances with the themes I do cover, the various ‘Assisted Immigration’ projects for European settlers, principally an imported population of artisans, traders and a petit bourgeoisie (though such designs were rarely successful). The European Immigration Department was closely related in bureaucratic innards to the IRD, and indeed the same man oversaw both. Beyond my focus are other indenture or labour facilitation projects that included a number of small-scale systems of bringing East African labour – Zanzibari, Tanzanian and even Somali men - to various agricultural concerns in Natal. This was based on a bond system – that is, private employers were responsible, legally and financially for ensuring passage, residence and return for labourers – but despite several attempts to develop the proposal, it never matured beyond several loosely related trial schemes. At the other end of the scale, the mass importation of some 63,000 Chinese workers for the goldfields in the Transvaal necessitated their passage by ship and rail through the colony of Natal. The ‘Coming of the Chinese’ provided for much public spectacle as enflamed debates eventually opted to support the needs of the up-country mining industry. In Natal, specific legislation was passed for this – the Transit Immigrants Act of 1904 – which effectively legalized the temporary arrest of miners while they were escorted through the colony via a night or two at a Durban compound, but administration, beyond the checking of ship’s manifests, was delegated by special arrangement to the Johannesburg based Foreign Labour Department (FLD) and its Chinese arm of the Chamber of Mines Labour Importation Agency (CMLIA) who provided much of the manpower and institutional infrastructure.²² As we will see, the IRD were happy to be shed of the workload. Though the case of the Chinese is the most ambiguous, in the

²² See Peter Richardson, *Chinese Mine Labour in the Transvaal* (London: MacMillan, 1982) and for Natal specifically, see my own recent contribution, “Durban-Bound: Chinese Miners, Colonial Medicine and the Floating Compounds of the Indian Ocean, 1904-7” in *Journal of Natal and Zulu History* 24, 2005/6: pp. 107-146. Available at <http://journaloss.ukzn.ac.za/index.php/jnzlh/>

absence of sufficient further material available to me, I have decided not to continue, and indeed, re-write the story I have told elsewhere.²³

Rather than history from below, I seek to write here a history from the outside. Who are the people with whom I am concerned? Specifically, I have traced several broad streams of those whose may be thought of as ‘superfluous’ or ‘redundant’ to the Natal administration. First and most obviously, were the ‘passenger Indians’ that arrived in the wake of an Indian Ocean economy feeding off the prior networks of indenture. These were in large part generally prosperous merchants with commercial interests throughout the Indian-ocean rim, but less independent migrants were affiliated to these business-houses and, arriving as shop assistants, small-scale jewellers, servants and cooks amongst many other callings, also became part of a generally undesirable class of ‘Asiatics.’ The broad rubric of ‘Asiatic’ also included similarly diasporic merchants from south China, and as well Malaysian and Arab journeyers who had need or desire to include the South African colonies within their commercial realms. Secondly, I follow the arrival of poly-national ‘cattlemen’ or ‘muleteers’ that worked as hands on ships departing Argentinean, American and Australian ports and who often sought to – and did – disembark at Durban in search of work or passage through to the Rand. Authorities and letter-writers often levelled the muleteers with a ‘public charge’ accusation- their presence in the bay provoked the eventually successful calls for a ‘detention ship.’ Thirdly, I tell the story of the strange welcome afforded a group broadly defined as refugees, produced during the South African War and consisting largely of displaced uitlanders,²⁴ as well as additional Indians residing in the Transvaal, who poured into Natal (as well as the Cape) between 1899 and 1902; fourthly, a lumpen population often designated as undesirables were those involved in the ‘white slavery’ controversy: these consisted of pimps and prostitutes, but included general criminals and liquor smugglers.²⁵ With the air thick with suspicion, IRD officials became increasingly vigilant toward poorer Europeans.

Officially, with the 1897 IR Act the IRD became in essence the policy guide with respect to what were variously termed Aliens, Undesirables and Asiatics. It prohibited

²³ MacDonald, “Durban-Bound.”

²⁴ Literally, polymorphous ‘outsiders’ or ‘foreigners’ in the Transvaal Republic prior to the conflict, whose apparent treatment by Kruger was one of several smokescreens for the declaration of war. Most were from Europe, including Britain, Ireland and Russia, the Baltic and Eastern Europe. Americans, Australians and Canadians were also represented.

²⁵ For a truly comprehensive investigation of such of networks and their relationship with South Africa and the Atlantic world, see Van Onselen, *The Fox and the Flies*.

those described as being “a public charge” or guilty of “moral turpitude,” as well as prostitutes, “idiots or insane persons,” and those unable to write in the characters of a European language. These terms – undesirable, alien, Asiatic - are multi-faceted, open-ended and historically contingent. The general discourse on outsiders at the turn of the 19th and 20th century suggests an important crossroads. Although legislation (in the sense in which moderns understand it) on cross-border movement began in north-western Europe (France, Germany and Britain specifically) in the tumultuous aftermath of the French Revolution, much of the 19th century that followed has generally considered to have been a period of more relaxed attention to travellers and outsiders – more easily conceptualized as a state-led imperative to document movement rather than to restrict it, as John Torpey and Jane Caplan have shown.²⁶ By the end of the 19th century, however, that ‘great interregnum’ had - arguably in response to the booming heyday of global migratory movement - began to give way to new forms of hostility. I investigate the contours of this phenomenon in the colonial port-city of Durban.

Numbers and Key Questions

Population movements around the Indian Ocean rim in the latter 19th and the first part of the 20th century were, contrary to prevailing assumptions in both the popular imagination and existing literature, at least as significant as those in the Atlantic.²⁷ Yet encouraging calls for the re-constitution of an Indian-ocean world must take seriously the impact of immigration restriction as once autonomous exchanges gradually became yoked to the regulatory impulses of colonial ports. Figures 2-5 discussed below represent something of this tension. The period under review marks a period of transition from what Sugata Bose has described as a “bazaar theory” of an inter-regional Indian Ocean trading and cultural arena, to one that was structured and

²⁶ Jane Caplan and John Torpey (eds.), *Documenting Individual Identity: The Development of State Practices in the Modern World*. (Princeton: Princeton University, 2001). Introduction.

²⁷ Adam McKcown challenges the conventional understandings of migration history by arguing for a single world system characterized by connected and similar flows prior to the establishment of migration controls from the late 19th century. Significantly in McKcown’s calculations, the mobility of Asians far outweighs that of Europeans. Between 1840 and 1940, McKcown estimates 29 million Indians and 19 million Chinese had ‘re-distributed’ themselves as opposed to just 4.5 million Europeans. Indenture accounts for comparatively few of these voyages, no more than 25% until 1860, and down to just 5% by the end of the 1800s in McKcown’s estimation. See Adam McKcown, “Global Migration: 1846-1940” in *Journal of World History* 15 (2), 2004: pp. 155-190. This new ‘global’ perspective on migration is an encouraging and rousing call for more research into cultural exchanges. For the current state of thought on mobility and migration studies, see the concise overview in Leo Lucassen, “Migration and World History: Reaching a New Frontier?” in *International Review of Social History* 52, 2007: pp. 89-96.

policed in quite explicit ways, a “monolithic sovereignty” demarcated in historically tangible ways.²⁸

As the rapid urbanization of the 19th century wrought acute changes in economy, society and demography in Indian, Atlantic and Pacific realms alike, perhaps the most compelling fact is not so much that people were moving – they, had, after all, been doing so for centuries if not millennia - but that new forms of regulations were rapidly emerging out of the imperial and colonial systems and their contemporary conceptions of subject hood and rights of mobility. The most recent scholarship agrees that the most conspicuous contemporary legacy of late 19th and early 20th century world system is the institutionalization of borders, along with the array of regulatory mobility technologies that accompanied such barriers. For Adam McKeown, this marks “a spectacular diffusion and homogenization of political forms...a story of standardization without convergence into a single polity,” in essence a patchwork of new rigidly territorial demarcations and geographical spheres.²⁹ In wide focus, prior to the 19th century, mobility and identity were tied to a range of merchant networks, kinships associations and corporate groups, a kind of imprecise matrix in which states played only a partial, and at times even quite negligible, role. Spurred by merchant economies, the alien/native division was seldom foremost in determinations of the pre-19th century world system. In small, town-centred and more intimate economies, rights were given instead to merchant and corporate groups as a whole and discrimination rested on a set of taxes and differential property rights, for example, rather than territorial exclusion of persons. However, as these once localized economies outgrew the towns on which they were centred, larger, more complex and interlocking systems emerged, in tandem with the political fall out of French Revolution and the emergence of modern concepts of ‘citizen’ in Western Europe. By the late 19th century there began to develop the centralised, “crustacean” nation. This demanded a change in the criteria of membership, common units of reference and systemization of mobility between large territorial entities, as well as the State becoming the enforcer of a new kind of sovereignty, a sovereignty in which *individuals* became the consequence of all-embracing official involvement. This change from the local to the central/national and from the group to the individual is core to

²⁸ See Sugata Bose, *A Hundred Horizons. The Indian Ocean in the Age of Global Empire* (Cambridge, Mass.: Harvard University Press, 2006).

²⁹ This is the fundamental précis of ongoing work by Adam McKeown in *Melancholy Order*.

understanding the broad 19th century context of the emergence of borders whose political and intellectual tides reached Durban in 1897.³⁰

In Natal in the period leading up to 1897, a comparatively unrestricted flow of capital and people connecting south Asia with South-East Africa was clearly discernable. The most obvious example of this was visible on the very streets of Durban itself, in the so-called ‘Arab’ economy of the city through the tiers of wholesalers, merchants and *dukhwallabs* that connected East Africa, Mauritius and South Asia and followed already established systems of indenture.³¹ The very hierarchies of this were layered, complex and changing as they plugged into a trans-regional cultural economy. The same might be said of the numerically much smaller Cantonese communities.³²

As the first debate over Immigration Restriction began in 1897, both supporters and critics of the motion to erect legal barriers to entry agreed that the colony of Natal had been porous and without particular emphasis on regulating or barring ‘free’ migrants. When one Member of the Legislative Assembly (MLA) insisted that the panic over immigration was premature and argued that “for 50 years the colony has existed without special protection,” another quickly countered that it was for precisely the same reason that the country was now “flooded with an alien population.”³³ The meanings of this emerging boundary, and by implication the nature of undesirability, are what interest me.

Between 1897 and 1909, 167 916 passengers occupied the overt attention of the port authorities at Durban (figure 2) while during the same period some 176, 957 passage-workers and ‘alien’ crews were regulated on the dockside (figures 3 and 4), excluding the 63 000 Chinese miners indentured for the Rand whose heavily regulated passage from China included transfer from ship to rail at Durban. These are significant numbers in a town whose population in 1911 hovered around 100 000 (See figure 1).³⁴

³⁰ These insights draw off McKeown, *Melancholy Order* and John Torpey, *The Invention of the Passport. Surveillance, Citizenship and the State*. (Cambridge: Cambridge University Press, 2000).

³¹ The first of these was Abubaker Jhaveri. For an overview, see Vishnu Padayachee and Keith Hart, “Indian Business in South Africa after Apartheid: Old and New Trajectories” in *Comparative Studies in Society and History* 42, 2000: pp. 683-712. See also Goolam Vahed, “A Man of Keen Perceptive Faculties: Aboobaker Amod Jhaveri: An ‘Arab’ in Colonial Natal, circa 1872-1887” in *Historia* 50 (1), 2005: pp. 49-73 and “Passengers, Partnerships and Promissory Notes: Gujarati Traders in Colonial Natal 1870-1920” in *International Journal of African Historical Studies* 38 (3), 2005: pp. 449-479.

³² For a broad South African overview, see Yoon Park, “From Sojourners to Settlers: Early Constructions of Chinese Identity in South Africa, 1879-1949” in *African Studies* 65 (2), 2006: pp. 201-231.

³³ Colony of Natal, *Debates of the Legislative Assembly of the Colony of Natal XXV* (1897). p. 161

³⁴ See note 13. Durban and Pietermaritzburg had by far the largest population concentration in a predominantly rural colony. The table above demonstrates the population of the entire colony, of which

Population Statistics, Colony of Natal, 1852-1909

Year	E'peans	Natives	Asiatics	Total
1852	7629	112988	-	120617
1859	11580	148590	-	160170
1862	13990	156061	1184	171235
1866	16963	170855	5041	192859
1870	17737	257787	4858	280382
1874	18646	281797	6787	307230
1877	22654	290035	12823	325512
1880	25271	362477	18877	406625
1883	31912	359841	26978	418731
1885	36701	377581	29357	443639
1888	35933	410158	35270	481361
1891	46788	455983	41142	543913
1894	45707	503208	35411	584326
1897	50241	724848	53370	828459
1900	64951	794650	70369	929970
1901	63821	786912	74385	925118
1902	73095	806512	79777	959384
1903	82542	877388	79857	1039787
1904	97109	910727	100918	1108754
1905	94427	927910	108409	1130746
1906	94370	945411	112126	1151907
1907	92485	955993	115807	1164285
1908	91443	998264	116679	1206386
1909	92643	1037677	118714	1249034

Figure 1. Source (with thanks to Prinisha Badassy):
Colony of Natal, *Statistical Yearbook* (Pietermaritzburg: P. Davis and Sons, 1909).

Passengers Examined at Durban, 1897-1909*

Year	Passengers of which examined	Restricted and	Unrestricted
1897	305	91	214
1898	2153	1745	408
1899	1449	846	603
1900	2441	869	1572
1901	7565	3620	3945
1902	8169	4992	3177
1903	9300	6760	2540
1904	25857	2557	23300
1905	23449	4232	19217
1906	24246	8430	15816
1907	18063	4890	13173
1908	22541	7528	15013
1909	22378	4786	17592
Total	167 916	51 346	116 570

*These figures refer only to paying passengers and do not include indentured labourers, shipping crews, passage-workers or those on government immigration schemes.

Figure 2. Source: Immigration Restriction Department Annual Reports, 1897-1909.

Passage Workers at Durban, 1897-1902

	1897*	1898	1899	1900	1901	1902	Total
Restricted:	-	86	117	854	1877	3526	6460
Unrestricted:	-	38	113	835	1689	489	3164
Total	-	124	230	1689	3566	4015	9624

* Because restrictions were not in place in 1897, no precise figures are available. Smith records 9 vessels each carrying between 10 to 50 labourers. An approximate estimate would fall between 200-400 men.

Figure 3. Source: Immigration Restriction Department Annual Reports, 1897-1902

Maritime Labourers at Durban, 1905-9.

	Total including Crews	Aliens, Asiatics and And Negroes	Passage-workers, Stowaways and Extra-hands (Number admitted)
1905	63 103	30 485	2 298 (277)
1906	58 757	28 276	3 080 (125)
1907	63 900	31 822	1 886 (105)
1908	64 327	33 682	1 572 (126)
1909	71 893	32 636	1 596 (252)
Total	321 980	156 901	10 432 (885)

Figure 4. Source: Immigration Restriction Department Annual Reports 1905-1909.

If the numbers of arrivals and potential undesirables was relatively large, restricted passengers also came from a wide variety and regions and countries, as figures 5 and 6 demonstrate:

Restricted Passengers by Region, 1897-1902.

India.....	31 064
East Asia.....	2764
East Africa.....	6448
West Africa.....	7
North Africa.....	71
Southern Africa.....	296
(incl. Cape Colony).	
Caribbean.....	75
Latin America.....	231
Central America.....	2
North America.....	165
East/Central Europe.....	181
West Europe.....	644
Southern Europe.....	1208
Britain.....	1789
Scandinavia.....	1091
Eurasia.....	179
(incl. Russia & Turkey)	
Arabia.....	1343
Indian Ocean Islands.....	84
(incl. Madagascar)	
Unclassified.....	523

Figure 5. Source: Annual Reports of the Immigration Restriction Department, 1897-1909.

Crews, Passage-Workers and Extra Hands at Durban by Region, 1897-1909.

India.....	69 207
East Asia.....	13 814
East Africa.....	6 718
West Africa.....	252
North Africa.....	50
Southern Africa.....	1 640
(incl. Cape Colony)	
Caribbean.....	299
Latin America.....	282
Central America.....	17
North America.....	1 777
East/Central Europe.....	3 357
West Europe.....	30 520
Southern Europe.....	3 809
Britain.....	188 921
Scandinavia.....	15 532
Eurasia.....	809
(incl. Russia & Turkey)	
Arabia.....	3 171
Indian Ocean Islands.....	1 196
(incl. Madagascar)	
Unclassified.....	28

Figure 6. Source: Immigration Restriction Department Annual Reports 1897-1909.

These figures need to be qualified: it is neither clear nor likely that these numbers represent different individuals, and no category exists to differentiate so-called ‘remigrants’, ‘transmigrants’, or those making multiple journeys within a single year. Even the most basic distinction, between migrants and *immigrants* (that is, those seeking a permanent stay) is not tabulated. Yet even allowing for the fairly large margins of error and ambiguity that this must imply, these figures still speak to large and complex population movements off the east coast of South Africa. From a qualitative view, the problems are more substantial. The data set was, from the single table of 1897 through to the 15 pages of statistical breakdowns in the 1909 report, very much a work in progress, making a stable year-to-year picture difficult to obtain for all but the most basic data. Conundrums abound: ‘Natives of South Africa’ are included in the ‘restricted immigrants’ columns. Categories of ‘nationality’ are vague and inconsistent, with no clear or agreed demarcation (at least to the untutored reader) of precisely what might separate, for example, a ‘Portuguese’ and a ‘Portuguese Native’ or a ‘Russian Jew’ from, simply, a ‘Jew.’ ‘Eurasian’ and ‘Mixed European’ are hardly unambiguous while, finally, categories such as ‘Arab’ and even ‘Indian’ obscure complex trans-regional linkages, allegiances and networks. This might be a result of the ‘racialising’ imperatives of colonial discourse, but tellingly there is no category of ‘black’ or ‘African.’ I concede that it will take more research to unpick and disentangle these enigmas.

All figures also assume the honesty of the immigrant or the integrity of his/her, or the ship master's, documentary papers at a time when there is both ample evidence and reason, as we will see, to suggest extensive subversive economies of fraud. Finally, ascribing over 500 restricted immigrants to the category of 'unclassified' is a sober – and refreshing? – reminder that the cogency of the nation-state is much more recent than we suppose. In figures 5 and 6, in an attempt to portray something of the connections Durban shared with the rest of the world, I have grouped the 'nationalities' of undesirables regionally to overcome the inconsistencies of IRD categories that use ascriptions of country, region, 'race,' religion, imperial association and continent seemingly interchangeably. This is perhaps still artificial and unsatisfactory, and involves occasionally arbitrary choices (where, for instance, does Turkey fit?), but in the absence of a better method, I proceed nonetheless. There are regrettably no figures detailing the providence of immigrants who were investigated but *not* restricted. Lastly, this corpus of numbers tells us precious little about the motivations or experiences of aliens and much will have to be inferred, where possible, in the cases that are discussed throughout the following chapters.

These figures, whatever their methodological limitations, plot in quantitative terms the story I want to tell here. Three concerns emerge. Crucially, the Immigration law of 1897 did not stop immigration or people arriving at the Port. In fact, numbers increased exponentially. This speaks to the heart of the matter: the actual extension of sovereignty and the imposition of a migration regime could only be attended to with labour and struggle at the very space of the boundary, in this case the port. If increased numbers were a foregone conclusion, successful and actual restriction was not. Secondly, the figures also show that while 'Indians' remained numerically the principle targets and recipients of the legislation, they account for just 57% of restrictions, and considerably less if we include the Chinese miners passing through. Numbers of non-Indians also affected are substantial, and this demands investigation. Indeed, for all the oratory in the Legislative Assembly around the need to exclude passenger Indians, the very first recipients of Harry Smith's attention were in fact four 'Romanian Gypsies,' the first to be prosecuted for evading the laws were five Chinese men. Thirdly, the immediate post-war years, especially 1904, are crucial ones, for two reasons: the ratio of restricted to unrestricted passengers is dramatically widened, where 2 out of 3 were restricted between 1897-1903, only 2 out of 6 were stopped at harbour in the period 1904-1909. Although

the sudden leap in numbers might be attributable to recovery on the regional economy, it is not entirely obvious why the ratio of restrictions should so dramatically widen. It was likely a combination of factors: firstly it seems safe to assume that the 1897-1903 regime had roundly failed to deter prospective arrivals. Another possible explanation centres on growing administrative inadequacy in dealing with arrivals. Or, it might have been that simply a 'better class' of immigrants began to arrive in large numbers or that conditions in the town had improved to the point where rigorous policing of immigration was no longer imperative, but this seems in the overall context of Durban and Harry Smith's regular reports, at least until the very latter part of the decade, to be highly unlikely.

The post-war years are important for another reason. Increasing concern over shipping crews is reflected in the fact that from 1905 considerably more energy was put into accounting for and monitoring maritime labourers as potential sources of undesirability. This explains the bifurcated statistical charts above. Increasing surveillance and scrutiny had been borne out of early experiences with the so-called 'cattlemen' or 'muleteers' between 1898 and 1902, which, as Smith refrained, continually caused him "no little difficulty." These labourers were also subject to Maritime and Merchant shipping legislation that forbade captains to discharge crew at a port of call without express permission or arrangements for transshipment. The IRD enforced shipping master's liability and such crews, passage-workers and extra-hands were the principle targets of a port policing regime, as I demonstrate in more detail in a later chapter.

The question around 'undesirability' crossed racial categories, and though that undesirability was articulated in different ways, was part of a single story to consolidate a particular form of belonging whose parameters had been set in the first 50 years of the colony's existence but was, by the turn of the century, under threat. How undesirability was constructed is the focus of the first half of this dissertation, the administrative and technocratic reflex the focus of the second. Understanding this disorder and the legislative and bureaucratic response to it is crucial, for it sheds important contextual light on a number of events that have received substantial scholarly attention: springing most obviously to mind are initiation of 'Durban System' of urban control, and the general movement towards increasingly more severe manipulation of urban space that ultimately was codified, on a national level, through the 1923 Native Urban Areas Act. My specific intervention here is to consider the experience of immigration and of

outsiders in the context of the above, and to suggest the mechanisms set up to regulate, limit and police the boundaries of urban space deserve to be included in that story. I argue that if rapid urbanization and sharply fluctuating economic fortunes from the late 1890s destabilized spatial and labour relationships, important in that story is the role of the immigrants queuing at the harbour mouth.

With this, and the basic quantitative outlines above, in mind, this dissertation seeks to explore a number of questions, which I outline here in bullet form for the sake of clarity and reference:

- What is the relationship between the state and extra-territorial movement in colonial Natal, especially within the urban port setting of Durban?
- How was this 'space of flows' of Durban's port articulated and defined, in terms of race, class and, to lesser extent, gender/sex?
- What were the technologies of exclusion around Durban harbour? How did these change over time?
- How does Immigration Restriction in Natal fit into, and differ from, a global discourse of exclusion and the 'appropriation of the legitimate means of movement'?
- To what extent can we say that South African war and its legacy produced both greater anxieties over a seemingly uncontrolled influx of people AND a greater capacity to arrest and intern at Durban, an important port-of-entry to the region?
- How were the technologies of exclusion and the embrace of Natal colonial state subverted? Is it possible to contribute to a subaltern social history of the port?

Theoretical Foundations

The problem and theory of the state, and theories of mobility, remain intriguing ones. It seems that it may be a worthwhile endeavour to explore ways in which it is possible to move on from revisionist and Marxian concepts of the state in which the apparatus of statehood is seen merely as a manifestation of the demands of ruling capital. This thesis draws on a number of insights into the study of government, movement and exclusion from social and political theorists rather than historians per se.

Most broadly, and as a starting point, the study of the IRD administration will be traced back to Michel Foucault's lectures in the late 1970s on government rationality, or what has now become known as 'governmentality,' that more objective praxis of rule based on population, prosperity and protection that displaced the naked Machiavellian pursuit of authority - power, in other words, for its own sake – in early modern Europe and which forms the basis of the modern nation-state system. I am concerned specifically with that series of lectures entitled "Security, Territory and Population." This theory enquires into the *practice* and activity of government endeavouring to shape the conduct of lived experience, rather than the legitimation of the bourgeois ideology against the working class. Colin Gordon put the Foucauldian concept of governmentality more succinctly than I can:

Government as an activity could concern the relation between self and self, private interpersonal relations involving some form of guidance, relations with social institutions and communities and, finally, relations concerned with the exercise of political sovereignty.³⁵

The art of government exists for and by itself, but is contingent and historically variable. Its practices are not guided by an ahistorical essence, but are rather continually re-invented and re-realized. How the state invents and realizes itself in relation to immigration exclusion and restriction is important theoretical starting point for my work. Without embarking on a detailed discussion here, it suffices to say that I am interested particularly with the last of the concerns listed above, and, as Foucault's ideas develop, in his coupling of the state, police and prosperity dating from the early modern period, what he terms as the *pastoral state*, and the ambivalent, enigmatic relationship between doctrines of economic liberalism and security. The key quote from Foucault himself is cited from a 1978 lecture:

Mechanisms and modes of state intervention whose function is to assure the security of those natural phenomena, economic processes and the intrinsic processes of population: this is what becomes the basic objective of governmental rationality.³⁶

³⁵ Colin Gordon "Government Rationality: An Introduction" in G. Burchell, C. Gordon and P. Miller (eds.), *The Foucault Effect. Studies in Governmentality* (Hemel Hempstead: Harvester Wheatsheaf, 1991).

³⁶ Michel Foucault, cited in Gordon, "Government Rationality." p. 19.

In short, I suggest that the bureaucratic and administrative efforts in exclusion and immigration restriction can be analyzed in terms of Foucault's 'little tools of knowledge' - the archive becomes not the bearer of some essential truth, but a valid object of study in and of itself.

In terms of a theory of movement, I point to the work of John Torpey whose fundamental proposition entails a state monopolization or appropriation on the legitimate means of *movement* – a position whose phraseology might owe something to Marx (appropriation of the means of production) or even Weber (appropriation of the means of violence) but whose meaning differs in important ways. Torpey's position is that the history of population movement may not be so much a case of state penetration of the individual life, but rather the embrace of the individual through documents such as the passport, amongst others. I argue that the embrace of the person through papers, in the specific context of colonial Durban, is augmented by a physical embrace of walls, compounds and interment.

Parallel to these overall theoretical frameworks must be a consideration of James C. Scott's concept of legibility and ordering as part of historical process he has termed as 'authoritarian high modernism,' that is, the imperative to manipulate, simplify and narrow the social (and actual) landscape in response to a multifaceted and unwieldy reality – he considers this in a number of contexts, ranging from urban planning through to land administration, rural settlement and the identification of management of people within those contexts.³⁷ I seek to apply his insights to the management of exclusion and border control.

Scott's theory as elaborated in his *Seeing Like a State* does not make room for a detailed treatment of those things that escape and fall outside of these state-led schemas. For the anxieties that 'outsiders' produce it may be useful to consider, in a moment, the recent work of the prolific sociologist, Zygmunt Bauman, who makes a provocative case for human 'waste' being a defining condition of modernity. This conception grows out of an Agambenist concern that modernity in effect consists of a constant need to define what is *within* and *without*, a distinction made, following the great ruptures of the French Revolution, on a legalized bio-political concept of *bare-life* (in simple terms, where birth

³⁷ See James C. Scott, *Seeing Like a State.. How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1999).

itself and citizenship become the absolute bearers of sovereignty and individual rights).³⁸ Those without citizenship or sovereign relationship to homeland through birth, ‘refugees,’ to put it unsatisfactorily crudely (Agamben makes much capital of Jews in pre-World War 2 Europe as the quintessential ‘refugees’), become a crisis for the legal foundations of the nation-state. In effect, such ‘refugees’ become *without law* or rights, the ‘sacrificial beings’ (or *Homo Sacer*), paradoxically created *by* law in a double-exclusion.³⁹ With such permanent suspension ensured, there is no moral or political injunction to prevent the total exclusion and even sacrificial death (in political, social and even physical terms) of *the prohibited*. The spatial locus of this obtains in the liminal, indeterminate spaces, for Agamben, of the concentration camp of Nazi Germany. One might add detention and asylum centres – and even border-stations themselves – to this.⁴⁰ These are dense theoretical excursions on the archaeology of power, and I am not yet convinced that this tells us much about how exclusion is regulated and effected through bureaucratic practice, nor is there enough discussion on managerial agency which, as Judith Butler points out, may not control the aims of power but *does* decide on and exercise that power.⁴¹ Thirdly, ample evidence can be brought to bear on how juridical dialogue does indeed provide for negotiations with the law and bureaucracy in which inclusion is in fact redeemed. Nonetheless, Agamben’s ideas are important interventions in the meanings of citizenship and exclusion which rest, in practice, on the sovereign demarcations and border-making cultures of the late 19th and early 20th centuries.

To return to Bauman: he traces this kind of order-building to what he terms “the modern war against ambivalence.” Superfluous or redundant populations are the ultimate by-product of modernity and modernization and the modern condition, he

³⁸ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare-Life* (Stanford: Stanford University Press, 1998).

³⁹ Agamben, *Homo Sacer*: 119-188.

⁴⁰ Certainly South Africa’s 20th century policies of exclusion – both internal and external – might testify to this. Indeed, bills for refugee laws of any kind did not occur until the late 1990s. See Jonathan Crush, “Immigration, Human Rights and the Constitution” in Crush (ed.), *Beyond Control*, pp. 1-18 and Lee Anne de la Hunt, “Refugees and Immigration Law in South Africa” in Crush (ed.), *Beyond Control*, pp. 123-148. For more international context on the denial of basic rights to immigrants, see, for example, the moving ethnology from Caroline Moorhead, *Human Cargo. A Journey Among Refugees* (London: Vintage Books, 2006); Joseph Nevins, *Operation Gatekeeper. The Rise of the ‘Illegal Alien’ and the Re-Making of the U.S.-Mexico Boundary* (New York: Routledge, 2002).

⁴¹ Judith Butler, *Precarious Life. The Power of Mourning and Violence* (London: Verso, 2004), pp.51-100. Butler overall context is a critique of the Foucauldian replacement of once established notions of territorial sovereignty, which Foucault had situated in late modern Europe, by his idea of ‘governmentality.’ Instead, Butler argues from a contemporary, post-9-11 stance that “sovereignty is an anachronism that refuses to die,” in which the procedures of governmentality are merely invoked to secure and widen sovereign power. Pointing to professionalized, managerial agents – and they could well be border-guards – Butler writes that “they are part of the apparatus of governmentality – their decisions and the power they wield to ‘deem’ somebody as dangerous and to constitute them effectively as such, is a sovereign power, a ghostly and forceful resurgence of sovereignty in the midst of governmentality.” (p. 59).

postulates, is founded on an incessant activity of separation. Using a Marxian and Durkheimian composite of economic alienation and moral disconnection, such ‘superfluous’ populations are ripped from established economics and deprived of legitimate livelihood, thus creating a swirling pool of ‘outcasts,’ refugees and migrants . How, and if, ‘outcasts’ are re-absorbed or managed into an alternative economy becomes the central pre-occupation of his later chapters, and indeed is a central theoretical question I pose in this work. Bauman answers this question by suggesting that the reciprocal anxieties of states and of outcasts can be described as ‘mutually assured vulnerability’ – deteriorating conditions on the frontiers means that security becomes the paramount factor in the management of ‘waste disposal.’ I will let Bauman himself summarize:

The production of Human Waste, or more correctly wasted humans (the ‘excessive’ and ‘redundant,’ that is the population of those who either could not or were not wished to be recognized or allowed to stay), is an inevitable outcome of modernization, and an inseparable accompaniment to modernity. It is an inescapable side-effect of order-building (each order casts some parts of the extant population as ‘out of place,’ ‘unfit’ or ‘undesirable’) and of economic progress (that cannot proceed without degrading and devaluating the previously effective modes of ‘making a living’ and therefore cannot but deprive the practitioners of their livelihood).⁴²

Critically evaluated, however, Agamben’s hypothesis that ‘states of exception’ produce, through a double exclusion, “a sacrificial being” both created by the law and then excluded from it, are persuasive only up to a point. How, in the more prosaic realm of bureaucracy this exclusion is maintained, if at all, is a question I pose in later chapters. Similar questions arise regarding Zygmunt Bauman’s contention that the production of ‘human waste’ and disorder are fundamental results of the ordering project of modernity.

Methodological Outline

The Research Methodology for this thesis was, by its nature, archival. The first stop was the published Debates of the Natal Legislative Assembly, available at the Pietermaritzburg campus of the University of KwaZulu-Natal, whose lengthy

⁴² Bauman. *Wasted Lives*. p. 5

transcriptions map out the legal backdrop to the Immigration laws, but which have already been amply considered by historians of the period.

Most importantly, however, were the IRD files housed at the Pietermaritzburg Archives Repository. The series consists of some 96 boxes, each containing a bound book of valuable, but uncategorized or at all indexed, material covering all aspects of the department's functioning from 1897 to the Union period (the last entry ends in 1912). These were covered in their entirety. In practice, it emerged that some 8 books were missing, but at random intervals so there is no large gap to have potentially hindered the analysis.

What do these files consist of? The IRD series is essentially a record of the department's correspondence with other administrative departments, with 'alien' applicants for entry, internal correspondence and correspondence with various embassies, shipping companies, captains, police guards, lawyers and private individuals in the colony. Much postal energy was expended between the IRD and Colonial Secretary's Office to whom the former reported regularly. The Attorney-General and the Treasurer were also frequent visitors to the IRD's mailbox and meeting table. There are also the published annual (occasionally unpublished monthly and even weekly) reports, minutes of internal meetings, interviews and notes of discussion over regular controversies and individual cases which often include newspaper cuttings and the occasional court record, unfortunately the only that are apparently surviving given the unpardonable destruction of pre-1910 court records at the Durban Archives at some point earlier in this century (and a considerable time before the tenure of the current archival management, I hasten to add). Petitions, complaints and statements of protest are also included. There are also a number of documents pertaining to exclusion and the management of undesirables more generally: this often includes references to legislation and procedures in force in other regions as the IRD drew on a transnational discourse on restriction and exclusion. Finally, there are useful statistical documents, contracts and documents pertaining to the technologies of documenting immigration and restriction. In an era before the passport, these consist of domicile certificates, bonds, deposit slips and visitor's passes. Because the correspondence is arranged only chronologically and not adequately – or at all – indexed by theme of any sort, the process of extracting a thematic narrative has required work both intensive and extensive. A bored, calculating moment waiting for the archivist to wheel through my morning's requisitions revealed that I was ultimately digesting a

stack of letters some 13 and a half meters high! So, with several thousands of pages to scrutinize – some typed, others handwritten, some not bound at all while others were stuck together – I hope I have not missed anything crucial and, if there are any gaps (although I believe these are small) in the narrative, it is not for want of trying to fill them. Of course, one will forever wonder what stories the 8 missing boxes might have held. Despite these mild obstacles, the IRD files have been an extremely rich source of information for the period and themes which this dissertation investigates, and the difficulty lay more in choosing particular stories than eking them out. As such, the IRD files have formed my core archival concern.

I supplemented my reading of the IRD documents with other relevant material. One of the richest sources to draw out turn of the century social history of Durban was that of its local newspapers, the tabloids often providing some of the grittier empirical context. While not discounting methodological debates around the use of newspapers and print media in the formation of identity, I have taken these sources, editorials and correspondences as allowing at least partial access to dominant perceptions/discourses on Aliens and undesirables. I have been fortunate to have excellent access to the *Natal Mercury*, the *Times of Natal*, the *Natal Commercial Advertiser* and the *Indian Opinion* for the period under review, while the digitized microfilm and capturing facilities have been a wildly progressive and enjoyable innovation in the Killie Campbell collections.

For the chapter that covers the South African War, the Confidential Print from the Colonial Office is a comprehensive record of correspondence, meticulously indexed, between the political authorities of the British Empire. These were printed and bound for circulation in Whitehall, but not necessarily published in the British Parliamentary Papers (or Blue Books). I consulted these latter papers for contextual information on Martial Law, the Refugee Question and Concentration Camps, although I may not have quoted them directly. The CP material provided insight into high places when Durban was one of several epicentres in the refugee crisis between 1899 and 1902. Weary that an M.A dissertation cannot go on for an eternity, means that Time - the entire corpus of material is vast – has prevented me from exploring other related aspects of the questions I consider here. The published reports of several commissions and conferences (The Inter-Colonial Conference of 1903, The Prison Reform Commission of 1905, the South African Native Affairs Commission, and, from London, the 1903 Royal Commission on

Alien Immigration, for example) also provided useful context of questions of undesirability.

For the Port area particularly, the Police Report Books, generally written by the wordy Superintendent R.C Alexander, have been accessible to me at the Durban Archive Repository, and a boon to a historian trying to get beyond criminal statistics. Alexander was in the forefront of social efforts of reform and (naturally) policing, and these have provided a fertile resource for exploring anxieties around space and outsiders, whether real or imagined. Additionally and finally, the annual reports of several private organizations – the Durban Home, the Durban Uitlander Committee, the Natal Harbour Institute, amongst others - helped in sketching a picture of turn of the century Durban, and I believe I have quoted from these occasionally.

The Killie Campbell collections in Durban also house numerous contemporary and rare published works and manuscripts specific to Natal. Reference to these will be found in the bibliography at the end of this work.

Structure of Dissertation

The first, short chapter begins with a brief circuit of the literature pertaining to mobility in colonial Natal. I sketch in the broadest of strokes the social system under development since the colony's proclamation in 1845 and the overall sense of crisis that animated settler discussion in the 'long' first decade of the 20th century, which I suggest, began and reached a first critical mass with the controversy around Asian immigration in 1897. In the second section, I thus revisit the famous controversy around the perception of an 'Asiatic Invasion' in 1896/97 and the resulting framing of legislation "to place restrictions on immigration." Metaphors of contagion were framed in the language of emergency and crisis, and drew on, in various degrees, spectres of environmental/territorial contamination, as well as challenges to very specific 'standards of civilization.' This aspect is comparatively well-known, but I try to add to the story by considering the very spatial interface between insiders and outsiders, Durban's port, as the principle site where struggles over ordered urban space unfolded, and to which I return in the final chapter. I advance that immigration restriction represented efforts to structure the social geography of Durban that would fulfil the imperatives of urban

governance. I end briefly by summarizing the legislative innovations of Act of 1897. The most important of these are discussed in more intricate detail in the latter chapters.

The second chapter tells a hitherto much less considered story in which intensified mobility produced immediately prior, during and after the South African war invigorated efforts to keep the port subject to “un-relaxing vigilance.” Here, I show how the necessarily non-racialised and non-specific character of the 1897 IR Act found a new and unpremeditated function as panics over influxes of poor whites and a heterogeneous population of maritime labourers threatened to amplify and intensify the more general crisis enveloping turn of the century Durban. Arguably, this second influx was fundamental to that crisis as poor, unemployed or potentially unemployable whites undercut social mores of a racialised class hierarchy and ‘demoralised’ Africans in the city. Contamination was here framed in the grammar of destitution and degeneracy and led to the policing of 3rd class passengers, ship’s crews and passage workers of all backgrounds who sought entry to South Africa’s emerging conurbations.

With the contours of ‘undesirability’ so sketched in the first two chapters, the long third chapter returns to legislative innovation and examines the ‘first line of defence’ that formed the technologies of exclusion orchestrated by the IRD. Pointing to precedents both within South Africa’s labour-economy and justifications for control that went far beyond the relatively obscure colony of Natal, (indeed beyond even the purely colonial context), this chapter argues that the IRD played an important role in a *global* proliferation of documentary ‘passes’ out of which the modern passport and paper-based border controls introduced by the end of the Great War were but more refined versions. Natal both drew on and contributed to this international migration regime, particularly through the innovation of the Literacy Test, whose political justifications were considered in the first chapter. I then turn the spotlight on the Domicile Certificate and the Visiting Pass which were both used to regulate – and, in the end, actually increase – cross border movement. The last point is an important one. Subversive economies of fraud and impersonation rendered the colonial state inert as it was regularly ‘captured’ by its subjects, and this forms a crucial intervention I wish to make. Indeed, only in the subsequent bureaucratic floundering was a ‘technological race’ began which led to increasingly sophisticated and defensive documentary technologies, this was to last for most of the Natal IRD’s autonomous existence from 1897-1910/11. The length of this chapter is duly noted, but it has been difficult to provide the contextual narrative in less

time and space; the reader might feel consoled to take my suggestion to consider this as one part with three related but also clearly separate discussions on three different documentary technologies, viz. The Literacy Test, the Domicile Certificate and the Visiting Pass.

The final chapter continues to consider the intensive bout of bureaucratic exertion that followed the passing of the 1897 Natal IR Act and the more stringent 1903 Amendment. Here, I examine the developing capacity of the state to detain and arrest immigration in the port of Durban. I argue that in response, a further subversive economy of ‘excarceration,’ escape, evasion, collusion and negotiation partially informed a culture of resistance. Such resisters were, of course, in large part criminals only of the IRD’s making. Thus if the documentary technologies could not always be lauded for their deterrent value, this last chapter is essentially a consideration of what other kinds of administrative capacities were developed to regulate, restrict and ultimately obstruct such arrivals. The bureaucracy negotiated with private agency (through shipmasters, agents and companies), the imperial state and military authorities to police the port-space and confine immigrants in ways which strongly suggest a powerful closing down of that space. The amplified power to deport marks both the final act of the trend towards ‘closing the gate’ and the beginnings of legal challenges to the often unchecked power of immigration officials. I show, in short, that the IRD was a prominent performer in South African repertoires of incarceration and exclusion, and the more crude colonial forms of ‘law and order.’

I conclude that if South African immigration and citizenship policy today grapples with the colonial inheritance of vigorous exclusionism and the production of ‘illegality’ often twinned to mobility, documentation and anxieties over influxes into urban space, these were well articulated in the first years of the 20th century in Durban.

Chapter 2

The Line of Perfect Safety Indian Immigration and Legal Innovation

Introduction

The numbers, as we have seen in the introductory chapter, bear a thought: conservatively calculated, between 1897 and 1910 close to half-a-million people anchored in the Bay of Natal. A good many were on fixed indenture terms of one form or another, others to begin positions as servants or artisans, to join families, or to pursue - or escape - business, love or luck; some came to entertain or to minister or to cook; yet others were en-route to the possibilities offered by Johannesburg and its goldfields. Many were engaged as working crews on the steamships plying the waterways and it was a commonplace to forsake the maritime economy for opportunities on land. Many probably didn't know. Harry Smith sat at his desk in a dilapidated government house at the Point and described Johannesburg as a "Mecca for the majority of the alien class"¹ to which Durban, he regretted, appeared to be the forwarding-post. Most crossed the wharves, as our contemporary passports might say, without let or hindrance. But a substantial number – 51 000 passengers, 160 000 crew members and over 63 000 Chinese labourers were confronted in varying degrees by Smith's embryonic immigration bureaucracy (see figures 2-6, chapter 1). They could only breach his barriers, if at all, with difficulty and in negotiating what was, in late 19th century southern Africa, the spectacle of a border.² Where did this begin?

If Natal's early colonial order had ushered in and established itself around a divisive social system based on institutionalized, territorial segregation and racialised labour, by the turn of the 20th century that tenuous stability faced a new and unheralded crisis. Natal – more specifically its principle *entrepot* of Durban adjoining the Indian Ocean – became a significant stage for the intensification of global migratory flows and state responses, part of the general multiplication of transport routes and intensification of human mobility that characterized the age of the steamship. These flows threatened and brought new challenges to the colonial city whose ideological foundations rested on deeply embedded race, space and labour hierarchies that hinged on the material prosperity of white settler society and the maintenance of particular 'standards of

¹ PAR/ARIRD, 1902, p. 8.

² When Kruger's Transvaal passed its Aliens Law in 1896, requiring crude 'border officials' to inspect the *bona fides* of European travellers, it caused uproar and fascination in equal measure. The *Natal Mercury* editor thought the measures "retrograde and regrettable as laws of a Republic desiring to be recognized and respected by the civilized world." See *The Mercury*, "New Transvaal Aliens Law," 26 Nov. 1896. The same newspaper carried irreverent dispatches from travellers detailing their experiences with the *Veldkornet* (Field-commander) at the border, who stood with an "air of mysterious, dispassionate, mocking officialdom." See *The Mercury*, "Aliens on the Frontier," 14 Jan. 1897. Procedures such as this were not as novel for Africans.

civilization.’ The result of these migratory flows was a gradual, but irregular and often haphazard establishment of city gates – literal as much as metaphorical - and the energizing of state capacities to secure those hierarchies.

I structure this chapter in 3 parts. The first covers in the broadest of strokes the social system under development since the colony’s annexure in 1845 and the overall sense of crisis that animated settler discussion in the ‘long’ first decade of the 20th century, from 1897-1910, which, I suggest, begins with controversy around Asian immigration in 1897. In the second section, I revisit the famous controversy around the perception of an ‘Asiatic Invasion’ in 1896/97 and the resulting framing of legislation “to place restrictions on immigration.” Metaphors of contagion were framed in the language of emergency and crisis, and drew on, in various degrees, spectres of environmental/territorial contamination, as well as challenges to very specific ‘standards of civilization.’ This aspect is comparatively well-known, but I try to add to the story by considering the very spatial interface between insiders and outsiders, Durban’s port, as the principle site where struggles over ordered urban space unfolded. I advance that immigration restriction represented efforts to structure the social geography of Durban that would fulfil the imperatives of urban governance, a theme that is more fully picked up in chapter 3.

A Model City for the Continent? 1845-1897

I begin answering the questions around undesirability and mobility some decades prior to the turn of the century, following David Welsh’s argument that the origins of segregation can be traced back to pre-industrial Natal.³ My intent here is not to engage in detailed analysis or deconstruction of what are after all well-known aspects of the political-economy of the region, but to provide some context of the antecedents over administrative concerns over mobility and urban space. These are crucial to understanding the ‘civil shock’ that immigration would produce at the turn of the century. In short, the barrage of laws passed to regulate African (and Indian) mobility, and its at least partial success between 1846 and 1893, created a normative social order and discursive strategies of exclusion. It is the boundaries of this social order that would become threatened by the multiple immigrations of the first decade of the 20th century and lay the foundation of the region’s immigration policy for decades after.

³ David Welsh, *The Roots of Segregation: Native Policy in Colonial Natal 1845-1910*. (Oxford: Oxford University Press, 1971).

By way of introduction, then, I turn to the Shepstonian system, focal to the southern African colonial project, which was built in part on the need for an economical and effective means of bringing about regulation and order to the African labour supply to Natal's settler population engaged primarily in agricultural production. In the mid-1840s with British ink barely dry from the signatures to the annexation of Natal and with troubling experiences of an African 'refugee problem' (chiefly from Zululand in the aftermath of political and demographic flux) not quite yet confined to memory, the prospect of unregulated mobility amongst Africans in the newly formalized territory had stimulated the early administration, under the Chief Justice Henry Cloete and 'diplomatic agent' and later Secretary for Native Affairs, Theophilus Shepstone, to answer the question of restraint through a 'reserve' system. This was to ensure Africans remained in their 'proper place' and subject to settler labour requirements. Politically, ultimate power would be vested in Shepstone himself, a 'paramount chief' who enjoyed autocratic power but who actually exercised rule indirectly through the codification of customary law and 'native agents', being native police and lackey chiefs. This partly offset the costs of native administration while simultaneously laying the general pattern of and shoring up white colonial economic, political and social domination of the region in what Mahmood Mamdani has coined as "decentralized despotism."⁴ This was, in essence, an official system of territorial and racial separation born out of anxieties over mobility.

What to make of the Shepstonian regime? The initial system never worked entirely gracefully, in part because of an inherent rural bias where the reproduction of labour in the countryside was the over-riding aim, and his policies either ignored or simply did not take seriously the gradual, and still sluggish, growth of population centres such as Durban and Pietermaritzburg. The reserve system was thus in constant antagonism with the recurring phenomenon of *togt* (day) labour in the towns, whereby Africans refused to sign up to more 'orderly' forms of long-distance migrancy regulated by long-term contracts with employers, preferring instead to exercise their autonomy in Natal's growing trading centres by engaging in such 'itinerant' occupations as dock-work, riksha-pulling, clothes washing and domestic servitude.⁵

⁴ Mahmood Mamdani, *Citizen and Subject. Contemporary Africa and the Legacy of Late Colonialism*. (London: James Curry, 1996).

⁵ See Keletso Atkins, *The Moon is Dead! Give us Our Money! The Cultural Origins of an African Work Ethic, Natal, South Africa, 1843-1900*. (London: James Currey, 1993), especially ch. 6.

An equally significant and related theme underpinning Shepstonian doctrine was around the fear of contamination whose obvious spatial location was that of the growing urban centres. The prevailing assumption amongst administrators from the very beginning was that ‘uncivilized Africans’ ought to be physically resettled away from the towns lest they be subject to “contaminating influences of the chief town and port.”⁶ As exponential growth in the economy led to increasing urbanization, so would anxieties around ‘contaminating influences’ become increasingly shrill in decades following the granting of representative government to Natal in 1856.

This town-ward mobility ultimately impressed upon administrators’ minds a very real threat to the colonial order in the towns to which these unchecked labourers moved. In 1873, Shepstone himself, in a famous memorandum, wrote that

These men have no homes, and as soon as their hours of work are over they are free to wander about at night and to resume or not their work by day, as they please. This system is calculated to produce, and does produce, insecurity in the towns, while it causes inconvenience and loss to the householders...it destroys, or fails to create, any feeling of mutual interest between Master and Servant and threatens, if not checked soon, to reach full development to which it naturally tends, namely a large but fluctuating native population living in the towns, but having no home in them, subject to no restraint...they come and go as they please, no official notice is taken of their presence, no one knows where they come from or where they go, or to whom they belong, are subject to none of the checks which their own homes supply; and suddenly find themselves in the midst of temptation to evil, without the deterring influence of any control or supervision. Such a condition must produce demoralization, lead to drunkenness, and tempt to every form of vice.⁷

For Keletso Atkins, 1873 marks a point of transformation, a “nadir of the labour market” and the beginnings of more assertive and uncompromising legislation toward African’s generally and in the urban centres specifically.⁸ The promulgation of the *Togt Rules and Regulations* in that year insisted - through the compulsory wearing of badges, set

⁶ This was the phrase used by Henry Cloete in 1846, cited in Atkins, *Moon*, p. 241.

⁷ Theophilus Shepstone, Memorandum on Togt Labour, 1873. This quote is cited in a number of works on the period, including David Hemson, “Class Consciousness and Migrant Workers: Dockworkers of Durban” (PhD Thesis, University of Warwick, 1979). Introduction.

⁸ Atkins, *Moon*, p.269

wage rules and licensing fees and concomitant prohibitions and regulations around residence – that Africans would only inhabit the city as bona fide and regulated workers. This was cast, importantly, in the language of welfare, sanitation and barrack accommodation. Results of this were uneven at best (indeed, Shepstone’s memorandum still enjoyed publication and discussion 20 years later), and the basic contours of this struggle would define much of South Africa’s modern history. It is beyond the scope of this chapter to survey in any further detail the workings and implications of the Shepstonian system beyond sculpting its basic lineaments; my point is that the town, the conurbation, was viewed as both a key site for the creation and maintenance of a colonial order, as well as its most vulnerable locus.

The ‘colonial order’ needs more sketching beyond merely pointing out that to which it was antagonistic. The values of ruling settler society developed from the metropolitan bourgeoisie and shared many of the latter’s anxieties around ‘vagrancy’ and deviance, but the relationship between metropole and periphery was not equivalent and not always harmonious.⁹ In the colony, the maintenance of unequal economic and social structures required an ideological construction of racial difference, where citizenship was not a given but had to be ‘earned.’ The essentialising discourses of race meant this was, in fact, rarely possible in practice. Crucial in the construction and preservation of difference was the production of danger. The lives of Natal’s African and Indians became increasingly criminalized through legislation intended to police property, marriage, sexuality, consumption and mobility with the aiming of compelling and maintaining optimal conditions of labour (re)production.¹⁰

More recent scholarship points to sexuality as a “dense transfer point of power” from which broader idioms of contamination and metaphors of pollution obtain in what amounts to a conflict of domesticities.¹¹ Sexuality as a term might be broadened and disaggregated into those of domesticity, the ‘proper’ family and construction of femininity/masculinity as the components of ‘civilization’ in which sexual and gendered roles and the nuclear family were precisely defined. Thus the bevy of legislation aimed at controlling mobility had as much to do with domestic concerns as those of the labour

⁹ See Gareth Steadman-Jones, *Outcast London* (Harmsworth: Penguin, 1971) for the context in Victorian Britain, and for the colonial setting, Frederick Cooper and Laura Ann Stoler, *Tensions of Empire. Colonial Cultures in a Bourgeois World* (Berkeley: University of California Press, 1997).

¹⁰ A comprehensive overview is Leigh R. Anderson, “Society, Economy and Criminal Activity in Colonial Natal, 1860-1893” (PhD. diss., University of Natal, 1993).

¹¹ See Ann Laura Stoler, *Race and the Education of Desire. Foucault’s History of Sexuality and the Colonial Order of Things* (Durham: Duke University Press, 1995).

market. In addition to legislative energies directed specifically at *togt* labour, Jeremy Martens has shown how the Natal Vagrant Law of 1869 – instituting curfews and controls toward Africans specifically in the municipalities - emerged directly out of the sexualized construction of African males in response to anxieties around the rape of female settlers.¹² Likewise, a second rape scare in the 1880s galvanized moves towards the embedding of a ‘native registration’ regime.¹³ In short, as the late 19th century profile of the South African economy began to turn from a rural agricultural base to one impelled by the demands of industry and consequent urbanization and contact, so had settler society consolidated a highly regulated, deeply embedded discourse of exclusion. In Welsh’s words:

The more Africans moved to the towns and settled as urban dwellers the more stridently whites asserted that their proper place was in the reserves; the more interdependent white and non-white grew in the town, the more fearful the majority of whites became of non-white competition.¹⁴

The 19th century development of Shepstonian policy, *Togt* Regulations and Vagrancy laws – a composite of political, economic and domestic anxieties - resulted, by the 1890s, in an overall administrative consensus that imagined the city as a segmented space built around an apparently self-evident socio-economic and racial order. The laws and regulations had helped to configure particular forms of capitalist settler domination and to institutionalize hierarchies on racial lines in order to fix, regulate and accommodate a migrant and indentured labour reserve, effectively criminalizing mobility in and around towns.

The legal offensive from 1846 to 1893 could hardly be described as completely successful and it, in fact, rather created more ‘crimes’ than it eradicated. The *Togt* system never quite took hold with the desired intensity and African and Indians, both indentured and otherwise, continued to exercise their own agency to give settler administration more than pause for thought.¹⁵ Yet Natal’s settler elite might have felt confident of their security and that, with the granting of Responsible Government status in 1894, a juridical

¹² Jeremy Martens, *Polygamy*, “Sexual Danger and the Creation of Vagrancy Legislation in Colonial Natal” in *Journal of Imperial and Commonwealth History*, 31 (3), 2003: pp. 24-45.

¹³ Jeremy Martens, “Settler Homes, Manhood and Houseboys. An Analysis of Natal’s Rape Scare of 1886” in *Journal of Southern African Studies* 28 (2), 2002: pp. 379-400.

¹⁴ David Welsh, “The Growth of Towns” in Monica Wilson and Leonard Thompson (eds.), *The Oxford History of South Africa*. (Oxford: Clarendon Press, 1971). p. 242.

¹⁵ See Hemson, “Class Consciousness” and Atkins, *Moon*.

culture founded on restraint and exclusion might well be assured. In the years immediately following responsible government, Indians were debarred from the franchise and a heavy tax imposed on 'freed' indentured labourers not returning to India or continuing terms; the reserve system was consolidated with the formal annexation of northern Zululand.¹⁶ In short, the long process of settler domination had reached a plateau as the colony of Natal established its territorial limits.

When the legally-trained Harry Escombe, Attorney General of Natal and sometimes Acting Prime Minister, and Henry Binns, a prominent administrator and sugar-planter (both had deep commercial and business interests) met in the first meeting of the Legislative Assembly in 1897, both pointed to the 'paradise' that Durban had become for Europeans. For Binns, it was

Quite true that we have in Natal an extraordinary prosperous population and the community is probably as free from residuum as it is possible to imagine any community to be.¹⁷

Just several months later, Escombe was interviewed by a journalist proclaiming Durban to be a "model city for the continent" and Escombe was pleased to say that "we have no very rich, and no poverty." The mayor concurred that although "we have a few drunken folk, ne'er do-wells and those that can't work, but for all practical purposes it is about true, nobody need be badly off." The Principal Immigration Officer, writing from the vantage point of 1903, reminisced about the pre-war days of Durban being "essentially a British community...the streets were free of all but respectable pedestrians, and houses of ill-fame, gambling dens were practically unknown."¹⁸ In 1897 Durban appeared then, in the eyes of its beholders, "a thoroughly healthy and handsome town," rich in a spirit of progress.¹⁹ But Durban was, of course, not a paradise and intense strains had become apparent, particularly in connection with presence of urbanizing Africans, Indian traders - partly ex-indentured workers or new arrivals of a merchant class - and small hotpotch of Zanzibaris, St. Helenians, Tsongas and Chinese,

¹⁶ This potted summary of complex political developments could be expanded in numerous directions. For the extensive process of the political subjugation of Zululand beyond the 1879 invasion, see Jeff Guy, *The View Across the River: Harriette Colenso and the Zulu Struggle against Imperialism* (Oxford: James Curry, 2001).

¹⁷ Colony of Natal, *Debates of the Legislative Assembly of the Colony of Natal XXV* (1897), p. 89.

¹⁸ PAR/IRD 391/1903. Harry Smith to Colonial Secretary and Attorney-General, 27 May 1903.

¹⁹ The *Mercury*, "The Land of Beauty," 24 Jan. 1898.

congregating for the most part around an infamous corner of Victorian pollution known as Bamboo Square not far from the Point docks.²⁰

Cracks in the Shepstonian order had therefore already begun to appear while the administrators congratulated themselves on the emerging cityscape in 1897. The summer of 1896/97 is a significant moment of change. If the city had existed in a kind of uneasy tension, in 1896 something gave way. One cannot miss the sirens of civil emergency and impending crisis that would develop into a loud popular and political din – a commotion whose resolution would be heard across the imperial seascape. Escombe and Binns, of course, had just begun a long and complicated debate over how to deal with the ‘immigration question’, specifically of ‘passenger Indians’ who had been arriving at the port in varying numbers for several years prior, establishing trading niches or working as domestic servants, interpreters and the like in the context of Natal’s growing population of ‘freed’ indentured labourers.²¹ Responding to a flurry of popular agitation over a “grave and critical danger,” Harry Escombe warned that “unless an arrestation [is] put upon immigrants from India, the whole of the social polity would be disturbed” before underlining that

nobody can be astonished that men who have embarked their fortunes in this country, and who have not only themselves to think of today, which is of no little moment, but have also to think of the future and of their children and remoter issue – nobody can be astonished that they should have taken into account where they would be and where their issue would be in case this enormous social change should take place which appeared to be impending.²²

Perhaps it was the very lack of establishing any substantive control over Africans and Indians already in the colony that made the illusion of order so fragile and threat all the more real. While the ‘immigration question’ would apparently be resolved with the passing of the Immigration Restriction Act (IR Act) in May of 1897 specifically designed to restrict the ‘passenger Indians’, it would be but the beginnings of struggle to police the sovereign limits of the colony and maintain a state of exception. This involved, as we

²⁰ See Brian Kearney, “Bamboo Square: A Documentary Native of the ‘Indian and Native’ Cantonment at the Point, 1873-1903” in *Journal of Natal and Zulu History* 20, 2002: pp. 29-64.

²¹ For innovative social histories of this, see Prinisha Badassy, “...and my blood became hot!” Crimes of Passion, Crimes of Reason: An analysis of crimes against Masters and Mistresses by their Indian Domestic Servants, Natal, 1880-1920” (M.A diss., University of KwaZulu-Natal, 2004), amongst others.

²² Colony of Natal, *Debates* XXV. pp. 66-67.

will see, the invention and modification of, and tussles with, the very systems of enforcement which provocative Agambenist political theory reckons without.²³

An Abyss of Degradation

To a reader familiar with late 19th century South Africa, the story of the arrival of the SS *Naderi* and the SS *Courland* with several hundred Indians, “only a few who are at all well to do” including a young M.K. Gandhi who narrowly escaped a lynching is now so well known as to be almost a cliché. The events whereby a suspected (but, in the end inaccurately reported) outbreak of plague coupled with rumours of Gandhi’s defamation of Natal while pamphleteering in India, led to a quarantining of passengers, a dramatic wharf side confrontation and ultimately the formulation of legislation around immigration, dealer licensing and enhanced quarantine measures. The events have been told in terms of biography, plague politics, urban history, popular police history, the early politicization of South African Indian struggles against discrimination and the development of Indian nationalism, and of course immigration policy.²⁴ The events are rightly accepted as metonymic of the immigration crisis that swept Natal in 1896. There is not, it must be conceded, a lot to add. Because, however, of the pivotal and explicit link between the port-demonstrations and the legislative meeting that set the Immigration Restriction legislation on its course, it requires some re-visiting.

The particular controversy had really begun some months before and initially had nothing to do with the passengers of the *Courland* and *Naderi*. In August of 1896, the *Natal Mercury* announced that the Tongaat Sugar Company (TSC) would depart from established convention of employing low-skilled labour by importing skilled artisans from India. The denouncement was immediate from Durban’s labour-aristocracy, meeting first informally at the Princess Café and then an evening later in greater

²³ See the discussion on theoretical foundations in chapter 1. I refer to Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005) and *Homo Sacer. Sovereign Power and Bare Life* (Stanford: Stanford University Press, 2003). See Zygmunt Bauman. *Wasted Lives. Modernity and its Outcasts* (Oxford: Polity Press, 2004).

²⁴ The most recent and informative consideration is Jeremy Martens, “A Transnational History of Immigration Restriction: Natal and New South Wales 1896-97” in *The Journal of Imperial and Commonwealth History* 34, (3), 2006: pp. 323-344; a similar story was told 30 years earlier in book form by Robert Huttenback, *Racism and Empire: White Settlers and Coloured Immigrants in the British Self-governing Colonies, 1830-1910* (Ithaca: Cornell University Press, 1976). See also Nafisa Essop Sheik, “‘This Most Perilous and Epidemical Disease’: Plague Precautions and Public Politics in Natal, 1896-1903” (B.A Honours diss., University of Natal, 2002).

numbers.²⁵ That Indian artisans would undercut acceptable wage levels was the main sticking point, imperilling the codes of respectability, decency and domesticity that bound Durban as a ‘home for Europeans.’ The meeting concluded in agreement that unable to “live in a 4-roomed cottage and dress his wife and child in European clothes on one £1 a month,” the ‘thrifty Indian’ was not welcome.²⁶ As the men ended, the final words of one speaker summed up the mood: “The European strove to maintain a decent livelihood and better himself and his children, and improve the colony and advance the cause of civilization, and the coolie was to do exactly the reverse.”²⁷ This ‘cause of civilization’ would be a recurring motif. Perhaps realizing the deep nerve they had struck and having no support from administration, the TSC rapidly withdrew its plans. In the week that followed, letters from ‘A Colonial’ and ‘Hammer and Tongs’ pounded out further indignation. By encouraging Indian immigration, the people of Natal were “[fostering] a Social Cancer” and an “immoral cesspool.”²⁸

Much of this language was sensationalist, reactionary and of course not particularly surprising given the decades long antipathy to ‘free Indians’ who were not offering sweat under the blue skies of the sugar plantations. For over a decade anti-Indian sentiment had simmered in Natal, based essentially on trade jealousy and exacerbated by depression in the 1880s. Yet a close reading of the very terminology of the controversy reflects the spectre of immanent ‘demoralisation.’ I am here largely inspired by the work of Maynard Swanson and his contention that South Africa had become “imbued with the imagery of infectious disease as a social metaphor” that shaped political, economic and social directions the region would take.²⁹ The contagion, however, was not always framed specifically in terms of medical disease; fears over plague or cholera only maintained momentum if actual outbreaks occurred. This explanation does not therefore suffice for the deeper impulse of exclusion that prompted the anti-Immigration movement. Rather the contamination was of an entire social order constituted by interacting material, economic, bodily and psychological realms that together formed the moral philosophy of the social polity. Disease, of course, remained

²⁵ For the complicity of white labour in the colonial project, see Donald Denoon, *Settler Capitalism: The Dynamics of Dependent Development in the Southern Hemisphere* (Oxford: Clarendon Press, 1983).

²⁶ *The Mercury*, “Importation of Indian Mechanics.” 12 Aug. 1896.

²⁷ *The Mercury*, “Importation.” 12 Aug. 1896.

²⁸ *The Mercury*, “Correspondence,” 17 Aug. 1896.

²⁹ See Maynard Swanson, “The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909” in *Journal of African History* 18 (3), 1977: pp. 387-410; “The Durban System: Roots of Urban Apartheid in Colonial Natal” in *African Studies* 25, 1976: pp. 159-176; “‘The Asiatic Menace’: Creating Segregation in Durban, 1870-1900” in *International Journal of African Historical Studies* 16 (3), 1983: pp. 401-421.

an important factor in the above and that particular anxiety did indeed colour all others and gave an intensely corporeal tone to many of the statements made in connection with immigration, but the actual intervention of medical personnel or strictly medical arguments in the spew of meetings in late 1896 to discuss the question of immigration was actually quite negligible. So while plague or specific disease played some role in general apprehension, the idea of contamination was more general, in the sense of “social cancer,” that Indians were “not of our blood” and that “purity of British type” needed to be kept.

Harry Escombe stepped in to calm the agitation by re-iterating that no support would be given to the TSC and that the government would do all possible within the constraints of imperial agreements not to aid further indentured immigration, but by that stage the tinder had already been lit. The letter pages of the *Mercury* continued to fill up with dark warnings. Wrote one: “It is the legitimate right of the white man [to erect] an impassable barrier [or] the rising generation will see the futility of ever trying to prosper in the place, clear out and leave Natal to degenerate into a second Mauritius.”³⁰ To blame for the immigration were “Arab merchants, who now have vessels for the purpose, will make the most of their time in stocking the Colony in every corner with samples of their own race.”³¹

Part of the reason for this particular racial anxiety is that in its late 19th century European sense, the construction of race, body and mind was viewed as part of neo-Lamarckian theory that emphasized environment as the primary agent of socialization. As the editor of the *Mercury* cautioned the increasingly rabid tone of the letter writers in his paper,

The Indian is but the creature of his circumstances and outcome of his environment, as we are. We are what we are not so much because of what we have done for ourselves as what our circumstances, our environment, and the traditions and customs have done for us.”³²

Important here also was the social evolutionary viewpoint that ‘race’ also be considered a discrete natural and scientific field open to investigation, modification and

³⁰ *The Mercury*, “Correspondence,” 7 Sep. 1896.

³¹ *The Mercury*, “Correspondence,” 7 Sep. 1896.

³² *The Mercury*, “Indian Immigration,” 5 Sep. 1896.

ultimately enhancement and improvement or, on the flipside, degeneration.³³ Coupled with neo-Darwinian theories of survival of the fittest in the biological world, this overall standpoint became applied to society, 'nation' and 'civilization' at large. If one's condition, both on the individual and community level, were to be acquired from the environment, then might not a 'flood' of 'low and degenerate men' imperil the very core of one's existence?

This called for rigorous defence. In September formal associations were inaugurated on the rather unsophisticated footing that "if they scotched the immigration in its inception they would kill it, but if they let it go it would kill them."³⁴ After initial meetings and the appointment of chairmen, resolutions were passed to defend and preserve the rights of white workers specifically but whiteness more generally. With "their being brought into the country a race of people incapable of description - of every shade of colour" there became the looming "danger of a mixed colony of half-breeds, all-claiming citizenship."³⁵ Specifically, the Colonial Patriotic Union (CPU) and European Protection Agency (EPA) demanded a legislative limit to immigration and powers of compulsion for others to leave. Not only were the burgesses in jeopardy, so too was the material infrastructure of the town itself. "Houses that, only a short time ago were a pleasure to look at and are now simply a heap of filth and dirt...for the people of Durban to let this kind of thing go on unchecked will mean ruin to themselves in both pleasure and health," claimed one.³⁶

In this context, prevailing metropolitan theories around urban space were important, as Swanson and, more recently, Geoffrey Popke has shown.³⁷ For all the progressive intentions of the reform-minded, the 19th century Atlantic city was one in which pervasive destitution, unregulated space and grime were interconnected and intense phobia. Urbanism was framed as a pathology in which only aggressive sanitary and medical intervention or the removal and/or the exclusion of the deprived could instil community order and therefore salvage the race and the promise of liberal modernity.³⁸

³³ See Saul Dubow, *Illicit Union. Scientific Racism in Modern South Africa* (Cambridge: Cambridge University Press, 1995).

³⁴ *The Mercury*, "European Protection Agency," 18 Sep. 1896.

³⁵ *The Mercury*, "Asiatic Invasion," 27 Nov. 1896.

³⁶ *The Mercury*, "Correspondence," 18 Sep. 1896.

³⁷ Swanson, "Asiatic Menace" and Jeffrey Popke, "Managing Alterity: Narratives of Race, Space and Labour in Durban, 1870-1920" in *Journal of Historical Geography* 9 (2), 2003: pp. 248-267.

³⁸ For a Foucauldian reading of the process by which liberal freedom was regulated and built into the very materiality of the city, see Patrick Joyce, Patrick Joyce, *The Rule of Freedom: Liberalism and the Modern City* (London: Verso, 2003). See also Steadman-Jones, *Outcast London*.

When, in November's meeting, one of the members of the CPU, spoke of Natal as being "the most equitably governed country south of the equator"³⁹, what he really meant was that the colony upheld the 'standards of civilization' common to the European bourgeois tradition and based loosely on Christian law. This spoke to the values of institutionalized property rights and courts, comity and intercourse bound by mutual respect and upheld by a centralized state. Asian and African political systems, indeed Asians and Africans themselves, were, in the view of European thinkers and writers, beyond and extraneous to this general concept of 'civilization' and a perceptible threat to it. But, and importantly, the threat to these standards of civilization could also come from *within*. As the news broke that the *Naderi* and the *Courland* were en-route to Durban and would be attempting to land, the culmination of the uncompromising and radical opposition to Indian immigration as an affront to 'decent livelihood' introduced the new problem of confrontation and violence. In the excitable days of late 1896, this was no mere fancy and without proper surveillance, the 'abyss of degradation' could easily intensify in the psychological realm and extend to whites.⁴⁰

Unrelaxing Vigilance

When a Demonstration Committee was formed with the intent of doing more than passing resolutions given the immanent arrival of the boats, *The Mercury* voiced the first concerns in its editorial on New Year's Day of 1897 about any gathering on the wharves:

Crowds are curious psychological conglomeration. [They] seem to develop an individuality of their own, generally of an exaggerated character. The mind of the crowd seems to be composed of and to absorb the abnormal feelings of the individual and the result is, as it were, a collective mind made up of the abnormal atoms in the mental composition of individuals in the crowd, and being abnormal is largely irresponsible, easily excited, and hard to control.⁴¹

This shifted attention to the harbour itself as the first barrier between the dangers of degenerate migrants and the 'standards of civilization.' It was here that the harbour

³⁹ *The Mercury*, "Asiatic Invasion," 27 Nov. 1896.

⁴⁰ *The Mercury*, "The Asiatic Question," 22 Jan. 1897.

⁴¹ *The Mercury*, "Proposed Anti-Asiatic Demonstration," 1 Jan. 1897.

became the point of actual contamination, and it was from this moment that the port first became subject to 'unrelaxing vigilance', an atmosphere that would endure for decades to come. Safety required a perfect line.

The ships were put into an unusually long quarantine through stalling tactics on the part of the administration while the controversy nudged toward resolution. Continued measures against what was now specifically and consciously being termed an 'Invasion' began. It is hard to miss the militant tone, as the administration implored that any rash act would destabilize both the ultimate aims of the demonstrators and the existing sympathies the government shared with the movement. Escombe insisted on "the most perfect preservation of law and order."⁴² As the Government became increasingly powerless and it became clear that the quarantine could not last forever, the demonstration committee headed by Harry Sparks, another of the self-made men with pretensions to political power, began to detail plans to crowds ranging from 1500-5000 people in halls across Durban.



Figure 7. "Asiatic Immigration Protest, 1897." Source: Pietermaritzburg Archives Repository.

⁴² The *Mercury*, "The Proposed Demonstration," 7 Jan. 1897.



Figure 8. “Asiatic Immigration Protest, 1897”

Source: Pietermaritzburg Archives Repository.

All men were asked to do their duty, and to “all fall in.” Bands of volunteers and mounted buglers paraded the streets and helped with the closing of stores, particularly those selling liquor. Paramount was that the ‘rule of law’, ‘standards of civilization’ and ‘fair play’ be maintained. Signallers camped on the beaches; an ‘Intelligence Department’ directed matters and detailed positions on the wharf, each signified by placards.⁴³

In the meantime efforts were made to have the ships return to India, which the master’s refused, on the grounds of expense rather than principle. It emerged in discussions that most of the passengers were Natal residents anyway and were reluctantly agreed to be acceptable enough to return. On January 13, as “The Advance” proceeded to meet the ships whose master’s had tired of the long round of negotiations, matters were at a stalemate. Harry Escombe, in a crucial intervention, addressed the crowd and conceded that immigration had, and would, become the Governments’ responsibility. His speech recalled the values of manliness and the justice – ‘the cause of civilization’ - of the Queen’s Empire: the ‘Abyss of degradation’ had been avoided, at least for the time being.⁴⁴ The Demonstration Committee retreated, holding Escombe to his word and hoping that their temporary victory was not a pyrrhic one. They were not to be disappointed.

⁴³ *The Mercury*, “The Asiatic Invasion,” 8 Jan. 1897.

⁴⁴ *The Mercury*, “The Advance,” 14 Jan. 1897.

Broadly and rapidly sketched, then, these elements formed the immediate backdrop to the origins of the Immigration Restriction Act 1 of 1897. The act initially informed not only the exclusion of Indian migrants for which it was expressly designed, but as the new century opened, also those undesirables from sundry corners of the map, including almost 2000 passengers and several thousand more labourers from Britain itself. If the agitators cramming Durban's halls cared only for the "rule of self-preservation," it was left to Harry Escombe and his legislators to navigate the choppy seas of the international and imperial system. What was the legislative genealogy of this process?

Calling a Spade a Shovel

That the impetus for restriction in Natal was part of a broader international movement to regulate mobility had been signified at the very first meeting that protested the arrival of artisan Indians, where it was testified that "the spirit here is the same that bundled Chinese coolies and all their belongings into the sea in America and Australia."⁴⁵ Indeed, it was American immigration legislation of the 1890s that, after long discussion, inspired the Natal Act that Harry Escombe tabled in the legislative assembly in March of 1897. Escombe, with common backing from white settler Natalians, originally thought the most efficient way to disentangle the 'Asiatic question' was to implement an explicitly racial immigration bill along the lines of that circulated by the New South Wales parliament in 1896.⁴⁶ However, the political imperatives of the imperial system, whereby all British subjects – Indians, therefore - had constitutional freedom of movement throughout the empire, thwarted these plans. With the need for a quick decision weighing heavily on the minds of the administrators and the threat of violence by agitators and the 'abyss of degradation', Escombe decided to replace the New South Wales formula with one that made no explicit mention of race or colour, although it was fairly obvious to all concerned when Escombe asked in his motion whether the assembly "could imagine anything more mad of a government than that it should apply [the act] of that kind to English immigrants? The object of the bill is to deal with Asiatic immigrants."⁴⁷ Still, this could not be put into official wording.

⁴⁵ *The Mercury*, "Importation of Indian Mechanics," 12 Aug. 1896

⁴⁶ Jeremy Martens, "Natal and New South Wales." The New South Wales bill stated that "all persons belonging to any coloured race inhabiting the Continent of Asia or the Continent of Africa, or any island adjacent thereto, or any island in the Pacific Ocean or the Indian Ocean."

⁴⁷ Colony of Natal, *Debates* XXV, p. 71.

Escombe's solution had devolved from a suggestion by Joseph Chamberlain, the Colonial Secretary, that a bill dealing with the "indigent or ignorant" would be far more palatable to Imperial sensitivities.⁴⁸ Thus, in an almost exact lifting of provisions from American legislation, the Act would make undesirable "all idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, persons who have been convicted of a felony or other infamous crime or misdemeanour involving moral turpitude" and "who when asked to do so by an officer appointed under this Act shall fail to himself write out and sign in the characters of any language of Europe an application to the Colonial Secretary." The Education Test was the perfect foil to passing racially inspired but neutrally codified prohibition. I will return this latter innovation, as well as other provisions to actually enforce the legislation, its development and implications in Chapter 3. For now it suffices to say that Natal's IR Act was celebrated, in an Imperial conference of 1897, as the kind of legislation that was acceptable to both the colonies and the British government. For Martens,

In the grand imperial scheme of things, the small colony of Natal was an insignificant and peripheral dominion and yet its solution to the 'Asiatic question' in 1897 was to have a significant impact on the history of immigration restriction in the British Empire. The Commonwealth of Australia, New Zealand, the Cape Colony and Transvaal all adopted the 'Natal test', as did South Africa following the creation of the Union.⁴⁹

Although the focus of this chapter is on *why* rather than *how* restriction was carried out, I want to return briefly to the debate in the Legislative Assembly that preceded the actual design of the 'Natal Formula.' The flipside of making the bill 'non-racial' was that it appeared on the surface to restrict European immigrants. Henry Binns was one of Escombe's fiercest critics, but his dispute was not with restriction *per se*. Indeed, it is important to remember that Binns was interested merely in the most effective way to enforce restriction; he had, after all, visited India in the 1890s with the aim of negotiating an agreement to prevent time-expired Indians from settling and was by no means pro-immigration. In the 1897 debates, Binns thought the implication of the non-racial character of the provisions would be to stop *all* people coming in, particular those who he felt had made Natal a 'home for Europeans.' Calling Escombe's

⁴⁸ Martens, "Natal and New South Wales"

⁴⁹ Marten, "Natal and New South Wales." p. 344

American inspired formula “mischievous,” Binns insisted, with respect to Europeans, that “we have men in this country, and plenty of prosperous men and good colonists, who came here without the ability to read or write.”⁵⁰ Likewise, an early suggestion – ultimately conceded by Escombe – that immigrants to be in possession of £25 was shot down by Binns because “some of our best colonists are those...that landed with nothing but a bag of tools and half-a-crown, and another with a pair of scissors, a various other similar experiences, and you are going to prevent again a good colonist because he has not got £25 in his pocket!”⁵¹ Escombe changed the provision to ultimately reflect “visible means of support,” but the condemnation continued. Asking Escombe “to call a spade a spade,” other members of the legislative assembly (MLA) joined in the critique. Symon’s was the most charged, referring to the obstruction of Europeans as “diabolical and monstrous.” He turned the argument up-side down and declared the biggest danger facing the colony was Escombe himself.⁵² In the face of the daunting criticism for not being more explicit on the question of race, Escombe held firm and was held by the wider constraints of imperial decision-making. The bill, he maintained, would apply “to all undesirables and bad characters”; re-iterating that “the intention of this Bill is directed against Asiatics and against all other classes of undesirable immigrants; Asiatics in the primary degree and others in a secondary degree.”⁵³ He ultimately defeated his sceptics by pointing out that nothing in the provisions was absolutely compulsory for the immigration officer to follow for each and every potential case, and that the Supreme Court had no power to compel investigation of every immigrant. Asked what the procedure would be “supposing an Englishman, a Dutchman or a German present himself...and he cannot write out and sign in any European language the form mentioned in the Bill?,” Escombe’s answer was confident and to the point: “You can stretch the Bill to any extent you please,” meaning, of course, that it precisely would *not* be stretched to include Europeans.⁵⁴ This discretionary aspect placed, then, considerable power in the hands of the Immigration Restriction Officer. Criticism, even outside the colony, was striking: the Act was described as something more severe than even the ‘retrograde and regrettable’ Transvaal Aliens’ Act of 1896 which had since been modified and repealed. That Europeans might be barred from entering the colony was an entirely novel aspect to South African law. Within a matter of years, however, those concerns had extinguished.

⁵⁰ Colony of Natal, *Debates XXV*. pp. 89-90

⁵¹ Colony of Natal, *Debates XXV*. p. 90

⁵² Colony of Natal, *Debates XXV*. p. 113

⁵³ Colony of Natal, *Debates XXV*. p. 123

⁵⁴ Colony of Natal, *Debates XXV*. p. 163

In the meantime, the precise mechanics of the IR Act were worked out in a long and winding almost riverine debate which took several weeks before it reached the ocean, gazetted as the Immigration Act 1 of 1897, “to place restrictions on immigration.”⁵⁵ The points eventually agreed upon gave a number of concessions to those arguing the danger of sweeping legislations, a cluster of exemptions were included for those who could obtain the consent of the Colonial Secretary and have due accreditation verified in a certificate. Other exemptions included those on government approved labour schemes, crown naval and land forces, as well as passing combatants of “any ship of war.” Wives and children of admitted immigrants were also not to be subject to examination or investigation, and those who were previously resident in the colony – not on contracts of indenture – would have right of return on proving their domicile status, although the actual officially sanctioned method of ‘proof’ would be worked out in time by the bureaucracy . For those who might be admissible but could not prove it whilst abroad, a system of deposits of £100 was tabled, in which the applicant had a week to gain ‘consent to remain’ from the Colonial Secretary or a local magistrate before he forfeited the deposit and was declared illegal.

The prohibited migrants were, as we have seen, first and foremost those who failed to write out and sign a form “in any language of Europe.” For others, the rescinding of the £25 condition was replaced by a prohibition on a vaguer criterion of visibly being a “pauper” or “likely to become a public charge.” The other conditions of prohibition, to recap, included any “idiot or insane person,” those suffering from a ‘contagious disease’ , anybody who had within the past two years committed a crime involving ‘moral turpitude’ and finally prostitutes or those living off the proceeds thereof. These terms defining prohibited classes were vague and not elaborated upon and time and again over the following 15 years, the ambiguities would vex the IRD.

Prohibited immigrants were effectively criminalized the moment they stepped on Natal soil, and were banished from being able to acquire land or exercise the franchise. Sentencing rested on jail-term of a maximum of 6 months (although available remaining records suggest the majority of cases were given half that), to be followed by deportation. An early release, or avoiding imprisonment entirely, was possible if deportation could be arranged sooner, and authorities were generally keen to rid themselves of responsibility

⁵⁵ For the full legislation, see Appendix.

for prohibited immigrants. A further allowance was made whereby a captured inadmissible would be allowed one month to leave, on the condition that two sureties of £50 each were found and refunded only once he had left. Responsibility rested – as we will see in a later chapter – with shipping companies, the much contested Section 8, in which shipping companies became the first line of defence and were to be held liable and financially responsible for the escape or landing of any prohibited immigrant. Fines of £100 were to be levied (although, given vociferous protest from the companies, amounts this high were very rarely imposed) on the ships, and failure to pay or account could result in the denial of clearance of papers, effectively marooning a ship, a great cost, in Durban's harbour. A further clause in the Act stipulated that where prohibited immigrants could not be caught and a ship was allowed to sail, a contract between the government and a range of shipping companies – funded by the former – assured the actual carrying out of deportation orders. In the initial absence of trained and specialized staff, police officers any “other officers” appointed by the governor were to be employed as guards and inspectors for the carrying out of the act, and “aiding and abetting” the landing of a prohibited immigrant was more stringently punishable than an illegal landing itself: conspirators were liable to 12 months in jail with hard labour.

Finally, in a clause that scandalized one MLA who it found “extra-ordinary” that the government should in effect define crimes on the basis of mere “rules and regulations,” the Governor-in-Council reserved the right to make, amend and repeal rules and regulations pertaining to Immigration restriction as he saw fit. The MLA who protested was not without insight, warning of the dangers the government was facing if it “drifted this way.”⁵⁶ The man made responsible for designing and implanting the “rules and regulations” on which the practical enforcement of the act in essence rested was Harry Smith (below), who was employed from the beginning to head up the new Immigration Restriction Department (IRD) as the Immigration Restriction Officer (IRO); as the bureaucracy expanded in size and staff, his designation would become chief, and then principal, immigration officer and but for short periods of leave (in which authority devolved to G.W. Dick, known in some, principally Indian, circles with something less than affection as “Dick at the Gate”).⁵⁷ Smith was at the proverbial helm of Immigration policy throughout the period which I consider in this thesis.

⁵⁶ Colony of Natal, *Debates* XXV, p. 195.

⁵⁷ Thanks to Goolam Vahed for mentioning this in a conversation just before going to print.



Figure 9. Harry Smith

Principle Immigration Restriction Officer

Source: *South African Who's Who 1910*

Ken Donaldson (ed.), (Johannesburg, 1910). p. 438

The Immigration Restriction Department was set up initially with offices at the port to administer the Act, with a much smaller – and generally ineffectual – border station at Charlestown on the Transvaal border that eventually fell out of use with Union in 1910. Smith (figure 9) had arrived in South Africa from England in 1879 and had worked for the Harbour Board since 1882. He had held a number of positions of authority in the administration of fisheries, passes, master and servants contracts and various aspects of immigration, including the European immigration branches of the bureaucracy and was well-versed in questions of immigration at ports particularly.⁵⁸ With his new appointment at the helm of the IRD, his brief was to become large and difficult. While I offer no further biography of the man in the pages that follow, Smith was also a voluminous writer on the subject of his job in which he clearly took a deep and personal interest, and in the chapters that follow ample, even copious reference is made to him. It is not my intention to argue that the fate of Immigration Restriction in Natal was a one-man show, but given his vast discretionary powers and the evident enthusiasm for the tasks at hand, it would be amiss not to draw attention to the personal influence he had on those both higher up and further down the chain of command, and not to mention the migrants themselves who, in these formative days, often had personal and personalized access to Smith.

As for Harry Escombe, his urgent priority had clearly been the solution to the immediate Asian immigration problem, and it is doubtful in 1897 whether the question

⁵⁸ Ken Donaldson, ed., *South African Who's Who 1910* (Ken Donaldson: Johannesburg, 1910). p. 438.

of European immigration weighed particularly heavy on his mind, despite the loud murmurings from the back-benches. Yet the ambiguous legislative posture toward Europeans, not fully resolved, would become an important aspect in the years that followed and Harry Smith would have plenty of scope to “stretch the bill as far as [he] pleased.” Europeans – non-Asians - would, in fact, also become an important target of the incipient immigration regime.

These innovative legal roots and administrative branches, and concomitant official zeal in limiting immigration into Natal, migrated throughout the region in the years that followed. Most conspicuous was the Cape Colony. There, strong and wide-ranging anti-alien rhetoric manifested in intense politicking in the unsettled electoral environment of the post-War years as parties stood to make and gain political capital of the social, economic and even moral scapegoat of the outsider. Exclusionary immigrant legislation was passed in the form of the 1904 Cape Exclusion Act that aimed at, and eventually succeeded in, the political ostracization of the relatively long-established, if small, Chinese community.⁵⁹ That act rested on the explicit racialisation of exclusion and was based on a system of hard-to-win exemption by permit, as well as stiff penalties for contravention, deportation policy and a somewhat inflexible provision that limited and regulated how long any Chinese might stay outside the colony, an effort to curtail multiple migrations.⁶⁰ During the same period, strong anti-Jewish sentiments coloured much of the debate around the Cape’s more general immigration restriction legislation of 1902 and the Amendment of 1906, as well as important statutes governing naturalization and dealer licenses.⁶¹ All became, in varying degrees, increasingly restrictive and limiting. These bureaucratic and official reflexes, however, had already begun in Natal in the late 1890s even if the precise mechanics differed.

Conclusion

One aim of this chapter has been to situate Immigration restriction within an existing historiography specific to Durban and Natal and acts, therefore, partly as an overview of that literature. Natal’s Immigration Legislation passed in 1897 and the development of its actual mechanisms and technologies was at the forefront of wider

⁵⁹ See Karen Harris, “Encouraged and excluded: the Chinese at the Cape a century ago,” paper presented at the *Historical Association of South Africa Conference*, Stellenbosch, April, 2004. Publication forthcoming.

⁶⁰ Harris, “Encouraged and Excluded,” pp. 16-18.

⁶¹ See M. Shain “Diamonds, pogroms and undesirables - Anti-alienism and legislation in the Cape Colony, 1890-1906,” in *South African Historical Journal*, 12 (1980): pp. 13-28

imperial debates over exclusion and citizenship, and this story informs the modernizing project of the South Africa's political and legal cultures.⁶² The establishment, by the 1897 legislation, of the IRD headed by Harry Smith was to be a crucial actor in shaping the urban profile of Durban during the almost 15 years of its pre-Union existence. The IRD developed into an important and supplementary arm of governance aimed at policing undesirables and acting as a gatekeeper to a stratified urban order.

The production of illegality is historically contingent and the 'illegal alien' tends to tell us something of how the internal spaces of incipient 'nationhood' were being constructed rather than some essential quality of the alien. The first immigration controversy over the summer of 1896/97 thus marked both the culmination of long simmering anti-Asian agitation and, more importantly I think, the beginnings of the new ways of imaging the boundaries of the colony. This was, and would be, framed within a eugenic context and contamination/degeneration of the Shepstonian social order, and in so doing complicates the established "anti-Indian" emphasis of the historiography around the 1897 IR Act by bringing poor whites/Europeans and urban Africans into focus, which is my explicit aim in the following chapter. Thus, before focusing on the workings and technologies of the department which is the focus of chapters 4 and 5, several further preliminary questions are posed: How undesirability and foreignness was further conceived – beyond the 'Asiatic' fixation - will allow us to connect the social geography of Durban with a broader Indian-Ocean world and, by turning analysis without, may help us see with yet greater clarity the internal spaces of the city in the years *after* 1897.

⁶² See Jonathan Klaaren, "Migrating to Citizenship: Mobility, Law and Nationality in South Africa, 1897-1937" (Ph.D. diss., Yale University, 2004); Martin Channock *The Making of South African Legal Culture, 1902-1936. Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001).

Chapter 3

Moths to a Candle Crisis, City and Restriction

Introduction

For all the brouhaha over the ‘Asiatic Invasion’ in the summer of 1897, it was a wider panic during the outbreak of the South African war that sharpened the lines of exclusion and gave longer administrative teeth to those processes of restriction which had been set in motion by the Immigration Restriction Act (IR Act) framed after *Naderi* and *Courland* controversy. It was no coincidence that the noose of that Act tightened almost immediately after the war’s end, initially through the 1903 Amendment and then through several subsequent revisions and additional rules and regulations which followed over the rest of the decade. Importantly, these also spread to South Africa’s other colonies. These rule-based ‘technological’ innovations are considered in Chapters 4 and 5. Here, I want to continue the investigation into ‘undesirability’ and consider the shock of the war; the initial stages of the combat encouraged increased and unchecked mobility of people and deepened civil emergency outside the main areas of conflict; port cities became a natural magnet for those expelled by circumstance or decree from the Transvaal. During subsequent parts of the conflict, systems of mobility restriction and regulation emerged in reflex, and lingered afterwards in the restrictive legislation of the Cape, Transvaal and Orange River colonies in addition, of course, to packing Natal’s legal code with greater clout.

This experience of the war did less to revolutionise than it did to cement fixations over unregulated mobility and accentuated the need to manage the social composition of the colony’s population. This is important in understanding the motivation and backdrop to the formulation and development of the specific technologies of exclusion around Natal and the Durban’s port specifically, as well entrenching the kind of migration regimes that might percolate throughout the imperial world and help in setting the foundations of the modern systems of border control. The political enthusiasm for basic systems of exclusion in South Africa was at least partly born out of British colonial exposure to multiple migratory pathways – some forced, others not - that converged in Natal and Durban specifically from 1899 to about 1906.

Despite the formal exclusion of undesirable Indians, then, the alien question remained as its meaning shifted in the decade after 1897. In the years that followed 1897, the city very quickly earned itself a popular reputation as a “dumping ground for

undesirables,” infamous for its high crime rates, urban *disorder* and a powerful challenge to that pre-war settler polity which Escombe so lauded.

Paul La Hausse has vigorously engaged with different aspects of the upheaval that constituted Durban’s social and economic realm in the first decade of the 20th century, concentrating on criminal activity amongst *amalaita* gangs and the struggle over the supply of alcohol, both of which were powerful and related metaphors of degeneracy to administrators and settler society in general and which were ultimately resolved by the enactment of more stringent and innovative systems of control, known as the ‘Durban-System’.¹ Ros Posel’s work on prostitution shares similar themes.² Even a cursory review of the daily press of the period displays a spirit of moral panic and civil emergency. The threat seemed many-headed: La Hausse himself acknowledges that

reading the inscriptions carved by Durban’s popular classes in the niches of a developing labour-coercive economy, one discerns the hand of Togg worker as part of a more general text bearing the script of the rickshaw-puller, the marginalized peasant, lumpen elements who formed themselves into *amalaita* gangs, prostitutes, domestic workers living in backyards and shacks, traders in dagga, animal skins and herbs, washer men and washerwoman and most importantly, beer brewers.³

To this list we might add that of the undesirable immigrant, the alien and the passage-worker. The arrival of large numbers of passengers and labourers who variously sought to live, work or pass through Durban added a new and troubling dimension to the challenges of maintaining Durban’s British colonial and desirable ‘social character’. At least four related reasons account for what the tabloid press repeatedly referred to, in familiar phraseology, as variously an ‘invasion,’ ‘a flood’ and the seemingly inescapable possibility of the city becoming “a modern Babylon.”⁴ The first, as discussed earlier, was related to broad technological advances in steamships and the dredging and consequent opening of Durban’s harbour to steamships of considerable larger size and

¹ Paul La Hausse, “The Cows of Nongolozo: Youth, Crime and Amalaita Gangs in Durban, 1900- 1936,” *Journal of Southern African Studies* 16 (1), 1990: pp. 79-111 and “The Struggle for the City: Alcohol, the Ematsheni and Popular Culture in Durban, 1902-1936” in Paul Maylam and Ian Edwards (eds.), *The People’s City: African Life in Twentieth Century Durban* (Pietermaritzburg: University of Natal Press, 1996), pp. 33-66.

² Ros Posel, “Continental Women’ and Durban’s ‘Social Evil,’ 1899-1905,” *Journal of Natal and Zulu History* 12, 1989: pp. 1-14

³ La Hausse, “Struggle for the City,” p. 40

⁴ *The Natal Mercury*, “A Modern Babylon,” 11 Nov. 1903.

tonnage. This was a lengthy process but whose ultimate success between 1897 and 1907 dovetails with the immigration scares.⁵ This encouraged unprecedented peaks in the traffic of goods and people as Durban became the primary port in southern Africa, something that was actively courted to trump competition from Lorenzo-Marques, 350km to the north and geographically closer to Johannesburg. The urbanization of the Rand and its consequent opportunities as a fast-growing metropolis feeding off the structural milieu of the mineral revolution made Durban its primary conduit. Durban was also a destination in itself, offering opportunities if not similar at least parallel to those on the Rand.⁶ Finally, the civil disturbances of the South African War and its immediate aftermath account for the anxieties around less militaristic ‘invasions’. This has usually been couched in the language of ‘the refugee,’ but the term belies the more complex motivations and factors around civilian mobility at the time, as well as including discharged irregulars, maritime labourers and released prisoners who, for the Chief Constable, “gravitated to [Durban] as moths to a candle.”⁷

While the protracted military battles between 1899 and 1901 on the South African veld drew most attention in the popular press and the many reams of historiographical work on the topic, it was in the political offices of High Commissioner Lord Alfred Milner and Colonial Secretary Joseph Chamberlain that a different kind of trench was being constructed, one that effectively drew the social boundaries of a new and normative white society in which the unemployed and the indigent, in addition to the usual Asiatic suspects, would be barred from crossing.⁸ With the unmanageable cosmopolitanism of the populace potentially compelling a keen check upon power-contests within white, political society, it was Lord Milner who took the deepest interest in shuffling the class and racial structure of a new society free from contagion and he ultimately who dictated the terms of re-entry.⁹ The Natal Immigration Act was to play an important role, both on its own terms and for the inspiration it gave to later acts

⁵ The definitive moment is generally considered to be the entrance of the 174m, 13000 tonne *Armada* Castle in 1904. The story of the dredging of the harbour mouth is detailed and long, and is amply covered in both contemporary and more recent literature, though much of it technical. The friendliest for the lay is Tony Pearson, *African Keyport. The Story of the Port of Durban* (Rossborough: Accucut Books, 1995).

⁶ Charles Van Onselen, *Studies in the Social and Economic History of the Witwatersrand 1886-1914. New Babylon and New Ninerab*, 2 vols. (Johannesburg: Raven Press, 1982).

⁷ DBP/MPR, Jan. 1899. These reports, as well as a substantial number apparently missing from the municipal archive, were printed verbatim in *The Mercury* as a matter of public interest on a monthly and yearly basis for the years under consideration. The printed reports were given different headlines depending on the editor's point of view. For simplicity, I will refer to these as “Monthly/Annual Police Report.” Unless otherwise stated, these reports were written by Constable Alexander.

⁸ Donald Denoon, *A Grand Illusion: The Failure of Imperial Policy in the Transvaal* (London: Longman, 1973).

⁹ See Shula Marks and Stanley Trapido, “Lord Milner and the South African State” in *History Workshop Journal* 8, 1979: pp. 50-81

passed in the Cape, the Transvaal and ultimately the Union. With energies also channelling in the reverse direction, such wider regional tropes of exclusion also energized, gave impetus to and honed Harry Smith's fledgling bureaucracy.

The population movements which leapt to prominence by the occasion of war were part of a broader process, enmeshed within the particularistic and global economies of an industrializing South Africa whose cities, in the last two decades of the 19th century were undergoing an acute urban metamorphosis after the discovery of unheralded mineral wealth. In the years preceding hostilities, the burgeoning area around The Rand - it was less a city than a collection of districts, business, warehouses, mines and compounds - had drawn into its ambit a heterogeneous population of Africans, Europeans, Asians and Americans and had an unmistakably cosmopolitan, if dusty, air with implications for forwarding stations such as Cape Town, Port Elizabeth and Durban. In all of these more peripheral centres, technological innovation and economic growth shared in a reciprocal boom. The port of Natal developed subsidiary industries in coaling and dredging, transport, building and manufacture as a well trading and hawking through which its population of just fewer than 50,000 sustained itself. Administrators self-consciously kindled its transition from borough to urban conurbation.¹⁰

Harry Escombe had throughout his charismatic political life championed two inter-related causes above all others: the technological advancement and opening up of the harbour channel to facilitate increased traffic in goods and capital, and the regulation of immigration to constrain the movement of certain categories of people who were arriving to make the most of new possibilities of a region increasing pivotal to world economies based on the gold standard.¹¹ In addition, outstripping those coming to settle in the colony of Natal was an impressive through-traffic en-route to the goldfields further north. An exhaustive survey of those passing through would not be possible, but as arriving passengers at Durban were no longer sporadic boats of passenger Indians arriving from south Asia and Arabia. Africans - if not already tied into the separate bureaucracy of the Native Pass Law of 1901 - moved down from the east coast: Mozambique, Zanzibar and as far north as Somalia provided labour, including some

¹⁰ See for example, the contemporary celebration and review in W.P.M Henderson, *Durban: Fifty Years Municipal History* (Pietermaritzburg: Robinson, 1904); another contemporary source regrets the passing of the earlier 'borough' days. See George Russell, *The History of Old Durban: Reminiscences of an Emigrant of 1850* (Pietermaritzburg: P. Davis, 1899).

¹¹ For Harry Escombe's political stance, see J.T Henderson (ed.), *Speeches of the Right Honourable Harry Escombe* (Pietermaritzburg: P.Davis, 1903).

short-lived indenture schemes. As global forces mutated into localized problems, large numbers of Eastern Europeans, putting distance between themselves and the depredations of Tsarist Russia, economic calamity and, in the case of Yiddish speakers, widespread anti-Semitism, began to arrive in South Africa.¹² A hotchpotch of western and southern Europeans and Scandinavians also sought to make good opportunities in trade and employment in the mine economy and the allied enterprises that supported it, while a shortage of domestic servants and, inevitably, female bodies drew women into controversial immigration schemes in a mixture of state-sanctioned (as domestic servants) and underworld networks (as sex workers).¹³ The morally charged renewal of the social landscape of New York also expunged the corrupt Tammany Hall administration and with it, by degrees, some of its more malfeasant coteries of pimps, criminals and traffickers, whose ambitions saw niche-markets in the turmoil and commotion of the end-days of Zuid-Afrikaansche Republiek.¹⁴ For the port cities, additional ships meant additional crews who, from the authorities' point of view, were likely to abscond from their stations and add additional pressures to civic resources and to contaminate the imagined canvas of a city heavily redolent of colonial bourgeois aspirations. Of particular note here was the muleteer phenomenon, squads of low-skilled, labouring men whose sundry origins stretched from Mississippi to Madagascar. The cattle trade had long been a widespread problem for port cities flanking the oceans of the imperial world.

It was in Liverpool in the 1880s that a large company of such muleteers – almost destitute – had become stranded on shore when the captain discharged them and they could find no further work. The incident led, through merchant shipping regulations, for captains to be held responsible and to provide security for the discharged men; a

¹² There is abundant literature on emigration from Eastern Europe – as elsewhere – in the 'great age of migration,' most concentrating on the journey to the United States. It is beyond the focus of this study to engage more fully with these experiences, but one seminal study is Moses Richin, *The Promised City: New York's Jews 1870-1914* (Cambridge, Mass: Harvard University Press, 1962). For South Africa, see R. Krut, "The Making of a South African Jewish Community in Johannesburg, 1886-1914" in Belinda Bozzolli (ed.) *Class, Community and Conflict: South African Perspectives* (Johannesburg: Raven Press, 1987), pp. 134-159.

¹³ For female immigration, see Cecille Swaisland, *Servants and Gentlewomen to the Golden Land: The Emigration of Single Women from Britain to South Africa, 1820-1939* (Pietermaritzburg: University of Natal Press, 1993). There are a number of other publications that survey the various streams of European immigration, but most take almost no account of the others. See amongst others Eero Kuparinen, *An African Alternative: Nordic Migration to South Africa 1815-1914* (Helsinki: Finnish Historical Society, 1991); G.B Dickason, *Cornish Immigrants to South Africa: The Cousin Jacks' Contribution to Mining and Commerce, 1820-1920* (Balkema: 1978)

¹⁴ See Charles Van Onselen, *The Fox and the Lies. The World of Joseph Silver, Racketeer and Psychopath* (London: Jonathan Cape, 2007), pp. 60-132 and "The Modernization of the Zuid-Afrikaansche Republiek: F.E.T. Krause, J.C. Smuts, and the Struggle for the Johannesburg Public Prosecutor's Office, 1898-1899" in *Law and History Review* 21 (3), 2004: pp: 483-525.

provision that had weaved itself into the Natal IR Act. The enthusiasm for compliance with the directive remained haphazard, as the chief restriction officer Harry Smith would soon find out. This 'cattle' or 'mule' trade, although existing to some degree throughout the 1890s in South Africa, assumed concentrated proportions as the outbreak of war drew near and the demand for horses in the region outstripped supply. As the war dragged on, the demand grew in intensity and increasing numbers of cattlemen and labouring crews, as we will see, were to "add another variety of human samples"¹⁵ to those already in Durban. We will return to the experiences of the cattlemen later. First, refugees.

The Poor that Are With Us: Refugees

When the squalls of war broke out, almost all of the *nitlander* population on which commerce in Johannesburg turned was flung toward the coast. A curry of nationalities, creeds and ethnicities spilled out over the neighbouring territories and Natal was to receive its fair share. In 1899, with the British invasion immanent, Kruger's republic opened the prison gates in a tactic aimed at sowing confusion and panic in British military administrators, and most others were forced by fear or need to flee the Rand. As the war gained momentum (or rather ground into attrition) over 1900-1, those in the countryside – Africans living on farms or in settlements close to agricultural land and Afrikaner families – were swept up in the scorched-earth policies of the British military as they ferreted out an entrenched guerrilla force, principally by destroying the crops and homesteads in which the Afrikaners might find sustenance and shelter.¹⁶ Women, children and male civilians not engaged in the fighting were rounded up to be accommodated and sheltered in numerous concentration camps across the country. Such concentration camps were designed primarily as a contingent and strategic response to the pressures and demands of the particularities of the conflict by clearing the countryside of civilians both black and white whose presence was undesirable for any number of reasons. Controversies over staggering death-rates and conditions in the

¹⁵ This was the view of the *Mercury*, in 1905, commenting on the poor results of the Immigration Restriction Act. See the press cutting in PAR/IRD 35/134/1905.

¹⁶ Enthusiasm for research – of all qualities but generally limited to military themes – into the conflict never seems to tire with a consistent, yearly addition of titles to choose from. The best general history is probably Thomas Pakenham, *The Boer War* (London: Random House, 1979); civilian experiences are better considered by Burrige Spies, *Methods of Barbarism? Roberts and Kitchener and Civilians in the Boer Republics: January 1900 to May 1902* (Cape Town: Human and Rousseau, 1977), ch. 6; for short sub-alternist perspective see also Bill Nasson *Ujadela nen'osulapho: Black participation in the Anglo-Boer War* (Johannesburg: Raven Press, 1999).

camps would rage for years to come, and spark a parliamentary commission of enquiry.¹⁷ Though the vast majority of occupants of these camps were rural Afrikaner families, a number of foreign men – of Russian, French and German origin – also found themselves placed in such camps, pending guarantees from their respective consuls to secure the men's departure from South Africa.

The concentration camps were the most crude and obvious way to limit mobility in the war as Milner's forces actively scoured and flushed the territory of its agricultural and human capital, a sinister metaphor for the political *tubula rasa* from which the new administration would be built. Indeed, these have received the most popular, polemic and scholarly attention. Not all people, however, ended up in camps and they were, in fact, a relatively late development in the conflict. Just prior to the commencement of the formal conflict, the very first stream of refugees first made their way to Lorenzo-Marques, but conditions there soon overburdened local authorities and the distress pushed many to move further on. As the closest port, and the cheapest to reach by boat, the turmoil reached Durban in the spring of 1899, captured by newspaper headlines concerned at "The Rush from the 'Rand.'" Thousand arrived with the intention of waiting out developments. Others, hoping to return to Europe, America or India, used Durban as the conduit. One could not have missed in the September winds that year a frantic change in an otherwise quite port town. This acutely increased mobility and population growth was dramatic and exponential, especially over such a short period and added to a general atmosphere - at least in police circles – that the town was again under a kind of siege. This sense of siege was, like the anti-Asiatic agitation of 1896/7, underscored by the eugenic discourses of the later 19th and early 20th century as a 'contagion,' an unholy trinity of mal-influence that threatened established grids of race and 'law and order'.

At first, the "strange faces" pouring onto Durban's station platform in early September 1899 received sympathy, the main concern being over accommodation.¹⁸ By the next morning, the beach "a memorable sight," the borough police hastily set up a Relief Committee while hotel managers and residents themselves began to offer housing in any available spaces in the town's homes, back-streets and yards. The African Boating

¹⁷ See PAR/BPP/Cd. 893 *Concentration Camps Commission, Report on the Concentration Camps in South Africa by the Committee of Ladies, 1902* and BPP/Cd. 819, 902, 936 *Reports &c. on the Working of the Refugee Camps 1901-1902*. For insight into one humanitarian champion in the Concentration camps scandals, see Rykie Van Recnen (ed.), *Emily Hobhouse: Boer War Letters* (Cape Town: Human and Rosseau, 1999).

¹⁸ *The Mercury*, "Arrival of Refugees" 11 Sep. 1899.

Company opened its barracks for bed-less refugees and, as the crisis developed over the next two months, 'Canvas Towns' were set up at parks and open spaces, particular attention being paid to sanitation, health and a physical grid-order that responsible city government demanded.¹⁹ These concerns spoke much to the nexus of 'contaminating' anxieties and spaces of disorder detailed in the previous chapter: for 19th century notions of urbanity, the refugee crisis strained both material resources and moral groundings. Lord Milner kept a close watch on events.

The reaction of Durban's civil society was largely led by a number of charitable foundations and organizations, benevolent societies and of course the Relief Committees. The immediate concerns of food and shelter partially if temporarily addressed, the question turned to employment. A joiner who had been working the past 6 years in Johannesburg fretted: "here I am. But what's the chance of getting work?" he wrote to the *Natal Mercury*.²⁰ His choices were limited: volunteer regiments for fighting pulled some 7000 men, while others, if suitably qualified, could take up positions as ship-orderlies or, for those who preferred manual grind, a Railway Pioneer Corps and road-building public works endeavours were set-up. The Natal Harbour Department wanted men to clear bush for the ongoing port water-works, but low pay and hard labour was hardly an appealing combination for often professional people, or for anybody else for that matter. The reluctance to work was compounded when all able-bodied men were, by the necessities of frugal resources, taken off charity after six months in March of 1900. They were left to make do as best they could, sometimes as hawkers or running skittle alleys, for which the municipal authorities provided licenses. Despite the flurry of projects hastily conceived to offset the threat of idleness, signs of restlessness amongst the established residents began to filter through the daily pages of the *Mercury*. In October 'Cosmopolitan' warned of "an influx of the most pestilential type of ruffianism into the colony, but chiefly in the principal towns."²¹ A day later 'Durbanite' wrote in to complain of men "frittering away their time in the Durban streets," the spectre of laziness barely concealing another immanent round of degenerative anxieties.²²

¹⁹ *The Mercury*, "The Rush from the Rand," 23 Sep. 1899.

²⁰ *The Mercury*, "Visitors in Durban," 15 Sep. 1899. See also the many letters requesting assistance in the files of the Durban Uitlander Committee, PAR/Accessions (hereafter A) 1538, Durban Uitlander Committee 1900-1902.

²¹ *The Mercury*, Correspondence, 5 Oct. 1899.

²² *The Mercury*, Correspondence, 6 Oct. 1899.

The general ferment moved the Mayor to meet with his municipal technocrats, including the police constable Richard Alexander and declared that there was

Increasing grounds for uneasiness on parts of the residents of the town and neighbourhood by reason of the great influx of persons, white and coloured, whose very presence is inimical to security of life and property²³

Alexander rallied a call for more police as the volatile situation was further exacerbated by “Africans carrying knobkerries and sticks, a constant menace to the peace and comfort of law-abiding citizens.”²⁴ It is not difficult to see how anxieties around *amaluita* gangs later in the decade were prefigured here: precisely how the presence of foreigners and armed Africans were linked must remain in this particular instance a matter of conjecture.

When the SS *Raglan* and SS *Guelph* arrived from Delagoa Bay on October 12 1899, the numbers had swelled; it was estimated, to 15,000 refugees in the city. The Relief Committee met daily and the London Mayor’s Mansion House Fund was called upon to combat the increasing distress and poverty. The accommodation options, now augmented by the Trappist Monastery at Marianhill and further tents on the Back Beach, were, it was argued, no longer sufficient. With the Press expressing more unease that the town was filling with “the scum of the Rand,”²⁵ on October 24 the Governor of Natal hastily sent a message back to London. “Matters [are] critical” he wired, “1,100 Aliens landed yesterday, prisoners let loose; understand 8,000 more of same classes still to come...matters alarming.”²⁶ With the approval of the military administration, the Governor immediately sent instructions to the shipping companies and Harry Smith at the Immigration Restriction Department (IRD) that he would no longer tolerate the “worst foreign characters that can possibly be sent.”²⁷ Smith, however, was already in a pickle. In addition to the uitlanders, large numbers of arriving refugee Indians were threatening to overwhelm his systems of regulation, as I’ll return to in chapter 4.

On the peripheries of Natal, obvious doubts over the advantages of free movement in a time of war had already been brewing. Two weeks previously, the

²³ *The Mercury*, “Protection in Durban,” 7 Oct. 1899.

²⁴ *The Mercury*, “Protection in Durban,” 7 Oct. 1899.

²⁵ *The Mercury*, “Rand Scum,” 24 Oct. 1899.

²⁶ PRO/CO/CP 879/61/606/79. Hely-Hutchinson to Chamberlain, 24 Oct. 1899.

²⁷ *The Mercury*, “Dumping Down Undesirables,” 25 Oct. 1899.

General Commanding Officer in Natal had broadcast his intention to “stop and arrest all persons against whom there is reasonable suspicion” in the countryside and at the inland borders (although suspicion of precisely what he did not elaborate).²⁸ Such wide powers could only be exercised by the suspension of the peace-time legal codes, and a day later, Martial Law had been proclaimed “with grave consideration” across the outlying districts of the colony. Chamberlain initially withheld the declaration of Martial Law in Durban; his first move was for him to declare that only “respectable British subjects” were to be allowed to leave Delagoa Bay.²⁹ This might have seemed like convinced leadership, but it wasn’t actually workable in practice: the strained authorities protested from Delagoa Bay and a solution clearly had to be found. Milner wired Chamberlain agreeing that the “great difficulties at the ports are a danger to health and order and defensive measures” and immediately set to resolving the impasse, by requesting transport ships to move refugees back to Europe, calling upon the Mansion House to assist with funding.³⁰ Despite this, war anxieties continued to simmer, refugees continued to arrive in Durban (peaking, it was estimated, at some 25 000) and Martial Law was eventually extended to Durban on 28 October. On the 31st, the first restrictions on refugee mobility were enforced against passengers on the SS *Lusitania*; Smith’s IRD was roped in strictly to enforce the Immigration Restriction Act, patrol the harbour and again take up an entrenched position at the forefront of the ‘self-defence’ of the colony.

After a fortnight Milner met with a select committee including the Chief Justice of the Cape Colony, the Mayor of Cape Town and the General Manager of the Standard Bank, high-flyers, amongst others, in a new society. They took a collective appraisal of the refugee crisis in the ports and signed off a further £5000 to the relief committees, commenting that “there are a large number of refugees, including almost the whole of those who left the South African Republic at the last moment, who either started entirely destitute, or will become so in a very short space of time.” The new challenge to Milner was firmly set:

I foresee that the immediate future will stain our resources to the utmost. British South Africa is at present only beginning to feel the pressure of the immense burden thrown upon it by the whole expulsion of the inhabitants of Johannesburg. A large number are entirely destitute and of a very undesirable

²⁸ PRO/CO/CP 879/61/606/218. General Commanding Officer to Governor, 14 Oct. 1899.

²⁹ PRO/CO/CP 879/61/606/98. Chamberlain to Milner, 26 Oct. 1899.

³⁰ PRO/CO/CP 879/61/606/103. Milner to Chamberlain, 27 Oct. 1899.

class, the loafers and hangers-on of society [who are] buying stolen gold and selling liquor to natives... but they are nonetheless thrown on our hands and will cause an immense difficulty at all colonial ports....My own opinion is very decidedly to the effect that we should as quickly as possible remove them from South Africa altogether.³¹

By the beginning of 1900 the Mansion House fund was reaching exhaustion. More transports were requisitioned but it could assuage neither administrators nor refugees. Funds continued dwindling while the number of refugees did not and there were increasing signs in all of the port cities, and in Durban particularly, of continued “impatience and discontent.”³² By the middle of 1900, Johannesburg was taken by the British ranks and, for a moment, it seemed that a mercifully short conflict would soon reach the end of its coil – most did not realize it was but the beginnings of a more drawn out ‘informal’ phase of guerrilla war which would in short time inspire the recourse to the infamous concentration camps. At this point – mid 1900 - an important change in the motivations of people moving to and through Durban began to appear, and it was no longer clear that the refugee population that inhabited the city was actually hoping or trying to leave the region. New streams appeared to be made up of those *returning* in the hope that the ‘Rand would soon be re-opened for business. It created further confusion and difficulty for colonial authorities. Milner wrote with concern to Chamberlain that “the number of visitors is constantly increasing, most of them with no particular duty or business. Their presence is a hindrance rather than a help.”³³ The delays would drag on, while the railways remained closed and the towns of the Transvaal remained devoid of basic resources or the logistical support to get them there. Milner played off the various, factious Uitlander Committees and set up a hastily arranged bureaucracy in July of 1900 that consisted of a Central Registration Committee to oversee and regulate the return to the Transvaal. This was, in theory, aimed at preventing undesirables returning or those ‘illegally’ making their way to the territory for the first time from doing so. Over the rest of the year and well into the next, the Registration Committee slowly doled out return-permits in strict, staggered order, to the benefit, it was argued, of only those that fitted snugly into the new imperial vision for South Africa: professionals in mining, commerce and agriculture had first bite at the cherry, while the ‘irregulars’ and the working poor were left to seethe on the coast in the midst of rumours of banquets and balls for

³¹ PRO/CO/CP 879/61/606/235. Milner to Chamberlain, 13 Nov. 1899.

³² PRO/CO/CP 879/63/608/599. Milner to Chamberlain, 13 Apr. 1900

³³ PRO/CO/CP 879/66/644/83. Milner to Chamberlain, 10. Apr. 1900.

Milner's favourites up country.³⁴ While those charged with securing the new colony in the interests of state and capital toasted one another at dinner, bottle-necks of the unfortunate continued to gather at ports like Durban.

With the complete exhaustion of charitable funds an inevitable reality a year later, the authorities also hit upon another difficult-to-obtain permit system to supplement the IR Act of 1897 and to regulate the *entry* of passengers at South African ports, notably Cape Town, Port Elizabeth and Durban. The general principles of Natal's Immigration Restriction Act - once described as "severe" and "diabolical" in Natal's legislative assembly for the legal sanction it gave to excluding pauper Europeans and those 'without visible means of support' - were invoked with barely a murmur of opprobrium. Quite the contrary, immigration restriction, administered under the auspices of the military, was roundly lauded. A new 'passport system,' suggested by the Governor of Natal, Hely-Hutchinson, was to include all arrivals, including British, and the system was later to be applied at 'home' (meaning British) as well as foreign ports to prevent European undesirables who "are likely to go to England and embark there under assumed names."³⁵ Milner warmly agreed, and with Chamberlain, the three set upon regulating the minutiae of the permit system in October 1901 (see figure 10).³⁶

Figure 10. Martial Law Permit. Source: Colonial Office, Confidential Print.

PERMIT TO LAND IN SOUTH AFRICA.		Number
This permit is issued to		
class passenger per S.S.		sailing from
on the	day of	190 .
Occupation, profession, &c.		
Address in United Kingdom		
Personal description of the above-named		
Age about	Complexion	
Height	Hair	
Build	Eyes	
Family.		
Wife		
Sons		
Daughters		
Nature of business, &c., in, or reason for proceeding to, South Africa		
Destination in South Africa		
Permanent address in South Africa		

See overleaf.

³⁴ This is the revisionist perspective of Diana Cammak, "The Politics of Discontent: The Grievances of the Uitlander Refugees, 1899-1902" in *Journal of Southern African Studies* 8 (2), 1982: pp. 243-270.

³⁵ PRO/CO/CP 879/73/650/256. Secret Correspondence. Chamberlain to Milner, 13 Oct. 1901.

³⁶ A copy of the permit regulations can be found at PRO/CO/CP 879/71/688/30. Enclosure. Hely-Hutchinson to Chamberlain, 9 Jan. 1902.

I declare that I am a _____ subject and that I am proceeding to South Africa on the business, or for the purpose, stated above; that I have not been deported from that country or sent home as indigent or in any way at the expense of the British Government. I also declare that I am in possession of £100 (or in a position to maintain myself on arrival in South Africa), and further that I will not directly or indirectly assist, in any way whatsoever, His Majesty's enemies in South Africa, and that I am aware of the penalties of so doing under Martial law.

Signature

Witness

The General Officer Commanding in Chief in South Africa and all others whom it may concern.

This permit was issued to the above-named by order of the Secretary of State for War on the _____ day of _____ 190 .

Lieut.-Col,
D.A.A.G.

Permit Office,

London, S.W.

NOTE—This document is not transferable, and must be produced at the request of the authorities, on arrival at any port in South Africa. In the case of those proceeding to Natal, it does not exempt them from the operation of the provisions of the Natal Act, No. 1, of 1897.

Though differing in manner of execution, the restrictionist spirit of the military arrangements derived inspiration from the climate of exclusion fostered by the Natal Act, which was still something of a novelty in 1900. The jurisdiction of the IR Act remained; in truth the permit system existed as an unofficial arm of the immigration restriction regime whose precedent had already been set. Indeed, the new permit rules were actually, in Durban, subsidiary to the over-riding IR Act and satisfaction of the stringent criteria for acquiring a permit did not automatically exempt one from further provisions of the Natal legislation. It was another aspect of the peculiarly cross-pollinating relationship between civil and military administration, notwithstanding Martial Law, for which the war dispensation was adroit at negotiating.

How did it work? Permits would be granted at first by the War Office, and any foreigner applying for one would need to acquire a recommendation from his or her embassy testifying to his/her standing. Once this was approved, an applicant would need to be able to show possession of £100, a small fortune, or evidence of a bona fide pre-existing business interest in the region. If these stringent requirements were met, a certificate would be issued and duly visa-ed. Possession of this would then allow a prospective traveller to purchase a travelling ticket from a shipping line. A memorandum was sent to the principal shipping companies reminding them of their obligations under the terms of the Immigration Act that held them financially responsible for deportation of prohibited immigrants. Some further modifications to policy were made – if the applicant could not show £100, he or she had to be able to show “sufficient means to

prevent his [or her] becoming a burden to the country or some definite employment to take up” – a clause which in practice meant that employed professionals or artisans would be let in while the poor and indigent would not. Hely-Hutchinson reported back to the Natal Ministers who all concurred that the system was a pleasing one. They then lobbied it be extended “to India, from whence considerable numbers of undesirable Asiatics have recently arrived,” a suggestion subsequently taken up.³⁷ Chamberlain, determined, ended his instructions to the governors of the colonies that

there is entire agreement among authorities in South Africa that the measure is necessary, with the object of preventing the influx of undesirable persons into South Africa at the present time.³⁸

After several months of the new system in place, and keeping tabs on the other side of the Indian Ocean, Hely-Hutchinson later reasoned that the £100 requirement was still not sufficient to keep out Indians and hinted at a racial bar, to which Chamberlain responded, in what must have been a familiar reproach, that the permits could not “differentiate between nationality or colour” but that the Government of India would be instructed to be more circumspect in issuing them.³⁹ With a heavy workload at the War-office, agents in foreign and colonial ports would also be entrusted with power to issue or refuse a permit, the discretionary principle underlined as any “officer of the colonial government” was made the first line of decision-making when it came to the condition of an applicant.

For those subject to the new pass regimes and regulations on mobility, it took some adjusting. One writer, stuck in a Transvaal town, scrawled with gallows humour:

a sort of visiting card entitles me to exist, a piece of paper to ride and another flimsy scrap to bicycle. I have recommended a much simpler plan which would be to brand all the Government officials with a V.R. This would not in the least degree impair the appearance of very striking set of officials. Moreover they would not have to search their pockets for the right piece of cardboard with a curious man standing over them with a great knife on the end of a gun. They

³⁷ PRO/CO/CP 879/71/668/232. Hely-Hutchinson to Chamberlain, 29 Oct. 1901.

³⁸ PRO/CO/CP 879/72/669/96. Chamberlain to Governors of Colonies, Dec. 2 1901

³⁹ PRO/CO/CP 879/72/680/39. Hely-Hutchinson to Chamberlain, 12 Jan. 1902 and 879/72/680/111. Chamberlain to Hely-Hutchinson, 30 Jan. 1902.

could simply shoot out their tongue at the military and all would be well.⁴⁰

Over the first half of 1902, with hopes of a “Return to the Rand” now reaching a crescendo, the permit system remained in full force. Milner implored his secretaries that “I should be glad with the utmost strictness enforce the conditions laid down” after rumours that the ‘passports’ were routinely available in fraudulent markets elsewhere.⁴¹ As the war drew to a close in the second half of the year, it was clear Martial law could not be maintained forever. Chamberlain was thinking ahead when he sent a confidential memorandum on the subject to Lord Milner. Citing the need to exclude undesirables, Milner wrote of “considerable practical difficulties” in the way of simply “expelling [undesirables] from the new colonies.”⁴² With the time not far away when Martial Law powers would no longer be in force, “a uniformity in the various South African colonies seems to be essential to its [the exclusion of undesirables] success.”⁴³ With the memo, Chamberlain included a summary of existing and previous restrictions on extra-territorial mobility. The Transvaal Immigration and Expulsion Laws had been subject to loud protests and duly repealed in 1897, but in the search for precedents Chamberlain clearly did not have to look very far and highlighted the Natal Act. Suggesting that the principle of exclusion was accepted, justified and had a clear precedent, Chamberlain could feel comfortable that there would be “no objection on general grounds to the legislation proposed...legislation along the lines of the Natal act is needed.”⁴⁴

When the war formally ended in May 1902 and it was announced by military authorities several weeks later that the permit system would fall away from the Cape Colony, it rendered the whole documentary machine “useless elsewhere.”⁴⁵ Worried that

⁴⁰ Curtis, quoted in Spies, *Methods of Barbarism*, p. 88. Another reflected on his experiences while trying to pass through Cape Town en-route to the Transvaal. On arriving in Cape Town in May of 1902, J.W. Pinckney had the following story to tell, which bears repeating in verbatim: “I at once applied for a permit to go to Johannesburg. I was refused the proper form and given a refugee’s form to fill up and send here [Johannesburg]. I was told to wait six weeks. I waited two months when I again went to the permit office and with difficulty got my card taken to the permit officer, who told me that I was “the very type of man they wished to keep out of the Transvaal” as though I were some sort of criminal gaol-bird. I obtained my permit – I presume through my saying that I meant to make myself unpleasant if I were refused it. When I went to the rail-station, I had to wait my turn, while some foreign Jews and Jewesses were first served...I waited while six were served before my turn came, and I will state on earth not one of them could speak proper King’s English...now, sir, my principal grievance is that I have been put to the needless expense of roughly £50, plus the loss of two months in town at the most critical time of my whole life. I am told I am comparatively lucky. If so, God help those who are unlucky, as the Government, apparently, won’t.” *The Cape Times*, “Injustice of the Permit System,” Aug 10. 1902.

⁴¹ PRO/CO/CP 879/77/699/31. Milner to Chamberlain, 6 Jul. 1902.

⁴² PRO/CO/CP 879/77/699/86. Chamberlain to Milner, 12 Jul. 1902.

⁴³ PRO/CO/CP 879/77/699/86. Chamberlain to Milner, 12 Jul. 1902.

⁴⁴ PRO/CO/CP 879/77/699/86. Chamberlain to Milner, 12 Jul. 1902.

⁴⁵ PRO/CO/CP 879/77/699/172. Chamberlain to Milner, 31 Jul. 1902

the new Milnerian dispensation would thus be powerless to exclude exiles, undesirables and 'pauper Polish Jews,' the time was more than nigh for countrywide legislation. Milner confirmed it ought to draw on the principles of the Natal Act, the only conceivable and administratively convenient mechanism to refuse entry and deport undesirables. There were some delays, however, before the fallout from the war finally exhausted itself. The implications in this interim period for the social character of South Africa's cities vexed the Milner-Chamberlain stable. As late as October, the situation was still not satisfactorily resolved and Milner was calling more anxiously to Chamberlain for action:

quite recently a number of notoriously bad characters have managed to slip in without permits. The Civil Government has no power to expel them and in the most flagrant cases I have been obliged to ask military to do so under martial law. But in view of the strongly expressed opinion of the most competent lawyers that martial law can now be challenged successfully in court, I feel very uneasy as having to take this course. The matter is very urgent as Martial Law can ship them out, but is open to legal challenge. What my Attorney-General and Judges and Members of the Royal Commission have all impressed upon me at various times is that these powers should rest upon an ordinance, and should not have the purely arbitrary character of martial law...[Further] delay is fraught, I think, with serious risk.⁴⁶

By mid November, the replacement of Martial law by civil ordinances and peace-preservation clauses was at last imminent. Milner now called the question of immigration "most important" and the need to maintain "as far as possible" the system that obtained under the permit regulations.⁴⁷ By December, the Transvaal and the Orange Free State had identical ordinances proclaiming the rights and procedures of entry; these would evolve into the Immigration Act of 1905, based on a permit system of entry. The Cape Colony legislature met to pass the Cape Immigration Restriction Act to be "brought into force without delay."⁴⁸ It was almost an exact copy of the Natal Formula, with a minor amendment which allowed entry to anybody with a bona-fide and demonstrable employment position waiting. Four years later, the Cape would also allow Yiddish as a European language, which, as we will see, Natal did not.

⁴⁶ PRO/CO/CP 879/79/705/54. Milner to Chamberlain, 17 Oct. 1902.

⁴⁷ PRO/CO/CP 879/79/705/195. Milner to Chamberlain, 17 Nov. 1902.

⁴⁸ See Cape Colony, Immigration Restriction Act 1902; PRO/CO/CP 879/79/705/312. Pledge from Cape Ministers, 20 Dec. 1902.

Further legal codification of restriction, and co-operation between the region's constituent colonies, was discussed at the South African Inter-Colonial Conference in Bloemfontein during two weeks in March, 1903. Hoping to seal the borders of the entire region and avoid the "battledore and shuttlecock" that would follow in the wake of inconsistent policies, Prime Ministers and Colonial Office authorities agreed that "there should be uniform legislation through the colonies in connection with the immigration of aliens and undesirable persons into South Africa."⁴⁹ In addition to restricting Asiatics, it was now agreed that

it is not desirable to have the country flooded with a large pauper element from all parts of Europe and America; all sorts and conditions of men who are without capital and who come to the country on the chance of making money...as far as we are concerned by the time the Peace Preservation Act ceases to operate we shall have got rid of all the undesirables we have.⁵⁰

Albert Hime, Prime Minister of Natal, took the support back to Natal, and set to tweaking the Natal Act to plug some of its holes, sub-titling the new amendment to read "To place closer restrictions on Immigration" which would eventually be passed in the 1903 session. As we shall see in later chapters, this drive was constituted by increasing complexity and buttressing by 'paper walls' of documents and greater energies in policing the port by force. Further, poor, unemployed or unemployable whites, like the Asiatics before the war, were now also *persona non grata*.

Citizens of No Country: Maritime Labour

Beyond restricting Indians and those broadly termed 'refugees,' the development of and political enthusiasm for a wider immigration regime in Natal and the policing of Durban's harbour also owed much to maritime labour and a potentially dangerous 'mixed' class of labourers 'likely to become a public charge.' It was in this context that Harry Smith began to exercise the discretionary powers invested in him by the legislation and to almost single-handedly build up a regime of surveillance at Durban's wharf-side edges. Thus while remaining throughout intensely concerned with the question of Asian immigration, other actors began to occupy his energies in ways that Escombe had left open during the long debates securing Act 1 of 1897.

⁴⁹ PAR/SAICC, Bloemfontein, Mar. 10-23. Minutes of Proceedings, p. 73.

⁵⁰ PAR/SAICC. Minutes of Proceedings, p. 75.

Sticky relationships between colonial settlers and administrators on the one hand and a maritime population of sailors, crews and even soldiers on the other were not new to Durban and Natal. In colonial ports, moral panic emanating from the convergence of two disparate sets of colonial cultures - landlubber and 'civilized' bourgeois capitalists in one corner and a dangerously mobile, potential lumpen element in the other first scandalized parts of the Indian empire, especially in its largest and most intensely active port of Calcutta, several decades earlier.⁵¹ The fallout of the Indian Rebellion in 1857 - coupled with a fierce typhoon that put thousands of stranded sailors into distress - sparked tensions amongst the colonial government there when a floating population of 'idle and suspicious' working class Europeans polluted the imaginations and very streets of the Indian capital. Drawing from an even longer tradition of resentment toward 'non-official' European workers that had been established during the century of Company Raj, elites (both Indian and British) were further alarmed to witness in the 1860s a steady flow of the unemployed - sailors, ex-railways workers, horse grooms, 'domiciled' or mixed-race Europeans, 'adventurers' and the powerfully discombobulating spectre of white female vagrants and sex workers.⁵² All, it was feared - and sometimes proved - contributed to spectacles of crime, disorder, begging and disease, and all, it seemed, contaminated the social mores and pristine image of more genteel colonials tirelessly effecting the 'civilizing mission'. This milieu sparked a powerful reformatory zeal across Indian port cities, with a series of Pauper Commissions (in Bombay in 1862 and 1867 through to Calcutta in 1891). Solutions were affected through temperance campaigns, welfare societies under the umbrella of the Charity Organization Committee and 'special homes' that worked toward the moral and material welfare of the indigent.⁵³ More institutional and disciplinary techniques were inaugurated through the Indian workhouse system and schemes involving military and marine training as well as agricultural communities (the latter was to be one arm of the Durban Salvation Army, through their 'Social Farm'), part of what Fisher-Tine has argued as an "internal civilizing mission".⁵⁴ Given Darwinian race-consciousness at home and an increasingly potent Crown bureaucracy in India, a round of Vagrancy Laws and amendments directed as this

⁵¹ Harald Fischer-Tine, "Flotsam and Jetsam of the Empire? European Seamen and Spaces of Disease and Disorder in mid-Nineteenth Century Calcutta" in Ashwini Tambe and Harald Fischer-Tine (eds.), *Exploring Spaces of Disorder in British India: Subalternity, Transgression and the Limits of Colonial Control*. (London: Anthem, 2006).

⁵² Harald Fischer-Tine, "Britain's Other Civilising Mission: Class Prejudice, European Loafers and the Workhouse-system in Colonial India" in *Indian Economic and Social History Review* 42, 2005: pp. 295-338.

⁵³ See Satoshi Mizutani, "The British in India and their domiciled brethren: race and class in the colonial context, 1858-1930" (DPhil. diss., University of Oxford, 2004), especially chapter 4.

⁵⁴ Fischer-Tine, "Britain's Other Civilising Mission," p. 298.

European population was initiated (in 1869, 1871 and finally the long-lasting amendment of 1874). It was one matrix of answers to a perhaps un-resolvable “colonial predicament”: the dependence on and presence of such maritime and labouring classes was actually unavoidable for landed elites, leading to the conclusion of one historian that the more Indian economy and society were tied to a trans-colonial modernity, the more the moral underpinnings of the project were eroded.⁵⁵ These apparent vagabonds, like the maritime crews arriving in Durban 30 or 40 years later, tested the dividing line of the rules of colonial difference. Elements of such ‘riff-raff’ were powerful visions of degeneration, both for ‘natives’ and for the colonial society which could be, and was, roundly stigmatized by reports of white pauperism and criminality. In short, the ‘riff-raff’ threw the integrity of bourgeois colonial culture in jeopardy and it needed stopping fast.

The parallels between post-war Durban in 1902 and post-Mutiny Calcutta in the 1860s are striking. One partial solution available in Durban, in addition to racialised economies of philanthropy, was to bar such undesirables from landing at the port in the first place. Where Calcutta underwrote a system of registration for sailors to keep tabs on their movement and further barred shipping captains from releasing their charges, Durban had the Immigration Restriction Act and Harry Smith. The Immigration Act was immediately wedded to policing the town by preventing the landing, and removing, of maritime labouring classes from contributing to the market of contaminating temptations inherent in the theatre of a city where the echoes of war were not so terribly distant. To a backdrop of coterminous popular and official calls for segregation and confinement of resident African and Indian populations from European, there was already certain for momentum for keeping the city clear of any additional undesirables.

There is not an ocean of information available on the backgrounds of the maritime labourers stopping at Durban, but if it is difficult to say precisely who these maritime labourers were, it is measurably easier to have some idea of what, for Natal settlers, they *ought* to be. In 1898 Escombe, who it will be recalled had championed and ultimately been instrumental in facilitating the (often acrimonious) engineering efforts to dredge the harbour mouth, took time out from his schedule to attend the opening of the Natal Harbour Institute at the Point, another of the flourishing charitable places for (white) locals and foreigners alike. At the Natal Harbour Institute, those engaged in

⁵⁵ Fischer-Tine, “Britain’s Other Civilising Mission,” p. 331

maritime enterprise might avail of “food for the body and mind.”⁵⁶ Like its counterparts in Calcutta, as well as the Durban Home and the Salvation Army, this institution was part of a broader reformatory fervour to counter the effects of the perceived unrestrained spaces of the city.⁵⁷ The Natal Harbour Institute was to administer such needs to those sailors, ship-labourers, harbour-workmen and others connected with Durban’s growing maritime economy. When an 85 year old resident at the Point told Harry Escombe at the function that he “could hardly believe his senses” over the rapid development of the harbour works, Escombe replied with what would be a common refrain: the development of the harbour, and of institutions like the one just opened, was to mark the difference between “the Port of the Past [and] the Port of Prosperity.”⁵⁸ In his speech, Escombe lauded the “dignity of labour” and celebrated the “work and workers” that would ensure Durban’s entry point was self-consciously modern and free of the “residuum of society.”⁵⁹

Durban was an important hub in the ‘cattle trade’ at the very end of the 19th century; the debates aroused over the cattlemen or muleteers became an important barometer of immigration concerns more generally. This trade, part of 19th century trans-continental labour circulations, centred on the transportation of horses, donkeys, mules and other livestock and connected disparate parts of the globe. In 1901 for example, over a hundred ships – and several thousand in crews – had arrived in Durban variously from Great Britain, Australia, New Orleans, Buenos Aeries, Montréal, Fiume (now Rijeka, Croatia) and Madagascar.⁶⁰ The men who did the work onboard were an unusually polymorphous group, confounding even Harry Smith who could but lump them together in a clumsy and vague category he called “Mixed, of European abstraction (includes British)” but which in all likelihood contained those of all ethnic backgrounds. Although as noted the transport of livestock was not particularly novel to southern African ocean economies, the trade was bolstered and reached a peak during the South African War as troop animals died in comparatively high numbers, sparking an equine trade principally with New Orleans but also including those areas mentioned above and India, Italy and

⁵⁶ *The Mercury*, “Natal Harbour Institute,” 4 Jul. 1898.

⁵⁷ The Durban Home, for example, in 1898, doled out work and wisdom to “the stranded...many have come down from Beira and have neither friends nor money,” those doing odd-jobs, ex-prisoners and a large class of “the drunkard” and “the tramp, who is well acquainted with every similar institution from Cape Town to Johannesburg.” See *The Mercury*, “Annual Report of the Durban Home,” 21 Jul. 1898.

⁵⁸ *The Mercury*, “Natal Harbour Institute,” 4 Jul. 1898.

⁵⁹ *The Mercury*, “Natal Harbour Institute,” 4 Jul. 1898.

⁶⁰ PAR/ARIRD 1901, p.6

Spain.⁶¹ Johan Wasserman calculates a ratio of 1 muleteer to every 15 horses or 20 mules. Wasserman shows that the cattlemen who were engaged by the ship's masters were those produced by the socio-economic circumstances of the USA at the time, and drawing on published war archives, describes them as "a motley group...adventurers, drifters, petty criminals, troublemakers, corner-boys, gaol-birds and the 'dead' brokes of America" as well as unemployed "arsenic-makers, boiler-makers, telegraphists and machinists" attracted by word of mouth to the job possibilities in Durban, especially during a war time economy.⁶² This still might not give an entirely nuanced picture of quite how polymorphous the cattlemen were and it remains difficult to get any dependable sense of precise motivations. Certainly relatively few were actually American. Another contemporary source describes a cattle ship leaving Montreal with a mixture of:

old Men and boys...men who had seen better days, and those who had never been anything better and had no desire to be so...a sprinkling of young fellows anxious to see life and too poor to travel, with not too much pride in them to work their passage to another land...natives of other lands, n'er-do-wells, most of them, sick of Canada or American and longing to get home. *They are citizens of no country* but their own brutal instincts... The respectable immigrant who has been disappointed and is on his way back, an assorted crowd...students...some of the tougher stiffs having almost forgotten their real names, so long had they been away from all who knew them.⁶³

It makes a good read, but hard to separate the embellishment. Some were British and lived in the interstitial spaces of empire, one finding himself "in queer street" had been "a schoolmaster and an organist," another described himself as "speaking fluent Hindustani and was reared in her Majesty's Indian Empire and also having worn her Majesty's uniform."⁶⁴ Yet this should not be read as a celebration of a "transcultural, uncontainable and freely roaming proletariat of the seven seas."⁶⁵ This was aptly illustrated with devastating simplicity by the *Mercury's* editor, who asked with unfussy rhetoric whether, when publishing the dispatch above in October of 1897, "is this class to keep

⁶¹ Johan Wasserman, "A Tale of Two Port Cities: Durban and New Orleans During the Anglo-Boer War" in *Historia* 49 (1), 2004: pp. 27-47.

⁶² Wasserman, "Two Port Cities."

⁶³ The *Mercury*, "Stiffs Aboard Ship," 5 Oct. 1897.

⁶⁴ The *Mercury*, "A Plea from Julia Park," 12 Oct. 1897.

⁶⁵ Ravi Ahuja has pioneered a critique of Linebaugh and Rediker's oft-cited thesis. See Peter Linebaugh and Marcus Rediker. *The Many Headed Hydra. Sailors, Slaves, Commoners and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000) and Ravi Ahuja, "Mobility and Containment: The Voyages of South Asian Seamen, c. 1900-1960" in *International Review of Social History* 51 (Supplement), 2006: pp. 111-141.

out?” Well-reported incidents in Durban both sparked the popular imagination around cattlemen: a violent mutiny on one ship followed shortly by a clash between English and Italian cattlemen that ended in murder were the most sensational.⁶⁶ In short, for all the heterogeneity of the ships and the port itself, both had also become spaces for conflicts and exclusions to emerge.⁶⁷

At first, Harry Smith’s incipient bureaucracy had not concerned itself unduly with these cattlemen, concentrating on the initial aims of the Immigration Act to restrict Asiatics. Smith had noticed the first arrivals of Cattlemen in May and June of 1897, but thought there “no reasonable ground to regard them as paupers or to suppose they would become a public charge...a fine body of men.”⁶⁸ Unlikely to either engender opprobrium or endanger the spatial and moral concerns of ‘decent livelihood’ that had so animated the anti-Indian furore earlier in the year, Smith concerned himself with other matters.

But after the first couple of months of the Act’s operation, suspicions had been raised in the popular press. In early July, the SS *Lincoln* had landed with 43 men of ‘mixed nationality’. Most had been allowed to land, but the *Mercury* smelled a rat: the men “had no trades and could speak no English, and the fact that some of them were walking the streets, showed, that there was no room in the colony for any more of the same class.”⁶⁹ Two month’s later another 42 landed, the *Mercury* again pointing out that it “was impossible to keep guard over the ship”; the Chief Police constable replied that he would “keep an eye on them.”⁷⁰ In early October, a resident of Point Road petitioned for police supervision of the area. “Owing to the improvement at the entrance of the Harbour and the coming inside of much larger vessels manned by larger crews than we have been accustomed to,” he wrote, “there have been cases lately of these drunken men rolling into houses without so much as asking ‘by your leave.’ If we cannot have protection for our homes and families...perhaps a lesson or two read by a six-chambered revolver will bring these characters to their bearings.”⁷¹ Harry Smith, working on the other end of Point Road, began to take note. In his report at the end of the year, Smith began to view

⁶⁶ See Wasserman, “Two Port Cities.”

⁶⁷ This also tells us much about the hierarchies that existed on the ships. Ravi Ahuja argues that these hierarchies were intensely racialised, with South Asians relegated to its lowest reaches. See Ravi Ahuja, “Mobility and Containment,” pp. 111-112.

⁶⁸ PAR/ARIRD 1897. p. 2

⁶⁹ *The Mercury*, “Undesirable Immigrants” Jul. 1897.

⁷⁰ *The Mercury*, “Trouble with Cattlemen” 14 Sep. 1897.

⁷¹ *The Mercury*, Correspondence, 6 Oct. 1897.

Immigration Restriction as an arm of law and order, an adjunct to sustaining the status quo:

The first arrivals were not restricted, but the advisability of applying the Act both in the interests of the colony and of the men themselves shortly appeared for those already landed and remaining in Durban, a large proportion were unable, owing to their inability to speak our language and for other reasons not necessary to be stated, to find employment and, being penniless, they became a trouble to the Police and a burden on the borough authorities.⁷²

Cattlemen would now be subject to investigation and restriction.

This is important. 20th century South African institutions of authority have been conceived in terms of policing, prison and the labour compound. The claim that civil and police functions have often blurred in the South African experience of enforcement is persuasive.⁷³ Immigration restriction became an agent of this process and it tells us much about the dialogic and reciprocal entrenchment of security responsibilities between police and other institutions.⁷⁴

Complicating the argument that the Immigration Laws were racialised, even British cattlemen were themselves barred. When the SS *Julia Park* arrived with a mixture of British and Argentinean crew members from Buenos Aeries in mid-October of 1897, the men were confined to their vessels by Smith who was by now making regular use of the Act to enforce the liabilities of ship masters to keep crews and extra-hands from absconding. Confinement of the British did create some mild controversy, but the debate was cast essential in terms of the 'condition' of the men and the recourse to 'British birth' seemed only a secondary argument. Even the British cattlemen themselves argued their grounds for admission on the basis that "We are no criminals, vagabonds of loafers... We are willing and able to work."⁷⁵ The men did have some support from the public; one argued that they might be "poor in money but a wealth in talent and money. Is honest

⁷² PAR/ARIRD 1897. p. 5

⁷³ See Charles Van Onselen, "Crime and Total Institutions in the Making of Modern South Africa: the life of 'Nongoloza' Mathebula 1867-1948," in *History Workshop Journal* 19 (1), 1985: pp. 62-81

⁷⁴ For wider context of the inadequacies and challenges of policing in the colonial context, see David Killingray, "The Maintenance of Law and Order in British Colonial Africa" in *African Affairs* 85 (340), 1986: pp. 411-437.

⁷⁵ *The Mercury*, "A Plea from the Julia Park," 12 Oct. 1897.

poverty a disgrace or even a danger to the state?”⁷⁶ But Smith was unrepentant. They remained, “as prisoners” and the men eventually departed with the SS *Julia Park* some days later.

Two years on, Smith remained concerned. The outbreak of war had intensified the cattle trade and the numbers of ships and undesirables had been growing. Despite a system of recruitment by the military authorities, the cattlemen were still a source “of no little difficulty” and were “adding to the large and growing numbers of vagrants and other troublesome characters” in the city.⁷⁷ That the confinement systems put in place were not always workable is really the focus of a later chapter, suffice it here to say that Smith was energetically appealing to the administration and designing his own methods that would prevent this particular class of undesirables. “Times,” he said, “have outgrown the existing law, and the Colony should have the protection of more comprehensive measures.” In the interim, Smith extended his vigilance to monitor *all* shipping crews (i.e., not only cattlemen) by continued recourse and insistence on the legislative provision of ship’s liability, subject to large fines, to ensure their crews did not desert, supplemented by a system of substitution and exchange in cases where deserters were caught after the original transport had departed. Finally he began tinkering with the development of a police guard system and making enquiries for the use of a ‘detention hulk’ to confine men and assuage uptight captains.

Important for this chapter is the motivation. Referring to the shipping crews, Smith insisted the colony must be on the alert if it “wishes to keep itself free of those whose presence here will conduce, as it has done in other communities, to the lowering of the standard of life, both moral and material.”⁷⁸ He felt that he was on the right track in excluding the cattlemen. Smith asked his readers in a passage that reveals much about emerging consensus around restriction and exclusion

To imagine the position Durban (for Durban would be its chief sufferer) today had those individuals [cattlemen] been permitted to swell our population?

But for the restraint, active and implied, exercised, we should by this time have had in the city and in Durban the nuclei of foreign quarters where all the unfortunate conditions associated in other and older British communities with

⁷⁶ *The Mercury*, “Correspondence,” 18 Oct. 1897.

⁷⁷ PAR/ARIRD 1900, p. 3

⁷⁸ PAR/IRD 1902, p.8

aggregations of low-class aliens will stand to be reproduced. *The susceptibility to demoralizing influences of our large Native and Indian population and the peculiar aptitude of the people to whom I specially refer to practice upon their weakness, lend to good reasons for maintaining a vigilant attitude on the question of immigration.*⁷⁹

In 1904, the cattle trade fell off from Durban as the demand for animals lessened and an outbreak of disease took its toll on livestock. Smith was relieved of the extra-work, but the case of the Cattlemen had left him with a distinct weariness of and wariness toward the crews of ships. In 1906 he confirmed that “we are concerned with the crews of ships as well as the passengers carried, especially as a large proportion of vessels frequenting the port are manned or partly manned by Asiatics and by others whom the Act was designed to keep out.”⁸⁰ In tandem with the guarding systems alluded to above, Smith embarked a rigorous statistical exercise, detailing and keeping close watch on the ‘nationalities’ of all crews anchoring at Durban (see fig. 6, chapter 1).

Contaminating Influences: Undesirables

What compelled this growing weariness toward outsiders, be they Indian merchants, refugees, or maritime labourers? The anxiety around influxes turned on the fundamental question that had been confounding city administrators for the previous quarter century, that of the urbanized African. So the refugee influx of September-October 1899 and the Cattlemen panic merely exacerbated and compounded for the local state a problem already writ large by Shepstone back in 1873, of the presumed dangers to settlers and natives themselves should they dwell and rendezvous in the ‘chief port’. Richard Alexander was the voluble and fraught Chief-Constable of Police who had been in his position since 1876 and his intellectual motivations on urban governance provided an almost smooth continuum with the older Shepstonian order; Alexander even took to quoting Shepstonian memorandums until early into the new century. Between 1897 and his death in 1907, he took upon himself far more than the mere routine rituals of the average police officer and his writings provide something of social commentary on Durban of the period under review. Alexander was deeply influential and corresponded

⁷⁹ PAR/ARIRD 1902, p. 8. Emphasis mine.

⁸⁰ PAR/ARIRD 1906, p. 4.

regularly with those in political positions above him and, although apparently less regularly, with Harry Smith himself.⁸¹

In 1898, Alexander first began to worry about law and order problems that could be traced to the contaminating influences of the growing urban centres, whose effect was now gradually beginning to be felt more intensely. The problem in Durban was particularly acute:

The Community is not dealing wisely or justly with the native, who is no longer the humble, docile, submissive being represented 50 years ago. The Native population is permitted in our midst [and] are daily spectators of all the vive and folly of a seaport town, and they are going to and from the goldfields where they are brought into contact with all the vices there. Until now they are little better than those they associate with and will, if steps are not taken in the boroughs and townships, become a source a great danger.⁸²

He had much the same to say 5 years later, distressed at rocketing statistics and, from a police officer's point of view, apparent social meltdown. (See figures 11 and 12); arrests for a wide variety of offences (notably drunkenness and vagrancy were particularly high) had nearly doubled. These figures reveal either increases in actual 'criminal' behaviour or greater keenness by police to arrest and inter. It may have been a combination, the forces of law and disorder in a dialectical, escalating spiral. Whichever, it is undeniable that Alexander – and anybody reading these - had cause to be staggered.

⁸¹ Jack Jewel, *A History of the Durban City Police* (Durban: Durban City Council, 1989) is a popular (the only?) history of the force, and much of it taken up with Alexander's biography.

⁸² DBP/APR, 3 Aug. 1898. See note 7.

<u>Arrests for Criminal and Borough By-law offences in Durban, 1902*</u>				
	<u>Europeans</u>	<u>Indians</u>	<u>Natives</u>	<u>Total</u>
<u>Criminal Offences</u>				
Serious Offences	36	11	38	85
Theft	111	108	205	424
Assault	54	44	136	234
Masters & Servants	1	305	289	595
Other Common Law	1	3	19	23
Sub-Total	203	471	687	1361
<u>By-Law Contraventions</u>				
Cruelty to Animals	34	38	30	102
Breach of Peace	388	363	554	1305
Disorderly Houses	176	31	3	210
Drunkenness	2719	2284	398	5401
Gambling	67	21	26	114
Indecent Conduct	96	80	128	304
License Defaulters	18	23	5	46
Liquor Regulations	16	5	25	46
Liquor to Natives and Indians	73	13	38	124
Liquor Found on Natives	-	-	390	390
Liquor Found on Indians	-	c.320**	-	320
Obstruction of Police	40	57	80	177
Obstruction of thoroughfares	74	289	303	666
Riksha	77	6	2871	2954
Sanitary	31	234	30	295
Togt Regulations	0	0	484	484
Vagrancy	163	389	2528	3080
Wood-Cutting	0	31	13	44
Other	63	25	31	119
Sub-Total	4035	4209	7937	16181
Total	4238	4680	86241	17542
*Actual convictions amounted to 15 790				
** The precise number is illegible.				

Figure 12. Source: Annual Report of the Police Constable, 1902.

This final section of the chapter investigates the apparent 'criminal' crisis in Durban around the South African War and argues that the presence of foreigners/aliens acted as an explanation, valid or not, for the near collapse of the social order. This xenophobia created a powerful current to buoy Smith's immigration restriction bureaucracy, even if the administrative connections were not always clear. The effect of the South African War was to invigorate and strengthen state capacities of exclusion. If the Native Pass Law of 1901 and Durban-system of the Beer-Hall monopoly was major

fall-outs of the war and post-War tensions, so was increasing enthusiasm in the development of more complex – and ostensibly effective – migration controls.

I have established that outsiders – particularly poorer whites whose admittance to the colony legislators in 1897 so passionately defended - was just a couple of years later imagined as a distinct threat. This needs to be deepened further: one important thread in the manifold anxieties of ‘strangers’ was that they were perceived to be a contaminating influence on those Africans who had carved out spaces of their own in the city. Undesirables were blamed for supplying Africans with liquor and owning unregulated ‘eating houses’ believed to be conducive to drunkenness, laziness, dirtiness and gathering places for the potentially criminal. This placed emphasis on protection of the vulnerable waterfront edges of the city which Harry Smith was simultaneously honing on the Bay.

Paul La Hausse has written how alcohol was the predominant theme in social relations in Durban from the turn of the 20th century, a powerful representation of the autonomy of the African peasantry and antithetical to modes of capitalist (re)production.⁸³ As early as 1899, Alexander, exhibiting mild (in retrospect surprising) shock that the properly British town could produce such a population of drinkers, attributed the continuing increase in liquor consumption to “so many unemployed strangers in the borough, both men and women, who have no respect for the community or the laws that govern it.”⁸⁴ Alexander was convinced that with the uncertainty and turmoil in Johannesburg in the months preceding the war that Durban was unequivocally “a dumping ground for undesirables...a seaport town is always more liable to the attentions of the won’t-work class...we have more than our share of the born-tired.”⁸⁵ The very geography of Durban became an apology in the debate over drunkenness amongst Africans, and one to be oft-repeated: it was these foreign ‘loafers’ who supplied the alcohol, and Durban was the gateway. Matters were not helped by the lack, initially, of any extradition treaty between Natal and Kruger’s Transvaal, something that must have made the grass of the Garden Colony look distinctly green for those seeking a convenient exit from the highveld.

Alexander was much happier after the passing of Martial Law in October of 1899. In addition to military oversight of population movements around the region,

⁸³ La Hausse, “Struggle for the City.”

⁸⁴ DBP/MPR, Jan. 1899.

⁸⁵ DBP/MPR, Jan. 1899.

Martial Law also instituted curfews, gave extension to his policing staff, improved financial resources and, as shown earlier, regulated and prevented travel for all except the most wealthy. Criminal activity stalled and statistics dropped; at the end of 1900, Alexander reported a good year all round, a “total absence of rowdyism.”⁸⁶ Whatever the legal and theoretical debates that the imposition of Martial Law created, Alexander was not complaining.⁸⁷

Yet as the conflict on the highveld appeared to near an end, we have seen how many who had fled the Transvaal and a great deal of new-comers began to arrive back in Durban by 1901, with the hope of an early return and the resumption of Johannesburg’s vital economy. The numbers soon overwhelmed even Harry Smith, who reported that no great check had been put on arrivals until the permit-system was functioning. For Alexander, this “critical period” was a giant leap backwards. He referred again to another influx of the “dregs of society” who he blamed for selling liquor to the Africans where rates of intoxication had suddenly spiked:

this class is steadily increasing by fresh arrivals from all quarters, with the hope of reaching the Golden City, and accounts for the large number detected selling liquor to the natives.⁸⁸

He estimated at least 300 ‘desperate characters’ were involved in the trade and required the strictest surveillance. “The natives,” he said, were becoming ever “more impudent and independent.” In the long and harried report of March 1901, the large numbers of undesirables who were “demoralizing” the Africans and the town itself were making itself felt, demanding almost all of both Alexander’s and Smith’s energies, whose correspondence reports work “at once anxious and harassing in the highest degree.”⁸⁹

By the end of year Alexander’s pen sighed: “the number of arrests to keep order is far larger than any borough I know of in the British Empire.”⁹⁰ He added a request that no more licenses be issued for the small road-stalls permitted to be used to offset the unemployment. The foreigners, he mentioned, were simply selling their businesses or

⁸⁶ DBP/MPR, Dec.1899.

⁸⁷ See Charles Townshend, “Legal and Administrative Problems of Civil Emergency in Britain and the Empire, 1800-1940” in *The Historical Journal* 25 (1), 1982: pp. 167-195; Richard Cosgrove, “The Boer War and the Modernisation of British Martial Law” in *Military Affairs* 44 (3), 1980: pp. 124-127.

⁸⁸ DBP/MPR, Jan. 1901.

⁸⁹ DBP/MPR, Mar. 1901 and PAR/ARIRD 1901, p.1.

⁹⁰ DBP/MPR, Nov. 1901.

licenses to Indians in the town. Smith must have read these reports with a strange mixture of disappointment and enthusiasm.

By the end of war little had changed – Constable Alexander complained again in 1902 that the town had returned to being a ‘dumping ground’ and that he was “compelled to admit into this borough everyone who chooses to come.”⁹¹ The problems were not solely restricted to liquor; overcrowding and a gratuitous mixing of the classes, although this was reason enough in the police view for the unruliness that resulted. Threatening to the urban, colonial order were a series of violent riots led by Canadian and Australian discharged ‘irregular’ soldiers waiting to leave the port and attacked even a police station in which Alexander himself was hurt.⁹² The precise reasons for the unrest are murky, though in the controversy that followed: it appeared that some of Canadians had been locked up for drunkenness. Again, Alexander traced it to an influx of ‘vagabond’ outsiders who incited the men in uniform.⁹³ Significantly, such others were white and poor – this was not something that the settler polity was entirely prepared for. The *Mercury* editorialized that a chief problem was:

the absence of any barrier between the harbour and the town...men leaked out of the ship in all directions, and once ashore, there was nothing to prevent them wandering off at their own sweet will.

Alcohol remained the more material embodiment of contamination and had the far more worrying effect of turning out-of-work locals – both African and European – to sloth, crime and ill-health. The threat of inescapable degeneracy loomed large. In the post-war years, the selling of alcohol was routinely linked to “Port Said natives” working at the harbour and white foreigners who continued the trade in liquor, often, Alexander asserted, buying alcohol licenses and re-selling these to local Indian traders. It seemed a vague conspiracy that threatened doom to the law and order pre-war administrators had laboriously – and somewhat presumptively – constructed.⁹⁴

⁹¹ DBP/MPR, Mar. and Jun. 1902.

⁹² *The Mercury*, “Rioting by Soldiers” 2 Jul. 1902; “The Street Riots” 3 Jul. 1902; “Tuesday Night’s Riot” 4 Jul. 1902; “Disabilities at the Port” 7 Jul. 1902.

⁹³ Since the war, the borough had been, for Alexander, “infested with scores of worthless blackguards.” DBP/MPR, 8 Jul. 1902.

⁹⁴ DBP/MPR, 8 Nov. 1901; MPR, 9 Jan. 1902; APR 7 Aug. 1902, APR, 3 Aug. 1903.

Finally, a rapidly increasing sex economy tended “steadily to sap and undermine native morals” which was, it was reasoned, a direct result of ill-maintained borders in which ‘continental women’ were corrupting otherwise upstanding local citizens and subjects.⁹⁵ Here, Durban had been tapped by the Atlantic ‘white-slave traffic,’ a ‘trade’ in female bodies that linked eastern Europe with western Europe, the United States, Latin America and Africa in complicated, robust underworld pimping networks. In 1904, Smith was officially delegated, as required by the terms of an international conference on the matter, with patrolling incoming vessels for victims, protagonists and those somewhere in-between.⁹⁶

Above all, the metonym ‘Idle and Suspicious’ used to mark-out vagrancy convictions spoke to a deep seated fear of the ‘surplus population’ and threw the colonial work-ethic into crises. In short, social contamination became the dominant motif of post-war Durban. This had a double-movement: on the one hand contamination could corrupt the presumably ‘childlike native,’ while on the other the stigma of crime, drunkenness or destitution could adversely effect the pride of the white race and, importantly, a construct of manhood that had ‘honest labour’ at its core. This is what Alexander meant when he decried “the demoralising scenes which happen in a seaport town with such a mixed population as Durban.”⁹⁷ In that, Harry Smith must have heard an encouraging call.

In 1903, the Colonial Secretary wrote to Harry Smith for general information and his opinions on the crisis. Smith reflected on the changes wrought by the conflict and the implications it had for the growing immigration bureaucracy. Nostalgically referring to the pre-war days when Durban was “essentially a British community,” he reminisced that the “streets were free of all but respectable pedestrians, and houses of ill-fame, gambling dens were practically unknown.”⁹⁸ How the times had changed in a few short years. To the Colonial Secretary he reminded him that the city had become a concentration of “all nations of the earth” who had, in Smith’s view, overrun the eating-house trade and were linchpins in a “nefarious trade in liquor” which splashed blight on the city’s African workers. In habiting a “nuclei of foreign quarters” in Durban and Pietermaritzburg that

⁹⁵ For this double standard, see Ros Posel, “Continental Women..” DBP/MPR 28 May 1902 and *The Mercury*, “A Modern Babylon” 11 Nov. 1903.

⁹⁶ See PAR/IRD 54/1282/1905. Secretary of State, London to IRD, Dispatch regarding “White-Slave Traffic Agreement, Paris, May 1904” and Appointment of Principal Immigration Restriction Officer.

⁹⁷ *The Mercury*, “Location of Natives: Superintendent Alexander’s Views,” 8 Dec. 1904.

⁹⁸ PAR/IRD 391/1903. Harry Smith to Colonial Secretary and Attorney-General, 27 May 1903.

were “all in association,” Smith was worried first and foremost about the “Greeks and Syrians” who in addition to hosting “third-rate eating houses and gambling dens,” had become the first stop in Durban for Prohibited Immigrants who had evaded the restrictive laws. Their premises fed into larger criminal networks, Smith surmised, and he claimed evidence of laundering through apparently respectable shop-fronts. “As poachers on the Bay,” he said, “they rival the Indian.” The rundown continued: Italian and Austrian stoneworkers, bricklayers and carpenters were also numerous and involved in the seamier side of a respectable colonial city. The familiar protest that the foreigners were underselling their labour and ruffling economic feathers in the city also grated. Smith, “disagreeably struck by their large number,” realized that the Immigration Act of 1897 was not altogether effective in keeping out the new arrivals, who *could* read and write in any European language. He also found time to dismiss, again, the polyglot cattlemen – “the French were not of Paris, nor the Spaniards of Madrid, but of South America.” The Jews, as he called them, though referring specifically to the Yiddish speakers of Eastern Europe were also meddlesome. Jewish deputations, buttressed by established charitable organizations had negotiated with Smith to be more reticent in issuing prohibitions against Jewish migrants. But the times had changed and Smith rued that the Jewish charities were “making the way clear for all those who may seek to enter” and their guarantees of respectability had become valueless. “We are getting too much of the foreigners,” (sic) he persisted to tell the Colonial Secretary, “and I fear that a continuance of the steady flow of immigration will result in a lowering of the standard of life.” Tellingly, the only likeable newcomers were the “Swedes and Norwegians” who displayed an “industrious and Christian way of life” and a few Italians were acceptable because they were “competent hands and acceptable colonists.” These aside, Smith remained despondent at the “marked change in the character of the town,” and finished his sermon with a lament:

in one’s walks one hears foreign tongues at every turn; it is difficult, bearing in mind England’s overcrowded cities, to avoid the conclusion that things would be better otherwise.⁹⁹

⁹⁹ PAR/IRD 391/1903. Smith to Col. Sec. 27 May 1903.

Conclusion

10 years after his appointment as the Chief immigration officer, Harry Smith had ample opportunity to consider the important responsibilities with which he had been entrusted. Writing in an unofficial capacity in 1907, he pontificated on the ‘problem of the poor.’ For Smith, the question of destitution was a pressing one, perhaps the most important of all. It is not clear whether he had ever read the Fabians, Benjamin Kidd or Karl Pearson, but he was deeply imbued with the spirit of *national efficiency* and social-imperialism.¹⁰⁰ For Smith, the ‘nation’ was weakening; its stability threatened at every turn. “The prosperity of the nation is dependent on its poor” he implored, “Physical degeneracy of the race is everywhere on the highways of our cities. Deformity and under development meet one at every turn. Poverty breeding poverty, crime, crime.”¹⁰¹ His conclusion in his article – the compulsory enrolment of the children of the poor in government nurseries - may seem anomalous to the themes that have occupied us here. But his political philosophy was clear, that the protection and welfare of the *population* was the responsibility of the state. The creation of Natal’s borders, at least on paper, was part of that process of imagining the boundaries of incipient proto-nationhood and the role of the State in their creation. For Smith, all were, in a sense, the children of the state and he their guardian. Whether the technologies of guardianship worked in Natal, is of course another question, and that which concerns me in the following chapters.

The liminal space of the border in this context demands attention. The specific mechanisms of this encounter in Durban and the ambiguous legacy of the technologies of exclusion constituted it is the main story to which this chapter has been but an important preface. The texturing of the imagination of the region’s borders offers insight into the exercise of sovereignty and the policing of membership to the social body, as well as deepening existing understandings of urban history in the region. To spit it out: between 1897 and 1910 the meanings of boundaries in Natal were emerging and shifting. The result of that negotiation became the bedrock on which South African

¹⁰⁰ See Bernard Semmel, *Imperialism and Social Reform: English Social-Imperial Thought, 1895-1914*. (London: George Allen & Unwin, 1960) and Geoffrey Scarle, *The Quest for National Efficiency: A study in British Politics and Political Thought 1899-1914* (Oxford: Blackwell Press, 1971)

¹⁰¹ *The Mercury*, “The Problem of the Poor,” 17 Jan. 1907.

borders have since been managed and conceived, and it is to the more technical aspects of this administration that I now turn.¹⁰²

¹⁰² See especially Jonathan Klaaren and Jaya Ramji, “Inside Illegality: Migration Policing in South Africa after Apartheid” and the rest of special issue of *Africa Today*, 48,3 (2001) – Evaluating South African Immigration Policy after Apartheid.

Chapter 4

Paper Trails

Documentary Controls on Immigration

Introduction

In the summer of 1905, yet another splash of panic spilled over the correspondence of several offices of the Government of the Colony of Natal. The latest rash of trouble, it seemed, clung to the banks of the uMbilu River in the Durban district of Malvern, on the very edge of the town's periphery. The Secretary of the Malvern District Association first wrote to the Colonial Secretary:

a colony of Pathans, of the dangerous type, have come to settle in this district; they are not only a terror to the large Indian Community and Native Police, but are scarcely less trouble to the European residents and although they are nominal leaseholders of a bare patch of ground, they subsist by virtually preying upon their neighbours.¹

It was a minor scandal. There were 15 men in all, and their unknown providence immediately taxed the city fathers. Couched in prevailing stereotypes of the destructive and peripatetic north Indian, the extent of the initial intelligence gathering was that they were "in all probability deserters from ships. None appear to do any work and live mostly by thieving."²

The Malvern Secretary reiterated the general undesirability of the men, and the Colonial Secretary passed the information on to Harry Smith, imploring him to investigate the legal status of the party and suggesting immediate prosecution and, if possible, deportation. A day later, the *Natal Advertiser* sent a reporter to the area and, unable to decide whether they were Pathans, Afghans or even Egyptians, confirmed the state of affairs. The reporter was resigned to writing that the men

have added one more variety to our colony of human samples. Their first act toward the coolies who befriended them was to rob them of their best fruit and vegetables they grew, and then to severely thrash them when their depredations were resisted. The hands of the district police have lately been pretty full with the work of capturing and prosecuting, but some of these rascally fellahcen are still at large, and the coolies are consequently in a state of terror.³

¹ PAR/IRD 35/134/1905. Field to Colonial Secretary, 11 Feb. 1905.

² PAR/IRD 35/134/1905. Inspector Stokes to Smith, 26 Jan. 1905.

³ *Natal Advertiser*, "Colony of Egyptians," 27 Feb. 1905. From PAR/IRD 35/134/1905.

The report concluded that “our Immigration Laws seem to have a big hole somewhere, big enough for this cut-throat lot crawl through” (sic). By 1905, Natal’s Immigration Laws had, of course, been in operation for 8 years but had met with only inadequate successes in administering the borders of the colony. The struggle to formulate systems of border management is the focus of this and the subsequent chapter.

If the previous two chapters have shown *why* immigration restriction developed in Durban and Natal, the focus of the following two is more closely on *how* this was carried out. The process by which the colony’s borders were regulated by the immigration bureaucracy had a troubled and contested relationship with (would-be) border-crossers. Innovative documentary technologies of exclusion formed the backbone by which prohibition from the Union territory, then edging in piece-meal fashion towards consolidation, would in practice be realized. These rudimentary frameworks - educational requirements, identity certification, residential exemptions and temporary visiting permits and the like - are now so widely held to be self-evident in contemporary migration regimes as to hardly provoke question. By historicizing this process, I speak in this chapter to the difficulties in consolidating a newly emerging administrative, above all effective, ‘border-culture’ in limiting mobility in the early 20th century. The origins of these basic procedures and policies of established immigration restriction technologies also bear the impress of subversive economies of fraud; colonial administration’s exposure to and efforts to restrict mobility in the face of these exigencies confirm the contingent and historically constructed nature of these technologies.

Harry Smith read the report on the phalanx of men on the banks of the uMbilu, pasted it in his file along with the District Association’s handwritten letter, and resolved it was time to investigate. As Natal’s Immigration bureaucracy and mobility regulations became increasingly wedded to the functions of policing and the performance of criminal law, Smith’s first step was to communicate with the Natal Police and made suggestions that the group of Pathans be prosecuted under section 7 of the Immigration Act which deemed migrants found in the colony without having undergone necessary examination liable to imprisonment with hard labour and ultimately deportation. To the self-confessed ‘ever vigilant’ Harry Smith’s surprise, the Pathans were entirely anonymous to him (although he, it seemed, was not as mysterious to them). Smith pointed out that Sec. 7 prosecutions were difficult to win unless it could be shown beyond doubt that the

prohibited immigrants had been in the territory for less than 12 months; anything longer meant they were legally resident. The question of the period of residence would be crucial to a successful case. Smith was not especially perturbed and was happy that the burden of proof fell on the Pathans. Smith's letter to the Inspector was telling: "do you know whether they have passes of any sort? They can hardly be entitled to any form of pass that I know of."⁴ Smith naturally hoped for a reply in the negative.

The Inspector replied after conducting a brief investigation that the men appeared to have been there for more than a year, and were in the eyes of law acceptably 'naturalized.' It was difficult for the inspector to *know but* he thought that they had once been indentured to work for Natal Government Railways. Most had Domicile Certificates; a few others had apparently valid Visiting Passes. The inspector replied:

The police in Bellair, Malvern and Sydenham will endeavour to make a complete list of these people with all possible particulars so as to have a record which may be referred to if necessary. Not being natives, they cannot in my opinion be brought under the [Native] Pass Law.⁵

Smith was undaunted and encouraged the inspector to complete the full record as soon as possible, with special attention to "passes purporting to be issued to the men from this office. I should be glad if a close comparison could be made in each case of the description in the pass and the person whose possession it is found." As enquiries developed, the men managed to produce a number of Domicile Certificates attesting to their residence in the colony for almost 5 years. Smith was unable to prove otherwise or that the passes - that included, in 1905, only perfunctory information and descriptions of pass holders - were not genuine, and the Minister of Justice was unwilling to bring a case. Smith gave up the chase, and the Principal Under-Secretary of the colony was left to sigh in his final communication on the matter that it "was impossible to get rid of them" and that "the Commissioner of Police be drawn to these papers, in order that instructions may be given to the Police to keep a careful watch on these men."⁶ The Pathans had, legitimately or not, scaled the Immigration Restriction Department's (IRD) paper walls.

⁴ PAR/IRD 35/134/1905. Smith to Inspector Meiners, Natal Police. Feb. 1905.

⁵ PAR/IRD 35/134/1905. Inspector Meiners to Smith, 16 Feb. 1905.

⁶ PAR/IRD 35/198/1905. Principal Under-Secretary to Smith, 29 Mar. 1905.

Precedents

Recent path-breaking scholarship confirms that one of the most enduring and entrenched features of 20th century statehood has been the emergence of the documentary and archival order, the ‘little tools of knowledge’ that have provided the epistemological and methodological foundations of governance and propped up claims to objective, legitimate and legitimating authority in modern forms of statehood.⁷ In 20th century South Africa, this would in time take on the qualities of a behemoth and remains an essential part of statecraft and administrative discourses, with debate divided on its benign or repressive aspects.⁸ The creation of legible and knowable subjects and the bureaucratization of mobility was a constituent element of the region’s colonial experience, and it laid the foundations for later schemes for the systemic regulation of labour migrancy and citizenship. Here, I consider these forms of documentation in relation to the notional and ‘proto-national’ borders whose force rapidly hardened in the first decade of the 20th century. The otherwise obscure tale of Malvern’s feared Pathans with which I began well articulates that pivotal recourse to paper, passes and documents around which the freedom of mobility and nominal citizenship hinged. It was initially through passes and certificates that the early 20th century South African state overcame the often inscrutable and bewildering possibilities of open mobility and identity. Such identities and migratory pathways were, through documents, legally codified, obstructed and channelled by officialdom. This chapter asks firstly how had this come to be and secondly interrogates the currency of such documentary technologies in the movements, motivations and even imaginations of aliens, undesirables and migrants arriving in Natal. What emerges is that the very origins of migration regimes in South Africa are actually constituted by and profoundly implicated in economies of fraud. To understand the scandal of the Pathans and their suspect passes more fully, we return to 1897.

By the late 19th century, the most ‘progressive’ governments of the day were widening their gaze toward the individual, going beyond mere police detection that

⁷ Michel Foucault, “Governmentality” in G. Burchell, C. Gordon and P. Miller (eds.), *The Foucault Effect. Studies in Governmentality* (Hemel Hempstead: Harvester Wheatsheaf, 1991); Peter Becker and William Clark (eds.) *Little Tools of Knowledge. Historical Essays on Academic and Bureaucratic Practices* (Ann Arbor: University of Michigan Press, 2001). Jane Caplan and John Torpey (eds.) *Documenting Individual Identity. The Development of State Practices in the Modern World*. (Princeton: Princeton University, 2001); see also the papers delivered at *Sensor-Census-Censor. Investigating Regimes of Information, Registering Changes of State* colloquium at SARAI, Centre for the Study of Developing Societies, Delhi, 30 November-2 December 2006.

⁸ See Deborah Posel, “A Mania for Measurement” in Saul Dubow (ed.) *Science and Society in Southern Africa* (Manchester: Manchester University Press, 2000); Ian Evans, *Bureaucracy and Race. Native Administration in South Africa* (Berkeley: University of California Press, 1997); Keith Breckenridge, “The Biometric State: The Promise and Peril of Digital Government” in *Journal of African Studies* 31 (2), 2005: pp. 267-282.

rendered only the explicitly criminal and antisocial visible, to bring a much wider spectrum of subjects and collectivities within the ambit of the interventionist state. Along with identification, residence and mobility registers, this process was shadowed by the related instrumental potential and archival promise of technologies such as photography and later fingerprinting that enjoyed increasingly valuable currency in both metropole and periphery.⁹ By collectively assigning identities on the basis of paper, such a system also did much to consolidate and produce racial, class and gender hierarchies, and secured those nationalisms that Benedict Anderson so seminally described as ‘imagined.’¹⁰ Growing bureaucratization was the motor of a prevailing modern politics of efficacy and rationalization that validated and anchored the leverage of state over subject. The obverse, of course, was also true: subjects themselves could “write themselves into history” and, as in the case of the Malvern Pathans, stitch a protective canvas in which to shelter from the glare of the state.¹¹ This documentary order was both rigidly restrictive as well as being self-validating for migrants arriving at Natal’s border stations; it both gave shape and form to new and emerging hierarchies, but also facilitated negotiations with and through the lines that had been drawn, both literally and figuratively, in the sand along Natal’s porous coast. These dual forces together constitute important aspects in the study of migration and of the experiences of migrants themselves. In the southern African context, broad documentary technologies have been shown to be a central motif in the imagination and consciousness of those who must bear their impression.¹² I seek here to move beyond the earlier chapter focusing on who ‘undesirables’ were, to elide frictions between identity and identification that the post-modern turn in historiography has tended to overlook.

⁹ See Alan Sekula, “The Body and the Archive,” in *October* 39 (Winter), 1986: pp. 3-64; Radhika Singha, “Settle, Mobilize, Verify: Identification Practices in Colonial India” in *Studies in History* 16 (2), 2000: pp. 151-198.

¹⁰ Benedict Anderson. *Imagined Communities. Reflections on the Origin and Spread of Nationalism* (New York: Verso Press, 1983); See also the useful interrogation of the much used term ‘identity’ in Rogers Brubaker and Frederick Cooper, “Beyond Identity” in *Theory and Society* 29, 2000: pp. 1-47.

¹¹ See Caplan and Torpey. *Documenting Individual Identity*. Introduction. For an excellent study of the ways in which a life narrative is emplotted around a personnel, parallel archive of commercial and legal documentation, see the biography of Kas Maine, a metonymic example of a black South African sharecropper over the 20th century, who appeared but once – for failing to pay a dog license – in the state archive. Charles van Onselen. *The Seed is Mine. The Life of Kas Maine, A South African Sharecropper, 1894-1985*. (New York: Hill and Wang, 1996).

¹² See Isabel Hofmeyr. *The Portable Bunyan. A Transnational History of The Pilgrim’s Progress*. (Princeton: Princeton University Press: 2004), ch. 6, “Dreams, Documents and Passports to Heaven: African Christian Interpretations of The Pilgrim’s Progress.” Hofmeyr persuasively shows how “documents are paradoxes: on the one hand they are props in the theatre of ruling, policing and dragooning; on the other they betoken enchantment and spiritual authority...documents, in other words, are dangerous and unpredictable. But they are also priceless and precious.” p. 143.

The translation, then, from legislative enactment of immigration restriction to the actual administration of the Colony's points of entry was made on the basis of a documentary order of certificates, permits and passes; this is, in hindsight, an undemanding claim to make but it reflected a profound shift in the ways in which regional and Indian-Ocean movement was regulated and heralded the advent of new ways of constructing and delineating territorial space and sovereignty. In South Africa, such recourse to certification and registration was clearly not without precedent and had been legitimized by several decades of internal mobility regulation through various forms of labour contract, urban passes and indenture bonds. This no doubt accounts for the certain inevitability by which a brace of new pass-based rules and regulations were instituted when Natal's administrators set to answering a series of pithy questions raised in the 1897 legislative debates by one Member of the Legislative Assembly when he asked "how [are] the government going to find out whether an individual is an immigrant to this colony or not, without asking him upon entering the colony?," another chimed with an air of desperation, "Where would the proof be? How would it be forthcoming? Where would you get it?"¹³

Historians of South Africa's pass laws in the 19th and 20th century have argued that pass systems have been central to the performance of South African exceptionalism, that is, a social structure tagged the peculiarities of the racialised/spatialised labour anxieties, capital accumulation and labour reproduction. These began in the late 18th century in the Cape with the imposition of nominal passes to secure a slave economy. By the end of the 19th century, a more formidable battery of pass regulations governing movement and the enforcement of African labour, service registers, urban influx and vagrancy laws had extended, with varying degrees of enforcement and capacity, over all of South Africa's constituent colonies and republics, a process that would ultimately become centralised between 1910-1922 and the passing of Native Labour Registration Act (1911) and the Native Urban Areas Act (1912), the basic framework of which would be maintained by Apartheid forms of state later in the century.¹⁴ Keith Breckenridge

¹³ The Colony of Natal, *Debates of the Legislative Assembly of Natal* XXIV, p. 122 and 164.

¹⁴ Doug Hindson has offered a subtle re-reading of diverging liberal and revisionist approaches that variously explain the pass system as either hampering and hindering, or facilitating and encouraging the growth of a large industrial economy hinging around low labour costs, high profit and non-capitalist reproduction – in essence the 'cheap labour power' thesis coined by Legassick and Wolpe. Hindson's intervention casts these antagonistic liberal/revisionist positions into some relief by showing that both ultimately mistake South Africa's migrant labour pass systems as overly monolithic and argues instead for a more elastic understanding of such pass systems that allows for an appreciation of their flexibility, specifically in terms of what he calls a 'differential labour power dynamic' – the simultaneous securing and protection of both an urbanized *and* temporary African proletariat. This understanding may not take us

has connected the financial influence of the Rand mining houses with Milnerian political vigour in establishing, in the flux of the South African War (1899-1902), a 'documentary state' with a degree of control unmatched by – though not in essence terribly different from – the Republican order which it replaced.¹⁵ Central to this project of 'archival discipline' were the native pass laws of 1901 that worked to record the movements, labour and indeed life histories of labourers through the Identification Labour Passport (ILP) and the Native Affairs Department (NAD). I have shown in chapter 3 how a separate permit system regulated extra-territorial movement. Although the ILP and the NAD would be beset by limitations and modifications of policy in the years to follow and though it would only be several decades later that the NAD would be able to muster a more comprehensive leverage of the South African politico-economic landscape, it was in this turn of the century milieu, motivated and energized by quasi-military registers of control and renewal, that documentary systems were consolidated. Where Hindson, Legassick, Wolpe and Breckenridge consider the nuances of labour regulation and internal migrant labour systems, I consider the embedding and proliferation of a documentary system at the margins and external boundaries of Natal.

The launching of a major new bureaucracy in the IRD thus drew on southern African fixations with documentary orders of certification, registration and the power of paper as a tool of governance and mobility regulation. Moreover, where documentary systems had, over the 19th and into the early 20th century, been framed within primarily labour terms, by 1897 and the passing of the Natal Immigration Restriction Act (IR Act), the scope of the documentary came to regulate access to nationality and citizenship.¹⁶ The act of 1897 was thus important as much for the categories of exclusion as it was for legal force it gave to border inspections systems, enforcement and related documentation.

very far from an overall conception of pass systems as wedded to economic imperative, and it is not my intention to make the necessarily long detour in developing considerations of this sort, but Hindson was right to point out the highly adaptable and dual – even multiple – nature of pass systems that constituted fundamentally important aspects of South Africa's political economy. See Doug Hindson, *Pass Controls and the Urban African Proletariat* (Johannesburg: Raven Press, 1987); Harold Wolpe, "Capitalism and Cheap-Labour Power in South Africa: From Segregation to Apartheid" in *Economy and Society* 1 (4), 1972: pp. 425-456; Martin Legassick, "South Africa: Capital Accumulation and Violence" in *Economy and Society* 3 (3), 1974; Michael Savage, "The Imposition of Pass Laws on the African Population in South Africa, 1916-1984" in *African Affairs* 85 (339), 1986: pp. 181-205; Sheila Van Der Horst, *Native Labour in South Africa* (Cape Town: Oxford University Press, 1942).

¹⁵ See Keith Breckenridge, "Lord Milner's Registry and the Making of South African Exceptionalism." Paper presented at the *History and African Studies Seminar*, University of KwaZulu-Natal, 24 Feb. 2004.

¹⁶ Jonathan Klaaren, "Migrating to Citizenship: Mobility, Law and Nationality in South Africa, 1897-1937" (Ph.D. diss., Yale University, 2004), pp. 23-57.

If the documentary system established by the IRD was only an indirect product or function of capitalist regulation in the Legassik/Wolpe sense, what other forces engineered it? If my first claim is an obvious one, that paper technologies - drawing off established South African precedents and hardly unusual given the context - were essential to the construction of exclusion, boundaries and prohibition, my second major argument to present in the pages that follow is that as much as this movement siphoned of the existing discourse of passes and identity documentation of the South African racialised labour economy, it was not *only* a phenomena of South African exceptionalism. Rather, the materialization of mobility documentation in Natal was part of a world-wide trend that was deeply enmeshed within what Adam McKeown's has called 'the globalization of borders.'¹⁷ Before continuing with a richer description of the specifics of the Natal case, I preface the IRD documentary systems by further contextualizing and globally mapping, albeit briefly, the broader history documentary regulations around mobility and identity, the evolution of which owed much to the politics and demographic precedents of continental Europe, the United States and, to a lesser degree, India.

The first moves toward the management of social capital – indeed, one of the first identification and registration systems – developed in the mid-16th century onwards in Britain with the establishment of parish registers as a proto-identification system that acted in tandem with the English poor laws.¹⁸ This was, in essence, an inclusive social security system and, accordingly, had less to do with surveillance than it did with empowerment, a bottom-up system of protection through localized, civic record keeping that facilitated and balanced the mobility of capital and citizens from one parish to the next. The French Revolution, however, was the harbinger of an important change: whereas the English Parish Registers had been an enabling technology for publicly and legally according economic, legal and political rights of individuals in a budding and intensifying market economy, in the post-revolutionary turmoil of France, documentary controls and registers took on more exclusionary overtures, delineating access to territory and acting as a kind of preventative tool from which first to identify, and then exclude undesirables.¹⁹ Despite a brief cessation on border controls in 1790, surveillance

¹⁷ Adam McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders, 1834-1930*. Forthcoming 2007/8. With special thanks to the author for a pre-publication look at the manuscript.

¹⁸ A good overview of these themes and extended historiography, is Simon Szreter, "The Right of Registration: Development, Identity, Registration, and Social Security: A Historical Perspective" in *World Development* 35 (1), 2007: pp. 67-86.

¹⁹ King Louis XIV's prohibitions on passage beyond French territory were, after all, one of the first barriers of the *ancien regime* to fall in 1791. When the King made his escape from revolutionary justice, the feasibility of such liberties of movement tested the convictions of the new legislative administrators and

and passport controls were soon re-instigated in the immediate post-revolutionary panic in which crime, war-mongers and the political enemies of the new guard – real or imagined - appeared to haunt the peripheries of the country. The political turbulence of late 18th century France represented an important watershed in the embedding of documentary controls, and modern territorial border-controls began their long and erratic evolution into the early 20th century, which the Natal bureaucracy was to both influence and be influenced by.²⁰

During the latter years of the 18th and first half of 19th century most of continental Europe gradually became more familiar with, and had instituted, documentary controls on movement of one form or another, evolving slowly into a variety of functions that included the identifications of ethnic, national and ideological others, the management of taxation, policing vagrancy and other legal compulsions, to deter *emigration* and even as a tool of controlling public health and giving practical quarantine leverage over perceived medical scares.²¹ To view any or all of these as a seamless web would be to miss much of new politics of the documentary order. Impersonation, theft and fraud were common in an administrative environment that depended on physical descriptions, residence permits and certificates. This tension activated a technological race between fraudsters and bureaucrats, as multiple – and often contradictory - documentary and registration-based technologies became further implicated and enmeshed within each other, so that, in a succinct phrase of the day, they had become “burdens for honest men, a means of security for scoundrels.”²² At any rate, by 1850, documentary controls on movement had been firmly established in social and political life in continental Europe, and permits, certificates and registration papers were no longer exceptional attributes to administrative formations of state, even if they remained muddled, disjointed and un-systemized. This was then the basic long-term backdrop from which documentary regulations over extra-territorial movement could be exported and tailored to South African needs.

within barely a year passport controls became mandatory for insider and outsiders alike, a situation that would not markedly change until well beyond the defeat of Napoleon, and even then only in a haphazard ways that did not always include legal repeal. See John Torpey, “Revolutions and Freedom of Movement: An Analysis of Passport Controls in the French, Russian and Chinese Revolutions” in *Theory and Society* 26 (6), 1997: pp. 837-868.

²⁰ See John Torpey, *The Invention of the Passport. Surveillance, Citizenship and the State*. (Cambridge: Cambridge University Press, 2000). Chapter 4. Torpey does not consider this history in relation to colonial peripheries.

²¹ Leo Lucassen, “A Many Headed Monster: The Evolution of the Passport System in the Netherlands and Germany in the Long Nineteenth Century” in Caplan and Torpey (eds.) *Documenting Individual Identity*. pp. 235-255.

²² Andreas Fahrmeir, “Governments and Forgers: Passports in Nineteenth Century Europe” in Caplan and Torpey (eds.) *Documenting Individual Identity*. pp. 218-234.

The conventional viewpoint has it that in continental Europe from the 1860s, restrictions on mobility began to subside as the imperatives of free-market ideologies and laissez-faire economics linked freedom of movement – of both people and capital - with prosperity. This perspective is persuasive in many respects but it does not account for the ways in which these new technologies remained embedded in the social fabric and took on a deeper exclusionary class and ethnic based zeal that suggests that the ‘liberal drift’ was far from universal. In France, residential registrations remained in place as a tool of military recruitment and to collect taxation.²³ In 1893, French law tied the registration of foreign workers to the presentation of the birth-certificate and in so doing inscribed divisions between nationals and non-nationals and working and non-working immigrants that maintained and re-energised the very controls on mobility that had a century before been so lambasted with the fall of the *ancien regime*. In Germany, likewise, passport laws remained to regulate the influx of Polish labour and identify those from which German protection might be withheld, thereby instituting divisions between mutually exclusive *nations* and the hardening of territorial divisions.²⁴ Within the liberal Netherlands, too, socio-economic arguments that drew on poor-relief measures and the anxieties over ‘public charges’ meant that the lower classes, wherever they were from, remained fixed within an administrative gaze.²⁵ This was often couched in the language of self-interest, which further deepened the symbolic imprint of documentary technologies in the lives of citizen and subject, and whenever Harry Smith at the IRD was confronted with protests over his deepening documentary reach over migrants, he was never apt to miss an opportunity to argue for the ‘protective’ nature of the various pass certificates, which he found to *enable* mobility rather than limit it. This is a central paradox of the documentary regime, one with which the IRD in Natal would have to constantly grapple in entirely unforeseen ways.

The discriminatory bias in the administrative gaze was perhaps nowhere clearer than beyond Europe in the emergence of increasingly stratified and sophisticated discourses of exclusion within 19th century Anglo-Saxon migration law in colonial, and most importantly, the American context, a response to the vicarious scandals and moral disapprobation of unregulated systems of indenture and ‘un-free’ labour migrancy, principally from Asia, that followed in the wake of only slowly transforming Atlantic

²³ Torpey. *Invention*. Ch 4.

²⁴ Torpey. *Invention*. Ch. 4

²⁵ Lucassen, “Many Headed Monster”

slave-economies. Recent and sophisticated scholarship²⁶ points to the emergence of border controls emanating from a complex process that re-orientated the state as the underwriter and regulator of minimum rights and nominal freedoms of mobility, as opposed to a multiplicity of private and kinship organizations and networks that were deeply suspect for 19th century liberal administrators. In effect this became a new legal and political mantra of sovereign borders administered by the state.²⁷ By 1896/7 in Natal, both the popular and legislative debates in Natal in the run up to the enactment of the 1897 law were peppered by continued references to the oddly novel *and* unquestionable right of sovereign government to decide who should and should not pass its borders. For this to take place, however, there required a standardization and narrowing of identities under which individual bodies and state verified categories of identity, occupation and family came to dominate the frameworks in which migrants could legally move. Natal had a long legacy of documentary technologies regulating indenture, but until 1897 had no system in place to regulate the movement of ‘free migrants’ arriving under their own steam. With the technologies evinced by the IR Act of 1897, this changed profoundly.

It will be recalled that in the case of the Pathans with which I began this chapter, migrants could avoid deportation or prohibition by the production of passes attesting to domicile or residence. This too was not the creation of Natal administrators. When the first wave of anti-Chinese exclusion laws swept along the American Pacific coast in the 1880s, entry rested on the establishment of domiciliary precedents or rights of birth for individuals and immediate nuclear families, a problematic that required proof and, therefore, systems of registration, certification and identification. For the Chinese, this was resolved primarily by the ‘Section 6’ certificates, following from the US legislative provisions for right of return for those already domiciled in the US. For those exempted from prohibition, visa-ed certificates at ports of departure spoke voluminously to the fact that even exceptions from restrictions required, tautologically, further documentation.²⁸ The principle of domicile, as we shall see, was taken up by IRD authorities in Natal, and

²⁶ McKeown, see note 17.

²⁷ McKeown, see note 17.

²⁸ A decade later, in the 1890s, the US pioneered photographic identification for admissible Chinese immigrants. These managed, in the end, only to reveal further inadequacies and were not, except in the case of Indentured Chinese miners scheme and profiles of known criminals sent from the CID, taken up by Natal’s Immigration authority until passports in their more modern sense became the order of the day. See Anna Pegler-Gordon, “Chinese Exclusion, Photography and the Development of U.S Immigration Policy” in *American Quarterly* 58 (1), 2006: pp. 51-77

it produced a bout of documentary innovations whose manifest limitations, we shall see, often bamboozled the immature IRD.

On the other side of the world, in India, the immobilization of social hierarchies central to the colonial project²⁹ was also framed – literally and figuratively – on the basis of paper well before the 1890s. Radhika Singha has convincingly shown how the fluidity of pre-colonial social forms were gradually arrested by the legal codification and categorization of identity, at first through scientific description, the ethnographic archive, the photograph and, importantly, the development of finger-printing, which I will return to below.³⁰ This would be the preliminary bases on which rested contract enforcement and judicial process, spread to the mobilization of demographic resources, particularly in labour and military recruitment, and finally in the more pedestrian use of criminal detection. The possibilities of verification offered by a documentary order, in short, was one resolution to the perils of new and unrestrained circulations that came in the fluxes of colonial modernity. Over the course of the 19th and early 20th centuries, the proliferation of identity documents in India also incorporated more explicit recordings and regulations of extra-territorial or cross border movement, though like its similar systems in Europe, they were amorphous and remained ill-defined.³¹ South Africa – through its principal coastlines in Natal and the Cape contributed to this global network of documents, registers and certificates, and its provisions governed much mobility along the South-East African, East African and Indian coasts.

By 1897, Harry Smith's Immigration Bureaucracy had a rich and varied lineage on which to draw when he sat down to devise means of implementing the new restrictionist thrust in Natal. Natal would contribute to this global migration regime most importantly in terms of the Educational Test, but the Visiting and Embarkation Passes and the

²⁹ I have in mind here the subtle – and not so subtle – manipulations of social organization by which 'traditional' pre-colonial societies were imagined, represented, fragmented and ultimately 'frozen' to buttress economic and political authority. See Nichols B. Dirks, *Castes of Mind and the Making of Modern India* (Princeton: Princeton University Press, 2001) and Mahmood Mamdani, *Citizen and Subject. Contemporary Africa and the Legacy of Late Colonialism*. (London: James Curry, 1996).

³⁰ Singha, "Settle, Mobilize, Verify."

³¹ Of particular note in the Indian context was the need to allow for a certain degree of permeability that allowed for substantial emigration for labourers, pilgrims and those who could claim a measure of social standing and mobility. These were met by documents that worked essentially as exemptions: pilgrim passports, coolie-agreements, and, by 1904, the 'Australian Passport' which was designed as testimony to an individual's ostensible and demonstrable class status. Here, the Indian Government sought to maintain and expand its influence over subjects that moved beyond its territories. The surveillance of immigration into India in the late 19th century appears to be far less developed, but did include the Alien Pass, issued primarily to pilgrims transiting through India, and serving primarily as an aid to surveillance and law and order. See Radhika Singha, "'A Proper Passport for the Colony': Border Crossing in British India, c. 1882-1920." Unpublished paper presented Agrarian Studies Colloquium Series, Yale University, 3 Feb. 2006.

Domicile Certificates – forerunners of the temporary visa and permanent residence certificate in South Africa – were as important technologies of regulation. These would together form the general administrative spine in establishing the efficacy (or otherwise) of incipient sovereign borders and the set the terms by which Indian-ocean mobility off the coast of Natal would have to first be negotiated. The fortunes of each of these are considered in turn in the remainder of this chapter.

An Element of Uncertainty: Literacy Tests

The most significant of the legislative innovations to result from the 1897 IR Act was that of the Literacy Test, which variously came to be called the Education or Dictation Test. The political manoeuvring to exclude Indians without mentioning such by name was the subject of an earlier chapter. Here, I want to consider the Literacy Test as a specific technology of rule, a document which acted as a kind of ticket to entry.

Writing as a cultural product has been at the heart of long-term processes of cultural hegemony; the selective preservation and maintenance of certain uses of language and indeed of writing itself has shadowed class and racial hierarchies and indeed consistently subverted them.³² In the context of colonial expansion and the consolidation of bourgeois cultures, literacy became a mark of social capital and cultural claims of superiority, resulting in other modes of communication being deemed unimportant and marginal: the very archive from which this study is drawn is ample testament to written forms of knowledge.³³ From the 18th century onwards, writing increasingly gained in legal and cultural significance and was of decisive and indeed necessary import in both state projects of legibility as well as negotiations with and through state policies from below.³⁴ Writing and literacy was, in short, symbolic of European ‘standards of civilization.’

³² For a very broad overview of this process, see Henri-Jean Martin, *The History and Power of Writing* (Chicago: University of Chicago Press, 1995); More specific in its investigation of the culture of writing and European modernity, see Dena Goodman, *The Republic of Letters. A Cultural History of the French Enlightenment* (Ithaca: Cornell University Press, 1994), pp. 12-52 and 136-215 (thanks to Vukile Khumalo for this reference); Jane Caplan, “Illegibility: Reading and Insecurity in 19th Century Law and Government.” Paper presented at *Sensor-Census-Censor: Investigating Regimes of Information, Registering Changes of State* colloquium at SARAI, Centre for the Study of Developing Societies, Delhi, 30 November-2 December 2006.

³³ Bernard Cohen, “The Command of Language and the Language of Command” in Ranajit Guha (ed.) *Subaltern Studies IV. Writings on South Asian History and Society* (Delhi: Oxford University Press, 1986): pp. 276-329.

³⁴ Histories of the epistolary sphere in South Africa include Keith Breckenridge, “Love Letters and Amanuenses: Beginning the Cultural History of the Working Class Sphere in Southern Africa 1900-33” in *Journal of Southern African Studies* 26 (2), Special Issue on Popular Culture and Democracy, 2000: pp. 337-348; Vukile Khumalo, “Epistolary Networks and the Politics of Cultural Production in KwaZulu-Natal, 1860-1910” (PhD diss., University of Michigan, 2004). For Gandhi’s self-styled written archive see Vashna

As a technology of exclusion, the Literacy Test was at the forefront of Natal's bureaucracy to deem immigrants undesirable and it could be applied with wide discretion and flexibility; for that reason, in 1907, when the number of those prohibited on literacy grounds reached a decade long high, Harry Smith was moved to write that "the chiefest [sic.] strength of the act is in the [literacy test] provision."⁵⁵ It had taken a decade, however, for Smith to reach this conceit.

The test was to be administered on board ships or in a small office at the inland border stations by and to the satisfaction of an assistant immigration restriction or boarding officer, after which a certificate of proficiency would be awarded to the applicant who would then be allowed to continue into the colony. It would be applied to Asian and European alike, although as mentioned the significant discretionary space afforded an officer meant less Europeans than Asians were subject to it.

The actual making of the literacy test as a technology of exclusion had as much to do with the practical problems and trans-colonial debates of British subject-hood as it did with the constitutional history of the United States, the 'great republic' whose precedent opened up new possibilities for settler dominions as they attempted to carve open more independent political spaces. This process of simultaneously distancing the body politic from the metropole and shoring up of categories of (male) whiteness arguably began in the United States. In discussions over firstly the constitutional 'problem' of freed slaves' and secondly over southern and eastern European migration, the educational test gained its early momentum.

In the southern United States, mid-way into the 19th century, stern challenges to a slave-based racialised order came in the form of claims to equality from the anti-slavery movement; it did not take long for US senators to realize that the defence of racial hierarchies required further work. Unimpressed by calls for multi-racial democracy and mired in 'the Negro Problem,' US legislators moved the granting of the electoral franchise to the centre of political debate. In 1855 and 1857 in Massachusetts and Connecticut respectively, constitutional drafters decided that suffrage and fitness to citizenship ought to be based on a pre-defined educational standard, whereby voters

Jagarnath, "Reading an Archive focused on its Archivist: the Case of Mohandas Gandhi," Paper presented at the *History and African Studies Seminar*, University of KwaZulu-Natal, 30 May 2007.

⁵⁵ PAR/ARIRD 1907. p. 11

ought to be able, at the least, to write their own names and be able to read the constitution, an astute piece of politics that neatly barred most ex-slaves from the right to vote.³⁶ It was in this context that the meaning of race was first explicitly linked to literacy and by the last decade of the 19th century, several states – Mississippi, the Carolinas, Louisiana, Alabama, Georgia and Virginia – had codified passing an ‘educational test’ as criteria for the right to vote. By 1892, the same principles had migrated to South Africa and inhered in the Cape Colony Franchise Act, which also added a property requirement.³⁷

The use of literacy tests in respect of *immigration* and the maintenance of borders also drew on an American precedent, different but related to the struggles over suffrage. In an atmosphere of massive mobility and immigration coupled with moral panics over southern and eastern Europeans, the 1890s also brought new challenges to unproblematic concepts of whiteness. Objections to immigrants in the United States were based on qualitative grounds – undesirability was ascribed to the ‘ways of life’ of certain immigrants that were inimical to American ‘standards of civilization,’ to criminality, disease and pauperism. Slowly evolving restrictionist tendencies matured into a focal point for US administration: the challenge was to ‘sift’ immigrants into desirable and undesirable categories. Restriction rested in the US, as it would in Natal, on the ‘principle of selection’ and qualitative filtering of immigrants. In practice, this had the effect of creating, refining and augmenting selective tests.³⁸

In this broad context, the specific history of the ‘literacy test’ as a means to limit immigration began in 1890, at the suggestion in the *North American Review* by the Boston senator H.C Lodge. When the Boston Immigration Restriction League was formally constituted in 1894 and began to agitate for restriction, the literacy test again achieved strong public currency and appeared to have considerable backing from lobbyists. At the last hurdle, however, the measure was successively vetoed on constitutional grounds by US Presidents, first by Cleveland, followed by Taft and Wilson. Into the early years of the 20th century the theme of presidential veto would be a recurrent one, despite even Roosevelt’s 1907 Immigration Commission agreeing that the best form of restriction was

³⁶ Marilyn Lake, “From Mississippi to Melbourne Via Natal: The Inventions of the Literacy Test as a Technology of Racial Exclusion” in Marilyn Lake and Ann Curthoys (eds.), *Connected Worlds. History in Transnational Perspective* (Canberra: Australian National University Press, 2005).

³⁷ Lake, “From Mississippi to Melbourne.”

³⁸ Henry Pratt Fairchild, “The Literacy Test and its Making” in *The Quarterly Journal of Economics* 31 (3), 1917: 447-460.

indeed such a literacy test. The chief reluctance pivoted around the principle, most succinctly captured in Wilson's claim, that the test was 'a test of opportunity not character.' After several more attempts – it had been discussed in the House, by the end, on no less than 32 occasions – the Literacy Test was eventually taken up in 1917, some 20 years after it formally debuted in Natal.³⁹

Back in Natal, initial enthusiasm for a literacy test to draw lines of inclusion seems to have come from what in hindsight appears to be a rather unexpected source. In the mid 1890s, as Natal's new legislative assembly motioned to pass a law stripping ex-indentured Indian males of the right to vote, the expected protest on the franchise question came in the form of a memorial from a number of prominent Indian residents – including one Mohandas Gandhi - of Natal to Joseph Chamberlain. Noting that the Franchise Law Amendment Bill made "assiduous distinctions between Europeans and others," the memorialists wrote that rather than an explicit reference to colour, Natal's colonial authorities might be content to institute only an educational test; those able to pass it might therefore be given exempted status and be allowed to vote.⁴⁰ The *Natal Mercury*, that organ of settler Durban, had earlier made a similar suggestion and the memorialists were sharp enough to quote the editorial in their petition to Chamberlain:

An educational test imposed which while it would not remove a single European from the Voter's Roll, would have a sweeping effect on Indian Voters. The number of the latter's possession immovable property of the value of say, £100, or paying a rent of £20 p. annum and able to read and write English must be exceedingly small, and should this fail, there would be nothing to hinder us from adopting the Mississippi plan, or a modification of it to suit the circumstances.⁴¹

Five months later, a pamphlet written by Gandhi – ever straddling the unsteady horses of resistance and collusion with the Empire - expressed a similar sentiment. In a letter to the *Natal Witness* on December 1 1896, Gandhi declaimed the colour bar and made some constructive suggestions which might be approved by the assembly. He wrote:

³⁹ Fairchild, "Literacy Test," p. 459.

⁴⁰ See Adbul Kareem Hajji et al., "Memorial to Joseph Chamberlain, 22 May 1896" in *Collected Works of Mahatma Gandhi*. Vol. 1 (Delhi: Publications Division, Ministry of Information and Broadcasting, 1994). Also available at <http://www.gandhiserve.org/cwmg/cwmg.html>, pp.337-355.

⁴¹ *The Natal Mercury*, "Editorial," 5 Mar. 1896. Cited in Hajji et al., "Memorial." p. 344.

A real and reasonable Educational Test would perhaps for ever put a stop to the danger (if ever there be any) of the Indian votes swamping the European and would, so far as possible, keep the roll clear of the most objectionable European voters also.⁴²

Moreover, an education test had the added benefit that it answered those fears amongst Indians that the scope for discretion on decisions on exemptions would be too wide when personally located in individual administrators. The memorialists had written that a “certain amount of education, intelligence or stake to be sufficient” and that introducing a “simple educational test” instead of leaving power in the hands of the Governor-in-Council would be the best way forward. “If it fails” they concluded, “a more severe test may be applied.”⁴³In the end, suggestions for a literacy test to mitigate the loss of the Natal franchise for Natal Indians fell on deaf ears, and the debate was resolved with the condition that the franchise could only be granted to (men) native to countries that possessed ‘democratic institutions,’ something that legislators used to debar those from India, even if this belief was ultimately erroneous and subject to continued protests. Still, by the time the 1897 Immigration controversy dawned on the colony, legislators were clearly well aware of the possibilities allowed by the exclusionary power of a literacy test.

As the legislative debates concluded (see chapter 2), the educational test was codified into law as section 3a) whereby “any person who, when asked to do so by an officer appointed under this Act, shall fail to himself write out and sign, in the character of any language of Europe.” The allusion to *any language* in Europe as opposed to English was a concession to fierce arguments that the Act’s provisions would prohibit, or at the very least deter, large numbers of white European immigrants whom legislators feared the small minority in the colony could not do without. The test was initially designed as a basic attestation of an applicant’s reading and writing skills, and gave – assuming the applicant was truthful – a modicum of identificatory information. The test read:

⁴² M.K Gandhi, “Letter to *Natal Witness*, Dec. 1 1896,” in *Collected Works* Vol. 1, p. 325.

⁴³ Hajji et al, “Memorial,” p. 352.

TO
 THE COLONIAL SECRETARY,

 SIR,

 I claim to be exempt from the operation of Act No.
 ., 1897. My full name is My place of abode for
 the past twelve months has been. My business or
 calling is. I was born at in the year

 Yours, etc.,

Figure 13. Educational Test, 1897. Annexure to the Immigration Restriction Act, 1897.

Within a year, however, Harry Smith was beginning to realize limitations of so perfunctory a test and felt there was scope for much more rigour. As the set-test stood, he wrote “it defeats its own object. The longer it remains, the weaker it will become.”⁴⁴ In his review of the first year of the Act’s existence, Smith was immediately advocating for “a test to consist of writing an application of reasonable length and quality of terms employed, and dictated by Immigration restriction officers [and] changed from time to time.”⁴⁵

Nothing immediately changed, however, and Smith was left to make do with the tools at his disposal. By the end of 1899, he was more agitated and noted with concern the increasing number of otherwise undesirable immigrants he was, per regulations, compelled to admit. The number was still not overwhelmingly large – less than a hundred – but in the first 30 months of the new border controls, the numbers of those allowed in by virtue of their ability to overcome the test was growing exponentially. The test was becoming increasingly ineffective by dint of its very standardization. Smith was regularly “confronted with evidence that the form prescribed has been learnt for the occasion. In some cases men holding Visiting Passes learn English in Durban, and then claim release from the act.”⁴⁶ This was the case when the trading firm of Amod and Bros. arranged for the temporary visit of a shop assistant in 1901 by the name of Abdulla. As the term of

⁴⁴ PAR/ARIRD 1897, p. 2.

⁴⁵ PAR/ARIRD 1897, p. 2.

⁴⁶ PAR/ARIRD 1900, p. 4.

the Visiting Pass – essentially a temporary exemption from the I.R Act with a guarantee of departure (see below) – came to end, Amod decided he would leave the stewardship in the hands of the assistant while he himself returned to India. When Smith objected, Amod pointed out that Abdulla had learnt English well in the time he was in his employ, and would gladly take the Test to legalize his presence.⁴⁷ In the two years over which the situation had been developing, there was little that Smith could do, and Abdulla was allowed to stay. Such underhanded tricks rankled with Smith, and he made a note to make it as difficult as possible for migrants to know what form the test might take.

There is also evidence to suggest that the requirements of the Educational Test were not so strict and forbidding to deter travellers who assumed entry could be gained in one way or another. Soon after the outbreak of war and the downturn in commerce, the Durban merchant Amod Moosa left for India. A few months later, however, he decided to return to his business interests in the South African colonies.⁴⁸ He wrote from Bombay to the IRD requesting that he be sent a guarantee that he would be allowed to land – it was required by the shipping company before he could embark on a journey setting course for Durban. Amod wrote in English, and attested to his self-evident command of the language. Smith agreed to send a guarantee, and reminded him he would still be liable to take the Education test when he landed.⁴⁹ Within weeks, however a man was detained on the wharf side bearing Amod's pass but who could not pass the examination. Amod had merely passed on the certificate to his brother Mohamed, who he had sent in his place to supervise the business concern. Mohamed admitted to speaking no English and agreed to leave the colony as soon as possible.⁵⁰ He was, in the interim, given a short-term Visiting Pass in a compromise engineered by Gandhi – but for Smith the Educational Test was clearly not yet of the utmost deterrent value and could not have been taken with the kind of seriousness IRD officials hoped.

Writing itself could also be used as a means to destabilize the power the literacy test and blunted the sharp dividing lines between those fit for inclusion or otherwise. Smith complained of the poor quality of the calligraphy and the hand-writing (to which this researcher can attest!) which belied easy decipherability and rendered an element of indecision and ambiguity on the forms. Smith wrote back to the Colonial Secretary that in a number of instances he was unable to legally exclude an applicant because he simply

⁴⁷ PAR/IRD 4/826/1901. Correspondence between Smith and M.K Gandhi. 15 Apr. 1901 to 13 Jul. 1903.

⁴⁸ PAR/IRD 4/728/1900. Moosa to Smith, 28 Sep. 1900.

⁴⁹ PAR/IRD 4/728/1900. Smith to Hudson, 26 Mar. 1901.

⁵⁰ PAR/IRD 4/728/1900. Gandhi to Smith. 27 Mar. 1901.

couldn't make a positive decision – Smith typed up disconsolately in his report of 1900 that “so long as the marks placed before me cannot reasonably be declared to represent something different from what they purport to be, or nothing at all, I have to be satisfied.”⁵¹

Smith continued to press for a sterner method of applying the educational test. It had become overly predictable and in 1901 he estimated that a change in format would reduce admission by as much as 50% and concluded that the “introduction of an element of uncertainty” and a stiffening of the requirements of the test would be uncomplicated and inexpensive.⁵² As the South African War ended and the Milnerian politics of renewal swept through South Africa, legislators and commissioners convened in 1903 to suggest, alter, create and promulgate a new range of rules, regulations and laws that set the parameters of new, unified South Africa. It was a perfect opportunity for Smith to air once again his views on the trouble with the educational test to a forum of law-makers. Smith found favour – all agreed that the initial Act had been hastily passed and the practicalities of the act had been found seriously wanting. One legislator was of the opinion that the Act had “failed very largely.”⁵³ The reasons for this were manifold, as will become clear. Of importance here is that Smith wrote in his official statement that the “education test [was] so simple that many of the undesirable class were able to master it...it took a period of three weeks to learn it. A fixed test set out in law was fatal to effectiveness.”⁵⁴ The revamped provisions took their cue from the Cape Immigration Act passed a year earlier, and insisted on a *dictation* performed by an immigration official. The first of the new provision read:

Any Persons who, when asked to do so by any duly authorized officer, shall be unable through deficient education to *himself write out and sign*, in the characters of some European Language, and application to the satisfaction of the Minister.⁵⁵

The more flexible dictation format was taken up in Australia in the same year, eventually by the Transvaal in 1905 and ultimately became an integral part of restrictionist administration in British Columbia, New Zealand, Tasmania and eventually the United States by 1917.

⁵¹ PAR/ARIRD 1900. p. 4.

⁵² PAR/ARIRD 1900. p. 4.

⁵³ Colony of Natal, *Debates of the Legislative Debates XXXV* (1903), p. 492.

⁵⁴ PAR/IRD 21/933/1903. Statement upon Natal Act, 1903.

⁵⁵ Immigration Act Amendment 1903. Clause 5a). Italics mine.

Another of the 1903 additions was that those who passed the Educational Test would be awarded an official 'Certificate of Ability' that doubled as a legitimizing document for one's presence in Natal – a successful applicant was “free from disability under the restrictive provisions of the Act. He will be at liberty to enter the colony” and contained information pertaining to name, nationality, age, trade, marital status, residence and a short space for a “general description” that included height and bodily marks, attested to by a signature of the holder.

The raising of the educational test and its growing esteem across South Africa's colonics (and beyond) had the effect of deepening the currency of documentary technologies in the regulation of the borders and it percolated into discourses of citizenship. Literacy and paper were an inherent part of the politics of exclusion. The British Indian Association launched a protest against the increased severity of the test in Natal 1903, but such a protest was unlikely to have ever gained more than passing lip service. As the Transvaal inaugurated similar provisions in 1906, Gandhi vilified the strictures of the new regulations but not the principle. In a speech protesting the Transvaal Location Laws, Gandhi admitted that legislation along Natal lines was generally acceptable, but should have included in the definition of its allowable languages those of India. “The test” would still, he said “exclude millions of [illiterate] Indians, and it is the millions which are a bugbear to the Europeans.”⁵⁶ As a sign of how far the issue of literacy – at first a mere smokescreen to deeper racial antipathies – had become embedded in ideas of mobility and borderlines was that it had become a *de facto* and *de jure* tool of exclusion *and* a means by which petitioners might gain a foothold of inclusion. The concept was barely challenged, and only its degrees and gradations questioned.

The use of the literacy test was not solely aimed at the Indian for which it had shrewdly been devised, but also applied to numbers of poorer whites, particularly eastern Europeans - principally Jews - who made up no small number of immigrants arriving at Durban. In this context, debates emerged as to what precisely constituted a 'European language', with Yiddish causing the most ambiguity and the Literacy Test remained a political hot potato as undesirables wrestled for inclusion. In the 1903 Legislative session in Natal, legislators responded to a number of Jewish deputations that had petitioned for Yiddish to be legally specified as a European language. The case for its inclusion was

⁵⁶ Gandhi, *Collected Works* Vol. 3, p. 61.

strong – the Cape looked like it would pass the proposal (and eventually did, but not until 1906) and the language was believed to have some 6 million speakers in Europe. A handful of legislators pressed for its inclusion, and one member flamboyantly added for good measure Russian, Finnish and Turkish to the list on the grounds that Natal needed whites – however broadly it was imagined – to populate and settle the colony.⁵⁷ The response from the Secretary for Native Affairs, the Immigration Restriction Officer (IRO) and several other politicians was aghast. It was, they said, principally the Eastern European Jews that had been “carrying on a traffic with natives” in Durban and were perennially thought to be involved in criminal rings, the trope of contamination once again a familiar echo in the Pietermaritzburg assembly.⁵⁸ The Secretary for Native Affairs was concerned that to allow Yiddish would be to set a precedent for more demonstrably ‘Asiatic’ tongues and proclaimed “that we might as well include Japanese.”⁵⁹ The metropolitan context is again important: the Aliens Commission in the United Kingdom was simultaneously writing up its reports in London; Jews living in the East-End were provoking considerable anxieties and, in a recurrent bout of anti-Semitism, had become in the first decade of the 20th century in England, the quintessential undesirables.⁶⁰ The Royal Commission on Aliens articulated ‘undesirability’ specifically in terms of moral and spatial contagion through disease, unemployment overcrowding and criminality, and the problems of assimilation and contact between (Jewish) aliens and (British) natives. This commission spurred the passing of 1905 anti-alien legislation in Britain, although by 1910 it had become a dead letter, partly explained by the political and bureaucratic inertia of a bill having been passed by an outgoing administration with an incoming one in no mood to take it up.

Harry Smith was in no such position and was almost apocalyptic in his language when he flatly refused to countenance the idea, saying that “Yiddish is the medium of communication in use by a people mostly foreigners who count amongst their number some of the most unfortunate of Gods’ Creatures.”⁶¹ Only when a deputation met with the Colonial Secretary and promised to act as guarantors to ‘respectable Jews’ did the Secretary agree that when a prospective Jewish immigrant was introduced to the Colony through the community’s recommendation, he would not enforce the Literacy Test,

⁵⁷ Colony of Natal, *Debates XXXI*, pp. 552-553.

⁵⁸ Colony of Natal, *Debates XXXI*, p. 553.

⁵⁹ Colony of Natal, *Debates XXXI*, p. 553

⁶⁰ See BPP/Cd. 1741, *Report of the Royal Commission on Alien Immigration*, pp. 1-50. For the bureaucratic inertia which followed, see J Pellw, “The Home Officer and the Aliens Act, 1905” in *The Historical Journal* 32 (2), 1989: pp. 369-386.

⁶¹ PAR/IRD 18/553/1903. Statement on Bill “To place closer Restrictions on Immigration,” undated.

although it still remained on the law book and at Smith's discretion.⁶² Literacy and Language once more came to delineate the boundaries of inclusion and exclusion of the settler polity, and it went beyond a clear racial binary. The claim I make here is that the Literacy Test, generally associating the IRD with the exclusion of Asiatics, was also used for a more subtle understandings of citizenship. The Literacy Test was not solely to restrict Asiatics, but came to demarcate more complex hierarchies where a specific Anglo-Saxon 'whiteness' was refined and secured *bureaucratically*. Yet as a tool of exclusion it also had a certain flexibility which made it all more pleasing to immigration officials. Certification of Literacy was, in short, at the centre axis of bureaucratic border making.

The new measures of the dictation test from 1903 were much more satisfying to the IRD – Smith wrote that the new test with its varied format was now “disconcerting to many who with the assistance of friends had gone to the trouble of learning parrot-like, the original.”⁶³ But there were still were potential weak links in the chain. When the prominent Durban Jews had met with the authorities on the question of Yiddish in 1903, one – a Mr. Schlom - proclaimed that the educational test had in any case generally been “of no great value; that it was conducted by a constable; and that it was often overcome by means of a small bribe to the officer charged with the duty,” a suggestion that the colonial secretary took as a “serious imputation,” though Schlom, worried that the controversy might deflect from the broader aim of his meeting for the legal inclusion of Yiddish speakers, refused to be drawn on any specific officers and there the affair lay.⁶⁴

The easiest way of circumventing education prohibitions was to flummox the bureaucracy on its own terms. If the ‘Certificate of Ability’ was meant to authenticate an immigrant’s admissibility, getting hold of one without actually having taken the test was another means by which immigrants might by pass the immigrations officers’ examination on ships. In 1906, Akoo Gunga, a storekeeper from Delagoa Bay, was examined by the officer on the ship when it docked at Durban who noted that the descriptive details on the Certificate of Ability did not tally with the person in front of him. Gunga was given a new test and failed, and in the ensuing investigation it emerged that Gunga had met one Hajee Hoosen Amod in Delagoa Bay who told him that “in

⁶² PAR/IRD 19/688/1903. Report on meeting between the Colonial Secretary and Mssrs. Nathan, Wartski and Schlom, Jul. 1903; Colonial Secretary to Smith, 30 Jul. 1903.

⁶³ PAR/ARIRD 1905. p. 16.

⁶⁴ PAR/IRD 19/688/1903. Report on Meeting between the Colonial Secretary and Mssrs. Nathan, Wartski and Schlom, July 1903; Colonial Secretary to Schlom, 30 Jul. 1903.

order to land at Port Natal he advised me to buy the above named certificate which I did by paying him £3 sterling for the same, he stating that there would be no difficulty to pass the immigration authorities at Port Natal.”⁶⁵ Amod’s name appeared on the pass, who had, it turned out, left Durban for Zanzibar and had sold the certificate en-route. Smith thought Gunga “more fool than rogue” and was content for him to be deported rather than face criminal sanction, and he was put on the next available steamer for Delagoa Bay.

But these slippages aside, by 1907 Smith was generally pleased with the results of the new dictation system. He continued to push for further muscle in administering the test. The provision that required the test be conducted in “some European language” was still too wide to leave the immigration gate partially open; certainly the implication that *any* European language would suffice taxed the linguistic capacities of his officers. He therefore asked for – and was granted – the power *to nominate* the particular language in which a test could be administered on a case by case basis, which had the added benefit of giving an immigration official increased autonomy in choosing a particular language in which an immigrant could not hope to be proficient, as was documented when a German adequately negotiated dictations in English, German and French but failed when he was asked to do so in Greek.⁶⁶

In 1910, to the backdrop of political and territorial Union, administrative decisions moved to Pretoria and a 3 year process of centralization began. No significant changes to the internal procedures of the provincial regulations were mandated, and the ability of the Literacy Test to perform as a flexible tool of exclusion remained as an integral part of wider South African policy. In 1910 the Secretary of the Interior wrote to Smith and confirmed that “no rigid rule should be followed with Education test” and that “a certain amount of elasticity” might be used in its administration. “If an immigrant is undesirable type, then the test is to be strictly applied” he signed off.⁶⁷ Smith responded, pleased that he and the minister were, so to speak, on the same page. “The same principles have governed admin of Natal act since the beginning” Smith wrote, before ruminating in conclusion his theory of immigration that “it is a point for consideration how far the migrations from East to West may have contributed to a lowering of the scale of life of the humbler classes of the indigenous populations of the

⁶⁵ PAR/IRD 54/872/1906. Declaration by Akoo Gunga. 17 Aug. 1906.

⁶⁶ PAR/ARIRD 1907. p. 11.

⁶⁷ PAR/IRD 84/1203/1910. Secretary of the Interior to Smith, 21 Sep. 1910.

countries which the East has invaded.”⁶⁸ He had, at least, the Literacy Test that might create a paper wall separating the two.

A Battle of Wits: Domicile Certificates

The efficacy of the Immigration Act of 1897 did not turn on the single hinge of the literacy test alone. Legislators realized that in the context of multiple (re)migrations the right of return would have to be protected and Harry Smith realized in principle – and was probably only too happy to write – that “the Government could not imprison a man here without his being allowed to an opportunity of visiting his native land.”⁶⁹ The concept of lawful residence came to play an important part in constructing the dividing line between inclusion and exclusion – and by implication the means to cross it; Jonathan Klaaren has argued that South African citizenship over the 20th century has been characterized as a “citizenship based upon lawful residence rather than upon membership in a political Republic or membership in a cultural bloc.”⁷⁰ How this concept was practically managed and what tensions and possibilities this evoked in bureaucrats and migrants themselves tells us much about the lived experience of the formative migration laws, and much about the limitations of Natal’s colonial state whose technologies might often acquire a life of their own in ways that suggest the documentary order ended up as much a game of cat and mouse than of a rigidly sealed borderline.

Lawful residence was to be established – principally by Indians, though again it was not legally specified on the basis of race – through the acquiring and producing proof of ‘former domicile.’ In the Act of 1897, this was codified in Section 6, whereby:

Any person who shall satisfy an officer appointed under this Act that he has been formerly domiciled in Natal, and that he does not come within the meaning of any of the sub-sections (c), (d), (e), (f) of Section 3 of this Act, shall not be regarded as a prohibited immigrant.

Yet while Section 6 laid the foundational basis of the concept, it did not go far in describing or suggesting how this might actually be put in effect, and relied upon an ad-

⁶⁸ PAR/IRD 84/1203/1910. Smith to Secretary of the Interior. 22 Sep. 1910.

⁶⁹ PAR/ARIRD 1897. p. 2.

⁷⁰ Jonathan Klaaren, “South African Citizenship: Past, Present and Future.” Paper presented at the *Law and Society Workshop*, University of Witwatersrand, 9-10 September 2004, p. 1.

hoc general basis of ‘providing proof’, a vague and contentious guideline that would very quickly need clarification. Prior to 1897 and the passing of the IR Act, two jewellers – we don’t unfortunately know their names – had been resident in Natal for several years but had, at some point in the mid 1890s, returned to India for a visit and planned to travel back to Natal. As they returned to Natal with the post-97 regime in place, they found themselves barred from entry. Mohandas Gandhi brought their situation to the attention of the authorities and relayed the news that the jewellers had been turned back at the port and were now in Delagoa Bay waiting for the situation to reach some kind of resolution. They had, it was said, been there for “three or four months and had been put to a great deal of expense and trouble.”⁷¹ The Immigration authorities were reluctant to let the jewellers in – they had clearly not been able to produce any *written proof* of former residence; when Gandhi claimed that their property and instruments were still in Natal, Smith dismissed it as “a few jewellers instruments that could belong to anybody.”⁷² What Smith really wanted was a document of some sort. Smith eventually compromised and allowed the men to enter the colony on a £10 deposit, the jewellers to appear before a magistrate to prove their domicile.

This was a cumbersome and in fact risky procedure for immigration officials, keenly aware of the difficulties in finding, proving and deporting prohibited immigrants once they were already in the territory. A number of similar cases bothered Harry Smith. Toward the end of 1897, he hit on the idea of a ‘Domicile Certificate’ which, he later described to the Colonial Secretary, was to be issued to:

Persons leaving the Colony, who desire to have their return protected, but whose right of re-entry would otherwise be subject to investigation...they are also issued to persons entitled there-to, who left the colony before the restriction Act came into force.⁷³

Smith required that an “affidavit or letter” from a second party be produced, on which he or his officers would make a brief enquiry before issuing a Domicile Certificate. Anything less, he mentioned “would be quite insufficient” and ordered the certificates – requiring little more than a name and an address – to be issued from Magistrates offices

⁷¹ PAR/IRD 1/1A/1897. Notes taken at an interview between the Attorney-General, the Treasurer and the Immigration Officer and Mr. Gandhi. 9 Nov. 1898. The events referred to took place in 1897.

⁷² PAR/IRD 1/1A/1897. Notes taken at an interview between the Attorney-General, the Treasurer and the Immigration Officer and Mr. Gandhi. 9 Nov. 1898.

⁷³ PAR/ARIRD 1897. p. 2.

around the colony.⁷⁴ The precise requirement was that anybody who had lived continuously in the colony for 2 years or more prior the passing of their Act, had not resided as an indentured labourer or for a temporary purpose, was eligible for the Domicile Certificate. In so drawing a line between restricted and allowable foreigners and basing it on a Domicile Certificate, Smith could not have realized he was providing a handle by which prospective migrants who had never visited the colony would be able to jar open its swinging doors.

Within only a matter of months, Smith's initial idea threatened to disintegrate. On the 23 September 1897, Mohamad Moosajee was charged at the Newcastle Magistrates court for having fraudulently entered the colony. In the testimony, recorded by the *Mercury*, Moosajee was found to have left Johannesburg but with a certificate stamped and signed by the Durban magistrate, where he had demonstrably never been.⁷⁵ It emerged that the certificate had been applied for by an unspecified other, and simply been posted on to Moosajee in Johannesburg; it was only by "pure accident" that it was picked up when the Immigration official took the time to examine the document more closely than normal. The loophole was as obvious as it was large – the chief limitation of Smith's original Domicile Certificate was that they gave no actual description of the holder (see figure 14).

⁷⁴ PAR/ARIRD 1897, p. 2.

⁷⁵ *The Mercury*, "Undesirable Immigrants," 25 Sep. 1897.

No.

THE IMMIGRATION RESTRICTION ACT
(NATAL), 1897.

CERTIFICATE OF DOMICILE IN NATAL.

Office of the Magistrate for the

Division of.....189

This is to Certify that the person hereinafter described has produced evidence to my satisfaction that he has been domiciled in Natal.

Name

Country of Birth.....

Occupation.....

Place of Domicile in Natal

Whether accompanied by wife or family

.....

Magistrate,

C.S.O.—246.

Figure 14. Domicile Certificate 1897. Source. PAR/TRD.

Secondly, only one copy of the certificate was issued, with the Immigration Bureaucracy not actually having a record. Concerned that “a lucrative trade” in Domicile certificates was being carried out, Smith fired a missive to the Colonial Secretary requesting authority and resources to beef up the arrangements. Smith’s suggestions were to duplicate certificates by means of a counterfoil, institute a registry of certificates issued, and perhaps most importantly, to require a much fuller description of the person applying. All these would of course supplement the affidavit requirement.⁷⁶ Within a

⁷⁶ PAR/IRD 1/71/1897. Smith to Colonial Secretary, 10 Aug. 1897.

matter of weeks, the new guidelines reached magistrates across the colony, with Smith's gloomy warning that without these additional safeguards,

there was nothing to prevent them from being put to wrongful use. Indians were leaving the colony with no intention of coming back and give or sell it to a friend, may send it away, or be procured on grounds that he is leaving, and sent on.⁷⁷

A year later, Domicile Certificates were a firm part of the Smith's documentary arsenal but were requiring "great time and care." Unfortunately for Smith, his headaches were only just beginning. Looking back from 1903, administrators agreed that the law had been "evaded over and over again in many directions" in its first 6 years of existence.⁷⁸

The nature, extent and methods of subversive economies of fraud are by their nature extremely difficult to track for both the researcher and concerned bureaucrats alike. It is impossible to tell in these years how many entries or Domicile Certificates were based on fraudulent claims of residence, but conterminous world-wide infrastructures of fraud suggested it was more than a footnote to the emerging immigration regime. Such underground networks existed in the Pacific, as Adam McKeown has shown, where Chinese migrant networks offered a systemized complex of means by which to evade the US immigration laws and the extensive interviews to which they were subject before being granted admission.⁷⁹ Chinese organizations offered coaching manuals, tuition, partly fictionalized life histories and geographies, as well as advice on how to conduct interviews with pointers to appearance and clothes, a "parallel archive" at once subverting and re-inscribing "the rituals of regulation." For McKeown, "administrators and migrants embraced each other in web of surveillance that facilitated fraud."⁸⁰ A similar pantomime played out in Natal.

For Harry Smith in Natal, much of his knowledge and surveillance of fraud was to some extent dependent on frequent tip-offs and anonymous notes. Smith's offices were often seized by Indian migrants specifically to gain leverage in localized disputes and a good portion of the tips offs came from Indians themselves, eager perhaps to thwart commercial jealousies and rivalries, although we can really only speculate on

⁷⁷ PAR/IRD 1/71/1897. Smith to Colonial Secretary. 10 Aug. 1897.

⁷⁸ Colony of Natal, *Debates XXXI*, p. 492.

⁷⁹ Adam McKeown, "Ritualization of Regulation: The Enforcement of Chinese Exclusion in the United States and China" in *The American Historical Review* 108 (2), 2003: pp. 337-403.

⁸⁰ McKeown, "Ritualization of Regulation,"

motives. As much as the Immigration restriction regime excluded some Indians, it also empowered and armoured others. These numerous tip-offs reveal an intricate, Indian-ocean wide network of schemes designed to thwart the Immigration Act of 1897. The sending of passes (acquired in Natal) by post to Johannesburg and India was a common practice, as the permits travelled through family hands and wider networks of selling and buying.⁸¹ Those permanently leaving the colony of Natal might also travel the short distance to Delagoa Bay where domicile passes were sold – figures noted include 70 rupees – and sent on to Beira or Zanzibar where they might be vended by storekeepers. All that was required was a passing likeness to the often vague and cursory physical descriptions, and to exploit the none too perceptive faculties of boarding officers often unable to distinguish one ‘wily Hindoo’ or ‘inscrutable Asiatic’ from the next would not have been difficult. A number of cases emerged where Natal Indians made a successful applications for a certificate to the magistrates court and promptly sent them to Bombay to those who were “not domiciled and do not know any European languages.”⁸² One storekeeper in Zanzibar was reported to be proficient at endorsing and altering descriptions on used forms, training migrants in the kind of questions they might be expected to answer on arrival at Durban, and even teaching language through correspondence. One (anonymous) letter writer admitted this storekeeper had taught him the “ways of Dundee” and tutored him in the identities and backgrounds of some the more prominent “merchants in Natal” before he himself had slipped through some years earlier.⁸³ Many of these tip-offs produced further investigations, with a mixed bag of results. Some were found not to be plausible, others simply led to investigative dead-ends. A handful resulted in prosecutions, but everywhere descended a fog of smoke and mirrors.

In his 1901 report Smith noted the heavy-workload occasioned by keeping tabs on these certificates in his annual survey. By 1902, matters occasioned the Principal Under-Secretary to meet with Smith, and the former concurred with his latter’s worries. The Secretary wrote to the chief magistrate that there was a definite need “for the exercise of greater care” in respect to Domicile certificates and gravely intoned in conclusion to the magistrates:

⁸¹ There are numerous examples throughout the IRD correspondence of such tips-offs. Larger collections of specifically anonymous notes can be found at PAR/IRD 7/58/1902; PAR/IRD 81/258/1910; PAR/IRD 94/125/1912. The following snippets of evidence have been extracted from this eclectic proliferation of notes, some difficult to read, or impossible to further contextualize or decipher motivations beyond what is apparent.

⁸² PAR/IRD 7/58/1902. Anonymous to Durban Mayor, 31 Jan. 1902.

⁸³ PAR/IRD 94/125/1912. “Please Help” to Smith, 12 Feb. 1912.

it is only by the greatest care on your part in the granting of Domicile Certificates that the Government can hope to prevent what now appears to be going on to a considerable extent, viz., that certificates are fraudulently obtained and sent to those who have no right to enter the colony, and are only enabled to do so by the production of the Certificate of Domicile so obtained.⁸⁴

They set to work streamlining and rationalizing the issuance of Domicile Certificates with the magistrates. Efficiency now required “the fullest possible particulars” and the forms to be carefully filled, and the rule of sworn statements or affidavits were now to be supported by *two residents of standing*. Realistic change was slow. By the end of year Smith was still feeling exhausted. The Domicile Certificates were giving him “infinite trouble” and the de-centralised issue system made “effective supervision quite impossible at present. I am feeling all the time that I am outwitted.”⁸⁵

After the Domicile Pass system was legally ratified in the 1903 Amendment and forgery or fraud prohibited on pain of imprisonment, Smith resolved to reduce the number of issuing offices to just the IRD offices in Durban, Charlestown, Van Reenen and Johannesburg, and even then all issues had to be ultimately sanctioned by headquarters in Durban. In the same year, Smith inaugurated a statistical watch on ‘confiscated passes’ (see figure 16 below), although this referred only to those cases proven to be frauds and were by no means a reliable indicator of the true extent of the scams. While the centralization of issuance of Domicile certificates might have had an effect of stopping a single applicant from “getting [multiple] certificates at a dozen offices,” these measures were but snips on the whiskers of a very difficult beast.⁸⁶ In 1903, Smith was up against it again. Soon after the reforms were taking off, he was astonished to relate:

Quite recently an arrival produced a certificate which, on comparing the description, was obviously never issued to him. When told it would be confiscated and that he would not be allowed to land, he produced another for which he stated he had paid £5 in India. As a matter of fact, it was the one at first produced that he had purchased. The second one described him correctly, and

⁸⁴ PAR/IRD 7/682/1902. Principal Under-Secretary to Chief Magistrate. 5 Mar. 1902

⁸⁵ PAR/ARIRD 1902. p. 6

⁸⁶ PAR/ARIRD 1903. p. 18.

from enquiries there was little doubt that he had previously resided here and entitled to return. He explained that as the property of Indian passengers was frequently pilfered on the voyage he had provided himself with a second certificate as a matter of precaution!⁸⁷

In 1905, Smith reflected that his energies two years earlier in arresting the traffic in certificates had been premature. Receiving news of a network of vendors in Bombay, Calcutta, Madras he sighed that he had been “over-sanguine that [the trade] would eventually wear itself out.”⁸⁸ If closer physical descriptions had made impersonation more difficult, the latest ploy, Smith noted, was “an admirable determination to get through by self-infliction, by fraudulent pass holders, or wounds by knife or fire to produce scars to fit the description of the certificate.”⁸⁹ As 1905 drew to a close, efforts to check these documentary transactions had reached a point of near absurdity. Smith provoked vehement protests when he ordered that food packets of passengers or well-wishers going on board ships were to be examined in search of smuggled documents, a “practice not unknown to me.”⁹⁰ Port side boarding officers were also instructed to retain the Domicile Certificates of permanently departing immigrants in an effort to squash the ‘hand-to-hand’ transfer of documents once out of sight of the IRD.

In 1906, a new and improved Certificate of Domicile was introduced, which introduced the novel practice of finger-printing to IRD documentation in a bid to rid the bureaucracy of the rampant fraud and impersonation (see figure 16).

⁸⁷ PAR/ARIRD 1903. p. 18.

⁸⁸ PAR/ARIRD 1905. p. 11.

⁸⁹ PAR/ARIRD 1905. p. 11.

⁹⁰ *The Indian Opinion*, “Treatment of Indians at the Point” and “Correspondence” from Harry Smith. 18 Nov. 1905.

COLONY OF NATAL

No 1272

I.R.D. 24/193

1907

IMMIGRATION RESTRICTION DEPARTMENT.

(Act No. 30 of 1903.)

(See F-1 - field)

G.O.

2046

07

CERTIFICATE OF DOMICILE.

This is to certify that the person hereinafter described has produced evidence to my satisfaction that he has been formerly domiciled or resident in Natal within the meaning of the Immigration Restriction Act.

Name: [Handwritten signature]

Nationality: Indian Place of Birth: Calcutta

Age: 36 years Sex: male Height: 5 ft. 7 1/2 ins.

Trade or profession: [Handwritten]

Caste: Hindus Married or single: married

Distinctive Marks: Scar Right Eyebrow, Scar Left

Place of Residence in Natal: 95, Crickwell Road, Durban.

Signature of Holder: [Handwritten signature]

Left Thumb Impression:



Right Thumb Impression:



Figure. 15. Confiscated/Fraudulent Domicile Certificate, 1907.

Fingerprinting as a technology of surveillance was truly a product of the circuits of Empire. Begun in the 1870s by a British Resident Magistrate in Bengal to informally regulate commercial transactions, contracts and receipts, it was re-introduced in the 1890s in Britain in the context of policing and detective work and gradually came to supplant the fading – and inefficient - marvel of Bertillonage and anthropometry to detect and prosecute criminals.⁹¹ Fingerprinting took some time to establish itself, however, and it required the separate classificatory work of Edward Henry and Francis

⁹¹ See Chandak Sengoopta, *Imprint of the Raj* (London: MacMillan, 2003); Singha, "Settle, Mobilize, Verify"; Peter Becker, "The Standardisation of the Gaze: The Standardisation of the Search Warrant in Nineteenth Century Germany" in Caplan and Torpey (eds.), *Documenting Individual Identity*. pp. 139-163.

Galton before it heralded the first successful criminal case on the basis of fingerprinting, concluded in London in 1902. South Africa had been something of a pioneer in its continued development. In that same year Natal – suggestions coming from a range of sources including the Scotland Yard trained Inspector William James Clarke then based in Johannesburg and, surprisingly, one Mohandas Gandhi – subscribed to the new possibilities for identification through the whorls and loops of the fingertips.⁹² Protests notwithstanding, indentured labourers (at first Indians and then the short lived Chinese labour scheme) were the first groups, as opposed to individuals, to have their fingers daubed in ink and duly archived, after which the system was extended wholesale to African labour. By the middle of the first decade, fingerprinting was standard to Indian and Chinese registration certificates in the Transvaal and Gandhi, in a reversal, quarrelled over the fingerprint system as he bargained for the rights of Indians – to his ultimate failure – with Jan Smuts in the Transvaal.

This more widespread use of fingerprinting marked an important semantic shift. The fingerprint had clearly percolated and found divergent uses throughout state and labour hierarchies, so, that, in the words of Radhika Singha; it had become an “infallible form of identification [that] also promised a new accession of power of the nation-state to enforce the obligations of citizenship... [And]...to exclude certain populations from its entitlements,”⁹³ In 1904, the gushing *Mercury* opened a week-day special on fingerprinting with the following words:

In these days of rapid transit, when a man may be here today and a hundred miles away tomorrow, when a journey is considered of less importance, and of less risk, than, say, the journey from London to Manchester a hundred years ago, the importance of identity is accentuated until a reliable system becomes almost a necessity.⁹⁴

Harry Smith took note and had the necessary infrastructure in place in the IRD two years later.

⁹² See Killie Campbell Collections, W.J. Clarke. *William James Clarke papers. Volume 1 1878-1919*; For Gandhi, see PAR/Minister of Justice and Public Works 128/MJ2203/1904. Correspondence from M.K Gandhi Re: Bill to regulate the signing of negotiable instruments by Indians. Suggests that Fingerprints also be taken. Thanks to Keith Breckenridge for bringing this to my attention.

⁹³ Singha, “Settle, Mobilise, Verify,” p. 191.

⁹⁴ *The Mercury*. “Fingerprints in Natal,” 17 May 1904.

If it is difficult not to overstate the revolutionary possibilities that fingerprinting promised for South African bureaucracies, it might also be tempting to overstate its successes. Keith Breckenridge has shown that what had been the nemesis of Bertillonage and anthropometry – the difficulties of actual classification, archiving and indexicality – would also unsettle the intricate fingerprinting system in South Africa.⁹⁵ Not quite “the infallible system” of the *Mercury*, the tensions inherent in what constituted valid measurement and practice are important in understanding the difficulties that fingerprinting actually had in establishing itself.⁹⁶ Still, in South Africa and for the IRD in Natal, fingerprinting became an important line of defence in the battle to overcome impersonation and to regulate mobility, and the sharp drop in fraudulent Domicile Certificate cases from 1906 is noticeable (see figure 15). One Jagmohan, who had come into the possession of a Domicile Certificate, was able to produce a supporting affidavit and tax receipts but, by chance, was recognized by an IRD officer as an ex-indentured labourer. He was ushered to the finger-printing table in the nearby offices and the fraudulent Certificate of Domicile was duly exposed, Jagmohan earning a conviction on a charge of falsity and sentenced to four months hard labour.⁹⁷

Fingerprinting also sought to check multiple applications by a single person, a result of premeditated subterfuge by way of false declarations. Ebrahim Mahomed Badat, for example, had arrived in Natal in 1887 and, after a four year stay in Pietermaritzburg, returned to India in 1891. He came back once more almost immediately, this time setting up a trading store in Durban and there remained for some 18 years. Claiming in 1909 that he wished to return once more to India, he applied for Certificate of Domicile, swearing that he had “never made an application before.”⁹⁸ Smith was deeply suspicious – for reasons that aren’t clear – and made use of the fingerprinting machinery to discover that Badat had indeed made a previous application two years earlier. Smith sent the file to the Colonial Secretary, pleased with the capacity that fingerprinting now offered him. He ordered that in all suspicious cases a fingerprinting check should be mandatory before issuing new certificates, especially in the case of ‘lost’ documents. Writing in Badat’s case files that,

⁹⁵ Keith Breckenridge “Flesh Made Words: Fingerprinting and the Archival Imperative in the Union of South Africa, 1900-1930.” Paper presented at the *History and African Studies Seminar*, University of Natal-Durban, and 10 March 2001.

⁹⁶ Anne M. Joseph, “Anthropometry, the Police Expert, and the Deptford Murders: The Contested Introduction of Fingerprinting for the Identification of Criminals in Late Victorian and Edwardian Britain,” in Caplan and Torpey (eds.), *Documenting Individual Identity*, pp. 164-183.

⁹⁷ PAR/IRD 62/537/1907. Sergeant Grimaldi to Smith, 26 Jun. 1907 and enclosed statements.

⁹⁸ PAR/IRD 75/643/1909. Application by Badat for Certificate of Domicile May 1909.

The serious points as far as I am concerned is that if men are able by false declarations to get certificates after certificate; the trade in these documents arising from the laxity in the early days of the act, which I have of late years been doing much to curtail, must continue unchecked.⁹⁹

With successes like these and others, from 1907 it had become much harder for passengers to elude the talons of the immigration bureaucracy, but the fraudulent trade in Domicile Certificates was never unequivocally quashed, as the figure below shows.

<u>Cases of Fraudulent Certificates*</u>	
Year	No. of Passes Confiscated
1903	192
1904	149
1905	229
1906	220
1907	75
1908	84

*These reflect known fraudulent certificates.
It is also useful to bear in mind that a single certificate could serve the purposes of multiple evasions over time, making this total only a guideline of minimum cases of falsification

Figure 15. Source. PAR/IRD 49/133/1905.

In 1908 Smith was still having to defend accusations of ‘wholesale evasion of the Act by trickery’¹⁰⁰ and later that year, a member of the somewhat re-animated Colonial Patriotic Union, now canvassing for the abolition of indentured labour, was trumpeting the news of a certain Persian he had met “who had left Durban with £1,300 in his pocket, which he had admitted that he had made that money getting Indians into the Colony.”¹⁰¹ He continued to ruffle feathers by telling his audience that he had also “heard from a lawyer in town that getting free Indians over here was easy as possible and there was impersonation to an extent not dreamed of...not very long ago there was a man in Durban who had Domicile Certificates prepared by the hundreds.”¹⁰² Naturally,

⁹⁹ PAR/IRD 75/643/1909. Smith to Colonial Secretary. 1909.

¹⁰⁰ PAR/IRD 95/239/1908. Smith to Criminal Investigation Officer, 2 Apr. 1908.

¹⁰¹ *The Mercury*, “Asiatic Immigration,” 7 Feb. 1908.

¹⁰² *The Mercury*, “Asiatic Immigration,” 7 Feb. 1908.

it is difficult to do more than speculate on the extent to which fraud of Domicile Certificates continued to exist. On at least one occasion, however, a counterfeit ring was discovered in Prince Edward Street of Durban. In August 1910, Arthur Putnam Donnelly alias Leslie Millbridge alias Arthur Domley and his partner, Mohamed Khan, were arrested by the CID after a tip-off. After a mild altercation, the investigating officer searched Donnelly in his private residence and found on him just under £10, several forged certificates, bizarrely a pair of handcuffs, blank fingerprint forms, a number of blank certificates and related apparatus for taking finger impressions.¹⁰³ A clutch of further certificates – mostly for the Transvaal – were discovered with forged signatures of the Registrar of Asiatics. All the more bothersome was that Donnelly appeared to be an ex-police officer with the Transvaal Constabulary and had travelled to Durban to pursue his trade. Both were found guilty, and Smith must have realized that the intricate documentary systems were as vulnerable from within as without the law and order bureaucracies.

Impersonation and forgery by passes holders were not the only problems that had dogged the IRD's documentary organism. Immigration bureaucracies gendered passes insofar as they were given directly only to adult males. Sons up to 21, mothers, wives and daughters were listed as 'endorsements.' This proved a useful gap for intending migrants and further confounded the lattice-work of documentary controls which was now decidedly fraying at the edges, as 'paper families' saw the breach and exploited it, phenomena that had reached global proportions.¹⁰⁴ A flurry of court cases in Natal followed in the second half of the decade as migrants challenged prohibition orders and accusations of falsification by Smith and his officers, who had by then had the age limit for children reduced to 16. These court cases were often successful as a string of court indictments repealed the prohibitions, rare moments when the law was able to override the bureaucracy and perform juridical reprieve for otherwise excluded migrants.¹⁰⁵ These successful legal challenges were telling of Smith's paranoia, who barely trusted the endorsements and had enthusiastically signed prohibitions; the continued indictments forced him to be more circumspect. Still, it was all a very slippery arrangement. Reduced age limits, for example, rested in turn on documenting birth-dates, something frankly unfeasible even at the beginning of the 20th century. The cases of false endorsements

¹⁰³ *The Mercury*. "Alleged Forgeries," 31 Aug. 1910.

¹⁰⁴ McKcown. "Ritualization of Regulation."

¹⁰⁵ Sadly, full testimonies from these cases do not appear to have survived, but important judgments of unsuccessful prosecution remain in the cases of Naran Vastha (PAR/IRD 83/429a/09) and Marchee (PAR/CO 6503)

reached their most absurd point when Smith wrote to the Colonial Secretary of a youth who - arriving on the SS *Mozzafarri* in 1910 – had come to his attention for having “two names and three fathers.”¹⁰⁶ For Smith, it always amounted to the problem of evidence. “I may say,” he wrote, “that my doubt and suspicion increase in proportion to the amount of oath-taking engaged in and to the number of averments made”; the competing claims could “seldom be reduced to a sufficiently firm ground to enable me to take the course which ought to be taken.”¹⁰⁷ Smith decided not to prosecute the schizophrenic youth.

Paper families remained puzzling. Perusing his statistics in 1907, Smith noted the high numbers of married men – around 90% of all male admissions - who did not initially travel with their wives, and who then later sought admission for women on the basis of the family claim. He estimated that of this number,

50% have not seen their wives for periods ranging from, say, 10 or 15 (and sometimes 20) years, and it is quite clear in most of these cases that at the time of parting both husband and wife were in the nursery.¹⁰⁸

Following the tally, he calculated that between 1903 and 1909 some 1,455 of what he suspected were mostly paper wives or children had entered the colony. He realized the wide scope for evasion presented by the structures of the law. He could see no real solution and could do little but demand a sworn statement and a cursory glance at the parties, to which, he said, “in reality I can attach little value.”¹⁰⁹ Occasionally, men simply disguised themselves as hijab-clad women and evaded examination. Smith complained:

I have practiced for 12 years to match Asiatic cunning in respect of [the endorsements] and other phases of restriction work, and I am so far from success that I am compelled to say that, notwithstanding the closest application to the cases that arise I estimate that I am unable to get at the truth where truth would lead to the conviction of falsehood, in two claims out of every five.¹¹⁰

¹⁰⁶ PAR/IRD 52/1910. Smith to Colonial Secretary, 10 Jan. 1910.

¹⁰⁷ PAR/IRD 52/1910. Smith to Colonial Secretary, 10 Jan. 1910.

¹⁰⁸ PAR/ARIRD 1907. p. 11.

¹⁰⁹ PAR/ARIRD 1908. p. 12.

¹¹⁰ PAR/ARIRD 1908. p. 12.

Smith's allusions earlier to the *sworn statement* bring us to another consideration. The falsification of affidavits was an inextricable problem which relied less on using a fake or borrowed certificate than it did on simply falsifying one's application in the first place. The clerk of the Natal Harbour Department wrote in 1905 that he had been dealing with a number of Indian's applications and claims for Certificates of Domicile. The clerk was concerned that the affidavits, even when made by two "residents of standing," often contained misleading information in which it was difficult to discern the true providence of an applicant. He suggested that "several persons are interested from a money making point of view in drawing up affidavits," and that a number of the claimants had simply neglected to mention that their presence in the colony at all was explained only by possession of temporary and concessionary embarkation/visiting permits, the subject of the section below.¹¹¹ The clerk continued – perhaps unsurprisingly – that many "disclose only particulars which may help them to defeat the law." Smith took the remarks seriously, and refined the affidavit procedure with a new 'Affidavit Form', reflecting a "uniformity of procedure" whose major innovation was to explicitly require, in addition to the usual details needed for the registry, details on how the applicant had come to be in Natal.

A year later it emerged that oaths from 'persons of standing' were being sold. One Parvoo Govind operated a business out of India in which it was claimed he had made some £500 – a bounty in 1906 – by vouching for sons and fathers (supposedly already in Natal) that did not exist.¹¹² Smith launched a further investigation that revealed another 16 traders in information, selling their signatures, oaths and conjuring abilities on affidavits. Regarding such conspirators with "unalloyed suspicion," Smith estimated that an average annual profit of £400 per annum to be made out of the trade, with the vertiginous amount of some £3000 going to some men such as one "Solomon."¹¹³ All of Solomon's affidavits, it was attested by an informant corresponding with the IRD, were inevitably false.¹¹⁴ The modus-operandi was straight forward, charging two guineas on a payment-by-results basis. From his premises in May Street he would also "teach men" how to take out Domicile Certificates. A typical operation might involve 4 unrelated men in Durban who would each surreptitiously act as each others 'alibis.' Each would collect a (or many, over time) certificate(s) under different identities from the IRD and then, with a batch in hand, travel to India and "walk from house to house selling

¹¹¹ PAR/IRD 35/142/1905. First Clerk, NHD to Smith, 1 Feb. 1905.

¹¹² PAR/IRD 56/1045/1906. [Illegible] to Smith, Sep. 1906.

¹¹³ PAR/IRD 58/1353/1906. Smith to Colonial Secretary, 28 Dec. 1906.

¹¹⁴ PAR/IRD 58 1212/1906. Moonsamy to Smith, 14 Nov. 1906.

them.”¹¹⁵ Smith was livid: “It is a case of my wit against the craft of these people all the time.”¹¹⁶

In 1907 the regulations were tightened yet again. Smith circulated a dictate that now only certified (!) lawyers and solicitors would be permitted to draw up affidavits, the general *two persons of standing* falling away. The practice of using Indian interpreters was also regulated so that “every obstacle should be placed in way of Domicile Certificates being obtained.”¹¹⁷ Even this had only mixed results. One popular immigration lawyer in Durban, Mr. Michel, was castigated by Smith for only perfunctory enquiries into the *bonafides* of applicants and had been known for being so token as to not include on his client’s affidavits much of the kind of information the IRD specifically requested – marital status and residency histories had simply been left out. Smith cited the un-professionalism and inexactitude of statements that claimed an applicant had been in the colony “for several years” and he could, he claimed, demonstrate a number of blatant untruths in Michel’s handiwork.¹¹⁸ The legal profession was swiftly reminded of their obligations and Smith insisted on the application to include a ‘certificate of interpretation’ of a competent interpreter. Smith also regulated that he would only consider a claim for domicile once, in an effort to prevent applicants from “going from one solicitor to the next” until a willing solicitor was found or successful application eventually made.¹¹⁹ These changes, at least with respect to Michel, were but of cosmetic value. Indeed, Michel was later the lawyer in the drawing up of the affidavits for the minor “with two names and three fathers.” When Smith dithered over charging the minor, he decided against it because “no doubt Mr. Michel will bring such a heap of testimony on the side of the client that this Magistrate will have to go with the weight of the evidence.”¹²⁰

Finally, one of the weakest links in the chains laid around Natal came from within. This aspect of the subversive economy of fraud was the hardest for Smith to keep tabs on, and lest he open a Pandora’s Box and repudiate his own managerial capacities, he had to be circumspect in reporting it. The problem was perennial and almost impossible to stop, and it contributes powerfully to the fluidity by which Domicile

¹¹⁵ PAR/IRD 58 1212/1906. Moonsamy to Smith, 14 Nov. 1906

¹¹⁶ PAR/IRD 58/1353/1906. Smith to Colonial Secretary, 28 Dec. 1906

¹¹⁷ PAR/IRD 57/19/1907. Circular to members of the Legal Profession

¹¹⁸ PAR/IRD 58/1218/1906. Smith to Michel, 22 Mar. 1907

¹¹⁹ PAR/IRD 58/1218/1906. Smith to Michel, 13 Jun. 1908.

¹²⁰ PAR/IRD 80/52/1910. Smith to Colonial Secretary, 10 Jan. 1910.

Certificates travelled amongst immigrants. Reacting to tip-offs from Asian informants who insinuated corruption amongst white officers also created peculiar racial dilemmas of the sort to which Smith seemed happier turning a blind eye. During the first years of the new laws, as rumours swirled of certificates freely available in India, attention focused on a pair of agents known only as Akoob and Osman, who for the cost of £6 could rapidly procure a certificate. One informant reasoned that the speed by which a Domicile Certificate became available was because of a special relationship the two men shared with a Sergeant Edwards at Durban, often on duty as Water Police Officer and Boarding Officer for the IRD. Edwards allegedly met with Akoob or Osman at the Point and simply handed over blank, stamped forms in return for a bribe.¹²¹

Not all failings of the officers were down to vice. Sometimes it appeared to be mere over enthusiasm or incompetence. When the SS *Herzog* docked in 1904, a particular passenger was declared prohibited but, it emerged later, had “negotiated with the water police officer.” Smith was stunned that the officer had “constituted himself judge and jury on the case” and at liberty gave out a Domicile Certificate, usually the purview at first of magistrates and later, strictly of IRD headquarters.¹²² Smith was understandably irate, proclaiming “it cannot be tolerated for a moment [and was] grave in the extreme.”¹²³ More troublingly, a question mark hovered over how the officer had come into possession of a number of blank certificates. Smith wondered aloud that “he might have schemed to land the entire ship” but, in the smoke and mirrors of wharf side relationships, the case was hastily filed away in the memorandum book.¹²⁴

It is difficult to tell but by the end of the decade matters may have been getting worse. A flurry of letters – often anonymous – arrived between 1910 and 1912, shedding faint light on how Domicile Certificates passed from hand to hand. A common refrain pointed out to how boarding officers often jiggled the report-sheets that had to be submitted after each ship arrived, simply allowing some to land.¹²⁵ One man claimed he knew of an agent who had free use of the immigration office at the Point and of the gangways of arriving and departing ships. Another spoke of an operation where a resident in Durban gave a small fee to a boarding officer who allowed a prohibited

¹²¹ PAR/IRD 7/58/1902. Anonymous to Smith. 29 Jan. 1902.

¹²² PAR/IRD 31/994/1904. Smith to Superintendent of the Water Police, 14 Oct 1904.

¹²³ PAR/IRD 31/994/1904. Smith to Superintendent of the Water Police, 14 Oct 1904

¹²⁴ PAR/IRD 31/994/1904. Smith to Superintendent of the Water Police, 14 Oct 1904

¹²⁵ PAR /IRD 81/258/1910; PAR/IRD 94/125/1912. See note 83.

immigrant to land, from where the undesirable was taken to a house in town and ‘taught about the places in Natal.’ After this, with two ‘witnesses’, the passenger went to procure his Domicile certification by claiming long-standing residence while the original agent left, one assumes, with a profit. Sometimes veiled threats were received from passengers who might have been denied access to the colony. One simply wrote – without a name of course – that since he had been deported he would simply try again and “present the officers with £20.” Harry Smith must have held one letter in hands for a tad longer than the others. It was barely literate, but it was seething with indignation. The writer said that he had obeyed the laws but found himself turned back from Durban. He had been struck by the boarding officers:

[They] are quite rude and great fools in the Colony [but] they consider the man as their friend [?] who wishes them bribes. Now the man landed himself in the colony by giving bribes is enjoying before your bloody eyes...but you bloody fool cannot do anything else to him.¹²⁶

We can only speculate how Harry Smith reacted.

Through the Back Door: Temporary Passes

The problems of implementing systems of border control and the regulation of admission to the colony, in the days before uniform passport systems, rested on a proliferation of further documentation in addition to Literacy Test and Domicile Certificates. As is quite clear, the IR Act never appeared, in itself, to have been a strong deterrent and Smith’s bureaucracy was often kept busy attending to claims for admission by migrants arriving, in flesh and blood, from ports in India and East Africa especially. Mindful of legal requirements, the complexities of myriad cases and life-histories, and a sense that outright exclusion was neither practical, allowable nor did the reputation of his office any good, extensive work in exemptions was inaugurated to regulate and channel flows of passengers arriving both by ship in Durban and entering through the inland border stations at Charlestown, Van Reenen and De Jager’s Drift. The exemptions rested on a temporary Visiting Pass-system that in turn offered new possibilities for securing passage to and through the colony, and these, like the Domicile Certificate, also became unsteady rungs on which enterprising travellers could gain a foothold. Indeed, amongst

¹²⁶ PAR/IRD 81/258/1910. Anonymous to Smith, 26 Jan. 1910.

the first known immigrants to thwart Harry Smith were a group of Chinese men who entered on 'Visiting Passes' but soon approached a magistrate who, none the wiser, granted their claims for domicile.¹²⁷ Their status was only picked up five years later, when an official realized that the "descriptions [of the respective Visiting and Domicile Certificates] did not match [and] even the names were different."¹²⁸

The impetus to create a system of temporary exemptions came from several different but overlapping and complex currents. Within the first six weeks of the Act's promulgation, Smith was already writing that he was confronted by a number of Chinese and Indian passengers who claimed that they had not come to immigrate (that is, to settle), only to visit. In Smith's words, they had shown a "suspicious desire to land temporarily." Muslim Pilgrims from the Cape and en-route to Mecca could also not be summarily dismissed or excluded, and Smith found himself finding the Immigration Act quite mute on the contingencies and complexities of the global migrations.

Smith was also astute enough to realize that the commercial interests in the small and not always booming Natal economy would not take kindly to a reduction in potential business. In the first decade of 20th century, competition between southern African ports was intense, and Durban had fiercely wrestled for revenue with its close neighbours in the Portuguese territory of Mozambique, especially Delagoa Bay, for the lucrative railroads running to the goldfields. Smith agreed that some kind of "temporary or traveller's pass" might agreeably provide for "intercourse and facilitate trade and revenue."¹²⁹

These commercial reasons for temporary exemptions and how they related to the shipping industry require a touch more elaboration. Shipping lines, fearful of fines and financial liabilities for deportation for prohibited undesirables, declined – and were indeed *obliged* to decline - bookings at the point of departure to migrants who could potentially not satisfy conditions of entry. But the ambiguities and elasticity of the Literacy Test meant that an immigrant's admissibility was not always an open and shut case. Immigrants unable to procure the infinitely more valuable and legitimizing Domicile Certificate and literacy test certificate required some kind of compromise

¹²⁷ PAR/IRD 29/711/1904. Correspondence between Smith and Immigration Restriction Officers. 24 Feb. 1899 and 15 Jul. 1904.

¹²⁸ PAR/IRD 29/711/1904. Correspondence between Smith and Immigration Restriction Officers. 24 Feb 1899 and 15 Jul. 1904.

¹²⁹ PAR/ARIRD 1897. p. 2

document that might make them at least eligible for *consideration* for entry. Smith's idea of a temporary pass assuaged both the shipping lines and passengers attempting to secure berths. Because this compromise pass was explicitly temporary, Smith could still easily sign a prohibition order after the requisite, and short, time period had elapsed. The shipping lines were happy too: the risk of refusal, and the cost of departure, rested on the shoulders of the passenger.

Smith also had to turn his gaze inland. Otherwise prohibited travellers and undesirables from the Transvaal hoped to leave South Africa through the port of Durban, which in practice meant immigrants also had to enter the colony of Natal in order to leave it (a twist of irony that Harry Smith could not have savoured). Shipping companies again did not naturally wish to decline business in an already competitive market, and representations to Smith thus came to prompt a system of deposits and 'Embarkation Passes' to ease the companies' quarrels.

Finally, some legitimate foreign residents of Natal were unable to prove their domicile status whilst beyond the Colony, and they too were given exemption for a temporary visit during which time they might be able to substantiate their claims to a magistrate and convert their immigrant status. None of these concessions were immediately part of the Act of 1897, and evolved only through the kind of rule-based innovations in which Harry Smith specialized. On his instigation, they would later enjoy legal codification and were important elements for those experiencing, in that first decade of the century, the formation of Natal's border and the embedding of various documentary control that would in time amalgamate into passport and visa systems.

The first, and least problematic of the temporary permits was the system of 'embarkation permits' which operated to allow otherwise prohibited immigrants to transit through the colony with the express purpose of boarding a departing ship from Durban's harbour. The problem had not occurred to legislators, and within 2 months of the act passing the crossing of 11 Indians into Natal from Charlestown excited the pages of the newspapers, to Smith's evident discomfort and embarrassment. The *Natal Advertiser* reported two confused police officers arriving in Durban "with 11 Indians of the trader description."¹³⁰ They had neither right nor documentation that would allow them to stay in the colony, and their presence was a legal anomaly; they should have been turned back

¹³⁰ *The Natal Advertiser*. "Immigration Restriction. A Muddle," 1 Jul. 1897.

at the border, *not* escorted practically all the way through the territory. In their defence they claimed to be making their way to a ship to continue to Delagoa Bay and thence onward to India. Harry Smith was astonished at “this most irregular course” and saw it as a “bold attempt to evade the law,”¹⁵¹ half-suspecting that they had simply “snuck in through the back door and passed the border with the least trouble.”¹⁵² Smith decided that the men could neither be sent to gaol, nor was it a satisfactory arrangement for the men to be housed at an indentured labourers depot, where they had proceeded. The men, it turned out, were quite honest in their claim to be catching a departing ship. Smith saw clearly the problem: where “the vigilance practiced at the port is rendered useless by the way the law is interpreted at the border.” The resolution came through the design of an Embarkation Pass (see figure 17).

Immigration Restriction Act (Natal), 1897.
Schedule B.

EMBARKATION PASS.

No. 189 Issued at _____
Date _____ 189

Sum Deposited £ _____

PERMISSION is hereby granted on behalf of the Government of Natal to the Person (or Persons) named below to enter Natal in order to proceed without delay to the Port of _____, in order to embark there by the first available opportunity for the place mentioned below.

This Pass is issued subject to the provisions of the Immigration Act of 1897. Any breach of its conditions involves the forfeiture of the deposit, in addition to the punishments prescribed by Law.

A.B., Officer.

Name of holder of Pass _____
Nationality _____
Residence _____
Sex and Age _____
Occupation _____
General description, height, and distinctive marks _____
Names and ages of Wife and Children, if included _____
Port of Embarkation _____
Destination _____

Fig. 17. Embarkation Pass, 1898. Source: PAR/IRD.

This Embarkation Pass allowed a person to pass through the colony “with all reasonable speed” to the Port for the first available ship to the passengers stated

¹⁵¹ PAR/IRD 1/39/1897. Smith to Colonial Secretary, 2 Jul. 1897.

¹⁵² PAR/IRD 1/39/1897. Smith to Colonial Secretary, 2 Jul. 1897.

destination. The pass would be issued on deposit of £10 sterling per male applicant and required 24 hours notice to be given for the refund. Each pass required a clutch of additional personal information items to classify and trace applications, including country of birth, occupational, residential and family information and a “General description” bearing height and distinctive marks. Wives and Children were to be included on the pass and the pass was made out in duplicate. The applicant would retain the pass, while a copy would be filed with the offices of the IRD. In practice, a system obtained whereby an issuing office (which could be at an inland border station or through the IRD agent outside the colony, such as the large office operated in Johannesburg) would send advice and confirmation of payment to Port Natal. On departure, a temporary visitor was required to report to the immigration officials with confirmation of details of sailing and a bona fide ticket, and would be refunded the deposit only once on board. Finally, a guard would stand by until the ship was underway. In 1903, Smith reported that in all of 6 years less than a dozen applicants had absconded. The system worked partly because of the relatively substantial amounts of money involved, and that a traveller genuinely desirous of leaving would not obviously wish to prolong his or her stay. More probably, however, if a migrant wished to stay for longer, there were also the much better possibilities inherent in the Visiting Pass.

The Visiting Pass (and deposit system) gained currency first in the case of one Triikum, an Indian shop assistant who arrived in Natal in 1897 to join a family business. Triikum would not ordinarily have passed the conditions of entry, but in the early, unsettled days of the IR Act his family made representations to the authorities and offered to provide a bond of surety in which the relatives undertook to provide for his well-being while he completed an unspecified term of employment.¹³³ The request went to the Attorney-General, who accepting that “family ties of blood ought to count for something,” allowed the provision of a bond.¹³⁴ In the following year, however Triikum – described by the Attorney General as “very poor and feeble, of the kind to be restricted,” asked to remain in the colony indefinitely and beyond the end of his job. It was important enough a case to be discussed in a visit by Gandhi to Smith’s offices in November of 1898. Gandhi’s first suggestion was that Immigration authorities should exercise administrative discretion and simply declare a general exemption for Triikum. Smith responded that it would be setting an awkward precedent that “others would be

¹³³ PAR/IRD 2/325/1898. Application to Remain in the Colony.

¹³⁴ PAR/IRD 1/1A/1897. Notes taken at an interview between the Attorney-General, the Treasurer and the Immigration Officer and Mr. Gandhi. 9 Nov. 1898. The following exchanges are traced to this meeting.

only too glad to take advantage of” and, with the Attorney General and Treasurer, began drafting a more acceptable solution to those migrants – particularly those involved in businesses, who might in some way contribute to the economy, wish to visit family or otherwise be genuinely considered for a temporary stay. The first solution was to request a formal deposit of £10 to cover the costs of a migrant’s return passage, rather than merely a bond of surety lodged within an applicant’s family, friends or employer. In the negotiations, Gandhi continued to argue that cash deposits were harsh and prohibitive, and continued to appeal for the personal surety bonds. Officials were steadfast. A bond system, they argued, was a dead horse as far the government was concerned: it would fall to a weak state to actually enforce such personal bonds and might entail dense legal proceedings, causing endless “difficulty and dissatisfaction.” Most troubling, the Attorney General noted, it was “very difficult to trace Indians who had given bonds. The names are hard to follow [and] often disappear without leaving any trace behind.” Smith seemed to clinch the argument when he insisted that to even consider the idea of temporary stays was a concession and he was under no legal compulsion to provide it; Gandhi’s suggestions and protests failed. By 1899, the ‘Visiting Pass’ system was inaugurated which, the Treasurer concluded, would obviate the labours and uncertainties inherent in a personal bond system and allowed “the Government [to have] more hold on immigrant, and can compel his departure.” Migrants, even those with a nominal exemption to enter the colony on a temporary basis, now found themselves glued to the documentary web. The actual mechanics were essentially the same as that described above in relation to the Embarkation Pass, excepting that a person’s presence was allowable for a full 21 day period which could be extended for a further 21 days – again, to the satisfaction of the immigration officer (see figure 18).

SCHEDULE A.

Immigration Restriction Act (Natal), 1897.
Schedule A.

VISITING PASS.

No. 189 Issued at _____
Date _____ 189

Sum Deposited £ _____

PERMISSION is hereby granted, on behalf of the Government of Natal, to the Person (or Persons) named below to enter Natal for the purposes of a Visit, and to remain in Natal for a period of Twenty-one Days, expiring on the _____ and no longer, unless the date be extended by a duly authorised officer.

This Pass is issued subject to the provisions of the Immigration Act of 1897. Any breach involves the forfeiture of the deposit, in addition to the punishments prescribed by law.

A B, Officer.

Name of holder of the Pass _____
Nationality _____
Residence _____
Sex and Age _____
General description, height, and distinctive marks _____
Occupation _____
Names and ages of Wife and Children if included _____

Figure 18. Visiting Pass, 1898. Source: PAR/IRD.

For all this early administrative labour, the outbreak of war occasioned necessary adjustments in the system. With the exodus from the Transvaal and population pressures in Natal all couched in the uncertainty of conflict, unworkable strain was put on Smith's capacities and it was decided by Government in September 1899, in the midst of the first rushes from the 'Rand, that the rule for deposits on Visiting Passes would be suspended so as to allow 'refugee Indians' to temporarily reside in the colony until such time as return to the Transvaal, or elsewhere, was possible. The Visiting Passes were "freely availed of" in Johannesburg on the condition that any Indian entering Natal was to report himself to the IRD offices in Durban where a record might be made and extension formally granted.¹³⁵ In the commotion, Smith was unable to keep a proper record of comings and goings but felt sure that only "a very small proportion complied with the condition requiring him to report himself."¹³⁶ The war years were full of difficulty for Smith and a year later; "with very few exceptions" the refugees were

¹³⁵ PAR/ARIRD 1900, p. 2

¹³⁶ PAR/ARIRD 1900, p. 2.

categorically not reporting themselves.¹³⁷ Smith was worried that several hundred had left South Africa entirely, disappearing from the purview of the state and each with a free pass allowing for return. The same problems of vague identification descriptions that dogged the Domicile Certificate saga did nothing for Smith's temper. By 1901 as the war ended, circumstances allowed for the special 'free issue' of the Visiting Passes to be repealed, but Smith was disconsolate: Most had "paid little to the conditions" and "many [passes] issued during the war had fallen into the hands of those not entitled to them."¹³⁸

In 1903, Smith was miserably left to report to the Colonial Secretary that the Visiting Passes had become a source of "great trouble," and that the war had provided the perfect pretext for evasion. Where Visiting Passes had been framed with object of limiting stays in the colony, they were now having the effect of being freely circulated and allowing those with no claims whatsoever for entry to the territory and to pass without question the officials at the port. Not only had many passes been left over by the leniency of policy during the war but the idea that refugee Indians had to report and register themselves had been a manifest failure. The ostensibly tight regulations had descended into something of a shambles, and Smith could not even be sure that those who *had* legitimately applied for and obtained Visiting Passes and reported themselves accordingly, were playing by the rules. He noted a strong tendency for visitors to simply outstay their term and forfeit the deposit, regardless of the war's conclusion and re-opening of the lines to Johannesburg. He bemoaned at least 40 cases in a single year (1902) of Visiting Pass holders apparently disappearing and, despite posting descriptions to magistrates and police-stations through the colony, none of the absconders could be traced, testament again to the ineffectiveness of brief physical descriptions.¹³⁹ It was later realized that immigrants had simply given incorrect names – so easy was it to falsify the details of the pass. Smith estimated that "50% of our communications fail to find the address" and concluded with an air of despair that the "Pass system operates to some small extent in defeat of the object of the law. The system is, in fact... inconsistent with the law."¹⁴⁰ It was a remarkably damning statement to make and an unfortunate judgment on his own capacities. The state had seemingly surrendered its technologies, captured by the prohibited who used the passes to facilitate mobility within the country. Such were the ambiguities of reliance on the documentary embrace.

¹³⁷ PAR/ARIRD 1901. p. 5

¹³⁸ PAR/ARIRD 1902. p. 6.

¹³⁹ PAR/IRD 38/694/1903. Memorandum on Visiting and Embarkation Pass Systems.

¹⁴⁰ PAR/IRD 38/694/1903. Memorandum on Visiting and Embarkation Pass Systems.

Smith launched into a frenzy of activity to clamp down on the vagaries of the Visiting Pass system and decided to exercise “very fully the discretion to issue or refuse to issue which the act gives to the immigration officer.”¹⁴¹ The solution lay in reducing as much as possible the issuance of Visiting Passes, a certain retreat from his earlier pre-war generosity. Like his moves with the Domicile Certificates, part of this solution was in centralizing the issuance of Visiting Passes where he could personally oversee and keep a more stringent check on applicants. Smith first decreed that no passes could be issued at Charlestown or through the Agent in Johannesburg without first referring applications to Smith in Durban, and insisted that all applicants must appear *in person*. The habit of having friends or acquaintances pay the deposit was also stopped, Smith asserting it as a risky business to assume these guarantees to be worthwhile in a world in which he saw there to be “no honour among thieves.” In discussions with officials in the Colonial Secretary’s office, it was decided that a non-refundable fee would be introduced to deter applications, and that the passes were to be refused “on the slightest doubt” of an application. One official even suggested that holders report once a week to a government officer, but Smith, drawing on his experiences over the preceding years declared it a “sheer waste of effort.”¹⁴² Nor, as things stood, could defaulters actually be prosecuted, because in the rule-based mania of the first 5 years of the IRD existence, the Visiting Pass system had never actually been legalized, and failure to comply with its provisions could not be shown to have transgressed any *law*. Thus when the legislature met in 1903, it was pointed out that the Visiting Passes (as well as Domicile Certificates) needed legalization. Part 3 of the Amending Act comprehensively outlined the new provisions listed above, and made it a criminal offence subject to a punishment of deportation or six months imprisonment with or without hard labour.¹⁴³

The imposition of fees – a non-refundable £1 for both Visiting and Embarkation passes - was only mandated three years later, in 1906, to the vehement protest of the British Indian Association, who derided it as another extortionate tax on British Indians where “passes are issued more the in the interests of those who enforce them than to those whom they are applied.”¹⁴⁴ In their petition, the IRD was guilty of a “shameful attempt to replenish the empty treasury. Although an Indian by Law may be entitled to enter or pass through the colony, he cannot without paying a price for it.” Harry Smith

¹⁴¹ PAR/IRD 38/694/1903. Memorandum on Visiting and Embarkation Pass Systems.

¹⁴² PAR/IRD 38/694/1903. Memorandum on Visiting and Embarkation Pass Systems.

¹⁴³ Immigration Restriction Act (Amendment) 1903. Part III (Sections 23-33).

¹⁴⁴ PAR/IRD 49/314/1906. Petition from Natal Indian Congress, 10 Mar. 1906

fell back on his most disingenuous defence. Smith told his Colonial Secretary, defending the fees, that,

The petitioners are distinctly wrong: Tax implies compulsion – there is no compulsion in the matter [and] Visiting Passes are a privilege of great value...This is an immigration Restriction Department, not a Department for the assisting the immigration of anyone.¹⁴⁵

The Congress might have called Smith's bluff, but there the matter lay and it seemed Smith had once again regained the initiative. There is little evidence in subsequent reports that Smith was unduly vexed by his Visiting Pass system whose general function had moved from the concessionary to the restrictive.

Conclusion

It stands as some testament to the proliferation and complexities of the evolution of the border control system in Natal that where the first instructions of 1897 to boarding officers had been but a single typed page leaf, by 1909 those instructions had grown to be a dossier of some 60 pages, requiring in addition to the administration of literacy tests, a slew of strict document and identity checking instructions and familiarity with no less than seven separate legal codes.¹⁴⁶ By 1909, the determining of prohibited immigrants and the prevention of their landing required the formulation of indexical lists of arrivals, names and descriptions of deserters "giving full details and to be recorded on the proper forms." The framing of certificates was "to be done fully and with very great care," with duplicates properly filed. "Neatness and accuracy are essential qualities" the instruction book offered when furnishing the numbers and names of Domicile certificates. For boarding officer and immigrant alike, the end of the first decade had culminated in ribbons of red-tape; trails to and through Natal were to be made only with a wallet of paper.

Documentary regimes over mobility were not unique to the South African political economy. In fact, precedents had been in existence for several centuries and were, by the latter half of the 19th century, manifest in a wide multiplicity of forms and

¹⁴⁵ PAR/IRD 49/314/1906. Smith to Colonial Secretary, 15 Mar. 1906.

¹⁴⁶ These were the Immigration Restriction Act, the Transit Immigrants Act, The Natal Harbour Department Rules and Regulations, the Native Pass Laws Act, Merchant Shipping and Foreign Seaman's Act, as well as the Cape Immigration Legislation.

formats and found in increasingly diverse geographical contexts. Manifold styles of passes, registers and identity documents were held together by a common thread of surveillance and the regulation of mobility of people and capital. Such information regimes operated in constructing different philosophies, techniques and modes of governance. In South Africa, as elsewhere, they registered important changes of state. Documentary systems were, in fact, from the late 19th century onwards the very basis of modern senses of governance and mobility and became decisive pegs on which political and social life, in a globalizing world, might hang.

In the years immediately before and after the Great War, the emerging and globalised documentary regime became increasingly standardized into an international system based on a single document, the modern passport, which Radhika Mongia positions as definitive in fusing and equating, for the first time, concepts of race, nation and state.¹⁴⁷ Natal's IRD documentation was part of the wide global circuit that underpinned the move to uniform passport systems. It seems sustainable to argue the failures inherent in such an array of documents called for greater, global centralization and simplification.

This chapter has made several essential claims. Firstly, the documentary order to manage the Colony of Natal's borders drew on existing South African fixations that had previously governed labour migrancy and accumulation of capital. Importantly, however, this was also part of a much wider global migration regime and the batch of identification and mobility documents were in line with similar initiatives that had been established in Continental Europe, the United States and India. The Literacy Test, Domicile and Visiting Passes were all paper-based means of regulation that linked identity, mobility and exclusion. Thirdly, much of the first 13 years of the IRD's attempts to control migration were severely limited as the documentary technologies of exclusion and regulation were routinely captured by migrants themselves. A subversive economy of fraud and impersonation made the border-stations of Natal but ineffectual sluice-gates to the 'flood of immigration' which IRD officials perpetually bemoaned. The fluidity of certificates meant, ironically, for great fluidity of movement across Natal's border, however watertight the Act appeared. Arguably, only the materialization later in the century of more uniform and centralised passports, endorsed with visas and residence exemptions and where identity was more deeply rooted in biometric and documentary embraces

¹⁴⁷ Radhika Mongia, "Race, Nationality, Mobility: A History of the Passport" in Antoinette Burton (ed.), *After the Imperial Turn* (Durham: Duke University Press, 2003), pp. 196-214.

could these slippages and limits be overcome. That however, remains a topic for further enquiry beyond the scope of my focus here. The following chapter charts how migrants who *were* detected and deemed prohibited were kept from landing, principally at the Port of Durban. The policing of the port from a more material point of view traces similar struggles and fractures, casting colonial authority in yet more complex and ambiguous light.

Chapter 5

From Pillar to Post

Port Policing, Confinement and Excarceration

Introduction

The triumphant story, alluded to in the introduction, goes that by the last decade of the 19th century, Durban's port was poised for greatness.¹ From 1850, a protracted 50 year struggle with ocean topography and littoral drift had provoked bitter contestation amongst a generation of engineers who finally succeeded in dredging and deepening the harbour mouth at mammoth public expense. From 1895 the town became open to increasingly larger vessels and the result was, economically, a 10-fold increase in port trade volumes between 1887 and 1910. Parallel to the idiosyncratic labour and industrial revolution around the Johannesburg goldfields as considered in chapter 2, Durban also experienced intensified urbanization fuelled by local, regional and global migrations of diverse motivations. Paradoxically, however, the regional economy would also endure moments of marked depression and crisis which amplified and concentrated xenophobic impulses that cross-cut Durban's settler elite and its working class labour-aristocracy. Socially and politically, the effect of this was to provoke a legacy of exclusion that both closed down urban space and mobility and opened up new possibilities for a subversive economy of movement, ultimately informing wider – if less explicit - struggles against a dogmatic state fixated on racialised legislation and spatial engineering. The politics of contamination² - in moral, political and economic terms as much as epidemical - would bequeath a powerful legacy on 20th century South African social and political policy as

¹ Examples of this kind of celebration might be coffee-table histories from Tony Pearson, *African Keyport. The Story of the Port of Durban* (Rossborough: Accucut Books, 1995) and a somewhat insufferable self-published Colin Bender, *Who saved Natal? The Story of the Victorian Harbour Engineers of Colonial Port Natal*. (Durban: C.C. Bender, 1988). An interesting and detailed contemporary source is J. Forsythe Ingram, *Story of an African Port* (London: G. Coester; 1899). This publication marked a shift in the ways Durban was imagined and represented essentially as a *port* rather than a settlement. The author promised to “treat the History of the Seaport from its discovery to the present time... full prominence will be given to the improved facilities for the landing, shipping and forwarding of merchandise.” It also self-consciously claimed to simultaneously be both the ‘story of an African seaport’ and a ‘history of Durban.’ This appears to be the first time the two concepts were collapsed in literature of this sort. For more recent academic work providing an outline of the history of the harbour to which I allude, see Lucille Heydenrych, “Port Natal harbour, c. 1850-1897” in B. Guest and J.M Sellers (eds.), *Enterprise and Exploitation in a Victorian Colony. Aspects of the Social and Economic History of Colonial Natal* (Pietermaritzburg: University of KwaZulu-Natal Press, 1985), pp. 17-48 and the first chapter in Bill Guest, *Receded Tides of Empire: Aspects of the economic and social history of Natal and Zululand since 1910* (Pietermaritzburg: University of KwaZulu-Natal Press, 1994).

² See Maynard Swanson, “The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909” in *Journal of African History* 18, (3), 1977: pp. 387-410; “The Durban System: Roots of Urban Apartheid in Colonial Natal” in *African Studies* 25, 1976: pp. 159–176; “The Asiatic Menace: Creating Segregation in Durban, 1870-1900” in *International Journal of African Historical Studies*, 16, (3), 1983: pp. 401-421. Another recent and provocative intervention – with its concern exclusively on western European states – is Peter Baldwin, *Contagion and the State in Europe, 1830-1930* (Cambridge: Cambridge University Press, 1999). Baldwin argues that the politics of quarantine, sanitation and exclusion have been historically specific, where preventative strategies are linked not to an inherent political tradition, but rather to particular geo-epidemic or topographical locations and administrative capacities.

well as making an important intervention, through documentary technologies, in channelling Indian-ocean migratory economies, as chapter sought to demonstrate.

This final chapter returns to earlier themes and considers Durban port *as* a port, that is, a dynamic urban space consisting of uniquely compressed experiences of mobility and relationships encouraged by the social geography of the harbour - a close interface, in other words, between insider and outsider. This magnified space of contact, a 'nodal zone', had concentrated exchanges – both actual and potential - between alien, settler and native. What emerged from a generally suspicious Immigration Restriction Department (IRD) bureaucracy was a regime of physical policing, patrolling and surveillance of the port, a culture of confinement and detention that fixed the imagination of physical and metaphorical borders as spaces of 'illegality' and criminalisation. What I have in mind is perhaps better explained by Rhodes Murphey, who makes the delicate distinction between 'harbour' as a physical, material concept, and 'port' as inveighed with social meaning and a profoundly more entrenched relationship with the internal imaginary and political spaces of the political centre and, ultimately, the 'nation.'

That said, the sheer geographical, historical and political variety of 'port-cities' makes contextualization and over-arching themes difficult to spin into a short narrative, but growing comparative research over the last two decades has indeed sought out commonalities and epistemological definitions.³ On the back of this literature, I posit that by the end of the 19th century – a moment distinctive in Natal for the technical widening of the harbour mouth to the extent that the most modern vessels could berth in the harbour, with a concomitant and rapid increase in trade and migration flows – Durban emerged, at least in part, as a quintessential port city that became better linked to an expansive littoral world.⁴ The resulting anxieties around this mobility fomented and

³ Characterizing a 'port city' is more difficult than it might initially appear. Foundational, if occasionally overly determinist, discussions in the 1980s pointed to the lack of dialogue between urban and maritime history. Historians, Geographers and Economists agreed that epistemological definitions of a 'port city' were valid if urban growth could be demonstrably tied to a maritime economy, and that this could be shown to have affected the "social, cultural and political superstructure of the city." An important enlargement of the discussion focused firstly on the interlocking relationship between port and hinterland, and secondly on regional, and ultimately national hierarchies of such nodes. For these debates, including actual transcripts, see Dilip K. Basu (ed.), *The Rise and Growth of Colonial Port Cities in Asia*. (Berkeley: Centre for South and Southeast Asia Studies/University Press of America, 1985); Frank Broeze (ed.), *Brides of the Sea. Port Cities of Asia from the 16th to the 20th Centuries* (Kensington: New South Wales University Press, 1989). The latter includes an extensive and partially annotated bibliography of further reading on diverse and multiple experiences – in time and space - of ports.

⁴ For the intriguing if difficult new research into 'littoral worlds' (that is, to "go around the shores of an ocean, or a sea, or indeed the whole world, and identify societies that have more in common with other littoral societies than they do with their inland neighbours" (p.353)) see M.N Pearson, "Littoral Society: The Concept and the Problems," in *Journal of World History* 17 (4), 2006: pp. 353-373 and papers presented

stimulated the growth of statist institutions such as the IRD and the Water Police (or, more properly, the volatile marriage between the two).

Port and Harbour

In order to grasp the kind of anxieties that the port space presented to Natal's bureaucrats, the wider structural context of the 'port' needs to be understood. Research shows that colonial expansion from the 16th to the 19th centuries in the Indian Ocean arena, particularly India and East Africa, had fostered crucial changes and interventions – in varying, indeed uneven, ways – in the social and cultural economies of coastal trading towns and cities such as Surat, Goa, Bombay, Mombasa, Suzhou and Shanghai to name but a few.⁵ However profound or limited, these changes had been 'grafted' onto pre-existing pre-colonial port and maritime systems: colonial administration in Asia emerged out of dialogue with those established networks. By contrast Durban, since the first Europeans decamped in the 1820s, had grown from the very beginning as a relatively unfettered colonial settlement. Not having native merchant elites to acquiesce, nor needing to negotiate with enduring maritime trade structures, nor the distinctly creole cultures such as might be found even at the Cape, officials like Harry Smith and Richard Alexander saw the port in which they lived and worked essentially in Eurocentric terms, often comparing the maladies and difficulties of Durban, it may be recalled (and however disingenuous,) with those of 'British boroughs' in the metropole.

The north Atlantic context on which Smith kept at least one eye – he sat on a number of committees of the Harbour Board and Fisheries Department, and clearly had not failed to have been aware of conversations around immigration in Europe – is thus important. The rapid increase in shipping numbers, speed and size from the 1880s posed vexing problems for port-cities on both sides of the Atlantic, throwing into sharp relief the relationship between space, population (particularly labour) and public policy.⁶ Older cities, materializing out of a different age, were inescapably indisposed to the effect of

at the *Seascapes, Littoral Cultures and Trans-Oceanic Exchanges* conference, Feb. 12-15, Library of Congress, Washington D.C., available online at <http://www.historycooperative.org/proceedings/seascapes/>; for greater context and long term perspective in the Braudelian sense, see M.N Pearson, *The Indian Ocean* (London: Routledge, 2003);

⁵ Basu (ed.), *Rise and Growth*, especially pp. 191-286; B.S Hoyle, "Maritime Perspectives on ports and port systems: the case of East Africa" in Broeze (ed.), *Brides*, pp. 188-206. Atiya Hameed Kidwai, "Port cities in a national system of ports and cities: a geographical analysis of India in the twentieth century" in Broeze (ed.), *Brides*, pp. 207-222.

⁶ See Joseph W. Konvitz, "The Crisis of Atlantic Port Cities, 1880-1920" in *Comparative Studies in Society and History* 36 (2), 1994: pp. 293-318.

new industrialized shipping economy: it is not commonly appreciated that the spatial design of Atlantic port cities were often socially and economically unsuited to the powerful, mechanized industrial transport of both goods and people. Far from a ‘golden age’, the late 19th century, for Konvitz, “generated problems faster than solutions could be found” in coastal cities in Europe and the United States.⁷ Chief amongst these were large concentrations of workers, who, strategically placed and prone to strike, destabilized both market and political balances. For my purposes here, such problems of population density were accentuated by large numbers of mobile travellers arriving and departing, spurring harbour-side economies to serve such mobility. This also roused the familiar Victorian fears around over-crowding and its assorted woes. In 1892 an outbreak of cholera in Hamburg – a principal channel for Eastern European emigration – had reportedly killed some 10,000 and it was an established and unquestioned truth that ports were, in the ‘age of migration’ also extremely vulnerable to epidemics. By the late 19th century, ports were vectors of misery as much as people and rapidly become spaces of marginality and contamination, the kind of atmosphere that Alexander had regretted as the “demoralising scenes of a seaport such as this’ in his reports on the Durban police-beat. Not only simply then an interface between *terra* and *aqua*, ports were imagined as both sources and threats to social health and national efficiency.

In terms of the actual spatial dynamics of the Atlantic port cities, the waning of the mercantilist waterfront on which social and cultural life had centred prior to the mid 19th century had given way to swift commercial and material transformations.⁸ In Europe – Liverpool, Antwerp, London amongst many others – port-boards began investments in ever larger, deeper and more expensive (in both monetary terms and for the reputations of some politicians and engineers who oversaw the processes) docks and mechanized wharf side facilities. The new ‘portscapes’ of depots, warehouses, cranes were in essence increasingly automated and machine-driven spaces and, being of great fiscal value, were removed of all but professionals and those strictly necessary to their industrial functions and efficiency. In short, ports were stringently off limits to the casual visitor. For these reasons, ports lost much of their hybrid vibrancy, to be replaced by something of “a fortress character,” described by one writer, in a telling phrase, as a process of ‘inoculating the port.’⁹ Durban underwent similar transformations¹⁰, though it added

⁷ Konvitz, “Atlantic Port Cities,” p. 305.

⁸ Sarah Palmer, “Current Port Trends in Historical Perspective,” in *Journal of Maritime Research* (December), 1999. Available online at <http://www.jmr.nmm.ac.uk/server/show/ConJmrArticle.17/>
The following overview draws on this concise and readable piece.

⁹ Palmer, “Port Trends.” p. 4

one more to the administrative wall: the IRD, in regular conversation with other wharf-side bureaucracies, prevented, channelled and regulated any non-maritime movement from the docks, piers and jetties of the growing port.

To cut to the point: the politics of immigration restriction and exclusion, in addition to the documentary order, invoked the trope of detention and removal, as the actual access to the space of the port, and the town which it served, was contested.¹¹ It is no overstatement to claim that in South Africa more than elsewhere civic consciousness has been historically and powerfully shaped by discourses of incarceration¹², and as Durban's population swelled, so did the construction, maintenance and reform of gaols impress ever more on the urban landscape.¹³ If South Africa's social landscape pivoted around and was informed by violence¹⁴ and detention in one form or another, so were its points of entry.

¹⁰ I drew attention in a note in an earlier chapter to the entry of the 13,000 tonne Armadale Castle in 1904. By 1907 the opening of the harbour was described in contemporary reports as an unqualified triumph, "a striking example of modern engineering" that had overcome the challenges of one of the most testing sand-bars on the continent and indeed the world. From an average low-water depth in 1876 of just 4ft, powerful dredgers had increased that to some 31ft by 1906. The only vessels of the time unable to enter the harbour were the "huge White Star liners from Australia en-route to London," but that was only when heavily loaded and that there was not sufficient wharfage accommodation. This was hastily provided and the port was said to provide "the best internal accommodation...and is also the best equipped of any harbour, not only on the African coast but, according to the opinion of many entitled to speak from actual knowledge and experience, second to none in the Southern hemisphere." From a "few hundred feet of timber wharfage [and] a single shed of an old-fashioned type" in the 1880s, Durban now boasted quay-walls, almost 14,000ft of wharfage on three-sides spread over 7 and half sq. kms., including reclaimed land. There were 16 sheds, 40 hydraulic cranes, a floating dock and workshop, and "elaborate appliances for loading coal into steamers." There was, in 1907, "a well-designed plan [that] can be carried whenever the necessity arises for further accommodation and additional facilities." See *The Natal Mercury*, "Port Natal," Jun. 28, 1907.

¹¹ The best synthesis of the struggle over space in Durban is Paul Maylam and Ian Edwards, eds., *The People's City. African Life in Twentieth Century Durban*. (Pietermaritzburg: University of Natal Press, 1996). For greater regional and continental context see Bill Freund, *The African City. A History* (Cambridge: Cambridge University Press, 2007). This latter work has, unfortunately, been published at a very late stage of writing this dissertation and I am unable to benefit or engage more fully with Freund's interventions.

¹² See Charles Van Onselen, "Crime and Total Institutions in the Making of Modern South Africa: the life of 'Nongoloza' Mathebula 1867-1948," *History Workshop Journal* 19 (1), 1985: pp. 62-81; Shane Graham, "Apartheid prison narratives, the Truth and Reconciliation Commission and the construction of national (traumatic) memory" in Graham Harper (ed.), *Colonial and Postcolonial Incarceration* (London: Continuum, 2001), pp. 223-239; Florence Bernault, "The Politics of Enclosure in Colonial and Post-colonial Africa," in Florence Bernault, (ed.), *A History of Prison and Confinement in Africa*. (Portsmouth: Heinemann, 2003), pp. 1-54; Recent work in progress is by Kelly Gillespie, "The Moral Architecture of Post-Apartheid Prisons," paper presented at *History and African Studies Seminar*, University of KwaZulu-Natal, 11 October 2006

¹³ Colonial police forces have not been widely studied. For Durban, the only adequate source is Jack Jewel, *A History of the Durban City Police* (Durban: Durban City Council, 1989). Wider context can be found in David Anderson and David Killingray, eds., *Policing the Empire. Government Authority and Control, 1830-1940* (Manchester: Manchester University Press, 1991) and the second section of Martin Channock, *The Making of South African Legal Culture, 1902-1936. Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001).

¹⁴ A note on the literature here could easily become unmanageable. For material relevant to my time and place, see Keith Breckenridge, "The Allure of Violence: Men, Race and Masculinity on the South African Goldmines, 1900-1950" in *Journal of Southern African Studies* 24 (4), special Issue on Masculinities in

unproductive colonial project could only stumble and grope its way towards the kind of social regulation its administrators championed.¹⁵ I aim in this final chapter to show how this constraining violence of detention, removal and exclusion was inscribed but also mitigated, modified, tempered, usurped, subverted and ultimately captured both by those intermediaries – the shipping captains, the water police- who would ideally enforce it and those – passengers, crews, stowaways - who were the principal recipients. The port was, indeed, at the centre of a Sisyphean struggle of the state to regulate mobility.

The IRD treated different cases in ways that were subtly different but also overlapping, modifying and adjusting policy to exclude entirely or regulate entry. The energies and means to achieve the ends differed and depended on whether the subjects were Gujarati merchants, Chinese ship cooks, Argentinean ships crews, French pimps or Egyptian coal shovellers, to pick out just a few. Each of these flows – which I have covered in more detail in chapters 1 - 3 - brought sundry anxieties to official and bourgeois Durban that were social and economic in character: undesirables were people who might pollute the ‘Garden Colony’ of Natal and enter its competitive and limited labour market. It will be remembered that in addition to individual networks of European and eastern European migration, there were several thousand ‘cattlemen’ working 50-100 per shipment in a cattle and mule trade that linked the Americas (principally New Orleans and Buenos Aires) with southern and east Africa and onward to Australia; these poly-national assemblies of men were drawn from a number of countries including Canada, Germany, France, Spain, Uruguay, Britain and Australia.¹⁶ There were also more general shipping crews working the various trading and passenger vessels - Europeans, east Africans, Indian lascars and Chinese all keenly aware of the booming city of Johannesburg. Such crews were, after the War, also to be restricted. Ships’ masters were initially liable for their security and all crew were compelled to depart the harbour ideally on the ship on which they had arrived or, by special agreement, transferred to another. These all added to the ‘passenger Indians’ who had been declared prohibited on the basis of not being able to fulfil the documentary requirements. In terms of detention, however, similar practices were adopted regardless of the profile of an undesirable. Confinement to a cabin, subject to a police-watch, placement in a detention ship, arrest in the event of any escape and a standard sentence of 3 months

¹⁵ David Arnold has shown a similar permeability to the colonial prison in India. See David Arnold, “The Colonial Prison: Power, Knowledge and Penology in the Nineteenth-Century India” in David Arnold and David Hardiman, (eds.), *Subaltern Studies VIII* (Oxford: Oxford University Press, 1994), pp. 148-187.

¹⁶ See Johan Wasserman, “A Tale of two Port Cities: the Relationship between Durban and New Orleans during the Anglo-Boer War” in *Historia*, 49 (1), 2004: pp. 27-47.

with hard labour, followed ultimately by deportation. The detention ship for example, whose necessity and evolution I detail in this chapter, was initially imagined as a solution to the large shipping crews who were not permitted to land, but was ultimately used for general passengers, including Indians. Liability, responsibility and ultimately expenditure was placed largely on the owners or captains of ships. Such owners were required to foot the bill for guarding ships and were subject to fines if escapes occurred.

Containment and the Immigration Act of 1897

We must return to the pre-War days to understand how the port had become a contested, vulnerable and prominent *space* in the public imagination. In 1897, a working resident of Point Road, the artery that connects then as now the wharves to the town proper (see map, above) wrote to the daily newspaper and gave vent to his feelings. The improved harbour conditions, he reasoned, had brought larger crews that had disturbed the urban order - an order that had been under construction since the vagrancy laws of the late 1860s had codified settler anxieties around racialised sexual danger and domesticity.¹⁷ Those leaving ship - many white and poor - were equally emblematic of the “threat to home and family,” a precedent set by colonial formulations of the urbanized African male. The resident demanded increased police supervision of the area, or, he warned “perhaps a lesson or two read by a six-chambered revolver will bring these characters to their bearings.”¹⁸

The impetus for restrictive legislation was spatially located at the very point of entry to the colony: the harbour. Natal had at first sanctioned and then developed a closely regulated bureaucratic, political and legislative apparatus to govern the movement of indentured Indians on fixed contracts in the sugar belt, which included an ‘Indian Depot’ where arriving labourers were confined.¹⁹ Yet in 1897 few structures existed that could deal adequately - if at all - with the movement and entry of unaided passengers energized by turn of the century commercial, social and political networks of mobility.

¹⁷ Jeremy Martens, “Polygamy, Sexual Danger, and the Creation of Vagrancy Legislation in Colonial Natal” in *The Journal of Imperial and Commonwealth History* 31 (3), 2003: pp. 24-45.

¹⁸ *The Mercury*, “Wanted, More Police Supervision,” 6 Oct. 1897.

¹⁹ A compendium of the legislation can be found in the BPP/Cd. 2105. *Papers Relative to the Laws and Regulations in Force in the Colonies Under Responsible Governments Respecting the Admission of Immigrants*, 1904. See also Patrick Harries, “Plantations, Passes and Proletarians: Labour and the Colonial State in Nineteenth Century Natal” in *Journal of Southern African Studies*, 13 (3), 1987: pp. 372-399.

Natal's established settler society, enthroned on the Berea ridge and flush with recently won responsible government status (1894) were well disposed to flexing some legislative muscle. Thus what had began in mid 1896 as white working class indignation and opposition to a proposed indenture of Indian mechanics and artisans at the request of the sugar-barons ended some months later in the controversial and now famous appearance of the *Naderi* and *Courland* at the harbour mouth, carrying between them around 600 *un-indentured* passengers of south Asian origin. This shifting stance was formalised when the Colonial Patriotic Union (CPU) and the European Protection Association (EPA) were hastily set up – without charters or formal structures - in town meetings that numbered in the thousands. Their purpose, put without diplomacy by D. McKenzie of the CPA, was to give “an object lesson to the Indians that the long open doors of Natal are to be firmly shut.”²⁰

As suggested earlier, the reasons for the rash of xenophobic public excitement were more complex, resting on a volatile cocktail of economic competition, plague fears, protective paternalism (in ‘protecting’ Africans and Asians already in the city) and an ethnology of irreconcilable difference, which suggests an important watershed regarding how the harbour would henceforth be imagined. To this was added a rumour mill fanned by gossip – the politicians later admitted as much – that Gandhi, whose was onboard, had publicly discredited social conditions in Natal and had set up an emigration agency whose purpose was to facilitate an “Asiatic invasion.” In the meantime, immigration was framed within the language of panic, contagion and civil emergency that made the atmosphere at the port inflammable.

To recap: the two ships entered the harbour and were put into a 21 day quarantine²¹; uncertainty grew and tension with the town reached “fever heat.”²² The Associations set-up Demonstration Committees along military lines and the very language of the demonstration arrangements betray an atmosphere of violent hostility: “Generals” were appointed, wearing red arm bands and an “intelligence department” was set-up. As the quarantine period expired and the actual moment of disembarkation drew near, strategically placed buglers were to mark the moment that the demonstrators

²⁰ *The Mercury*, “Proposed Demonstration,” 7 Jan. 1897.

²¹ For technologies of quarantine around the port – which the IRD left in the hands of the Public Health Department and appeared – perhaps surprisingly - to share little correspondence, see Nafisa Essop Sheik, “‘This Most Perilous and Epidemical Disease’: Plague Precautions and Public Politics in Natal, 1896-1903” (B.A Honours diss., University of Natal, 2002).

²² *The Mercury*, “Asiatic Invasion,” 14 Jan. 1897.

should converge on the wharf, referred to as “the theatre of action.”²³ It was estimated that there were by then 5,000 waiting. One man offered to raise a force of 1000 armed men from Johannesburg²⁴ and there remained a noticeably self-conscious imperative that all who had gathered would “stick their guns” and prevent the landing of the passengers.²⁵ Government was compelled to act as these quite extra-ordinary developments continued without abatement. The Prime Minister struck a compromise with the associations by promising to pass legislation at the earliest opportunity if the passengers could land unmolested. As is well known, Gandhi escaped only by disguise (while the crowd chanted “we’ll hang old Gandhi by the sour-apple tree”), but the crowd thinned, the passengers disembarked and politicians drew a collective sigh of relief, the Associations claiming a moral victory.

When Harry Escombe, the Prime Minister, spoke at the first legislative sessions several months later, he precluded his suggestions for restrictive legislation by dwelling on how the breakdown of law and order had been but a whisker away. Addressing the house, he recalled that

Where there was room for doubt was as to whether or no the committee would be able to control the enormous crowd, and whether the crowd itself, however anxious it might be to maintain order, would in fact be able, under the circumstances of extreme excitement, to maintain the very order which they were anxious to...there is always danger when a crowd is brought together under exciting circumstances that through any accident, through any trifle, the line of safety might be overstepped, and then nobody could say what would be the consequence of that overstepping.²⁶

The port became the locus in which ‘civilised standards’ were at their most vulnerable, where the tensions of empire might ignite and the constructions of ‘colonial nationalism’ may descend to imbroglio.²⁷ The regulation of port and urban space and the

²³ *The Mercury*, “Asiatic Invasion,” 14 Jan. 1897.

²⁴ *The Mercury*, “The Asiatic Invasion,” 11 Jan. 1897. The man, it must be said in defence of the crowd, was ridiculed.

²⁵ *The Mercury*, “The Asiatic Invasion,” 8 Jan. 1897.

²⁶ Colony of Natal, Debates of the Legislative Assembly of the Colony of Natal XXV (1897), p. 68.

²⁷ “Colonial Nationalism” was a term coined by Richard Jebb, a contemporary imperialist and reformer, to describe the sense of new-found – but tenuous – sense of independence the dominions where anxious to assert in managing their own affairs. See John Eddy and Deryck Schreuder, (eds.), *The Rise of Colonial Nationalism. Australia, New Zealand, Canada and South Africa first assert the nationalities, 1880-1924* (Sydney: Allen and Unwin, 1988). For a more dynamic analysis of the problems of pan-colonial citizenship and the

restriction of movement through it thus became an important concern of administrators as colonial mechanisms of rule became consolidated. The concern and management of urban space and the control of access to it was not particularly unique to Durban or even to South Africa. An Anglo-American discourse of city governance had been developing over the late 19th century, where progressive influences sought to regulate, sanitize and order urban, civic spaces.²⁸ These translated – mediated by fears of race-conflict, degeneration and disease - into residentially segregated cities across the colonial realms – a vast new template for city planning that stretched from Sierra Leone to Singapore, from Port Harcourt to Pondicherry – and looped back even to US cities such as Baltimore and New York.²⁹ As had occurred across the Atlantic world, the South African city was full, in Patrick Joyce’s words, of the “conditions of possibility” – where “social imaginaries of power” were being transformed into the very material infrastructure so that the city itself became the object of governance.³⁰ Like Joyce’s liberal British model, techno-social South African cities sought new modes of governmentality in the space of the city, but South Africa outstripped almost all of the above in the energies with which segregationist planning was championed. Far from an aberration of late 19th century liberalism, the colonies of South Africa has become paragons of ‘progress.’

Our Strongest Weapon

If one of the balancing acts of colonial governance was to play off the movement toward extended control and regulation with limited resources, then it is perhaps not surprising that the first responsibility for actually enforcing part of the Act of 1897 should pass over to the owners and captains of the steamships. This intermediate dimension to immigration restriction was important and the ships themselves became the material site around which much of the struggle to regulate migration was played out.

debates around immigration policy which were crucial to this, see Daniel Gorman, “Wider and Wider Still?: Racial Politics, Intra-Imperial Immigration and the Absence of an Imperial Citizenship in the British Empire” in *Journal of Colonialism and Colonial History* 3 (3), 2002, available online at <http://muse.jhu.edu>

²⁸ See Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, Mass.: Belknap Press, 2000).

²⁹ See Phillip D. Curtin, “Medical Knowledge and Urban Planning in Tropical Africa,” in *The American Historical Review* 90, (3), 1985: pp. 594-613 and especially Carl H. Nightingale, “The Transnational Contexts of Early Twentieth-Century American Urban Segregation” in *Journal of Social History* 39, (3), 2006: pp. 667-702. Nightingale provides an excellent bibliography of studies into such segmented cities across the world.

³⁰ Patrick Joyce, *The Rule of Freedom: Liberalism and the Modern City* (London: Verso, 2003).

In the legislature, Escombe's sparring partner and later Prime Minister of Natal Henry Binns (see chapter 2 for the policy backgrounds of these two men) had pointed out the potential problems for enforcement by highlighting that "there is no machinery provided in the bill for carrying out the details of it. You will have to place officers at every point of entrance into the country."³¹ Binns had little overall success in the debate, but when the Act was passed the problem was resolved through the important Section 8, where it was the shipping lines that would be liable for the detention of declared prohibited immigrants – in practice this would involve finding a suitable room or confined space and locking up an undesirable on the boat. Such shipping masters, in the event of an escape, were liable to a minimum fine of a £100 per immigrant up to £5,000. The penalty was made executable by the Supreme Court and, importantly, a ship's clearance to leave the port would be withheld until such a fine had been paid. The shipping companies were also compelled to assist, wherever possible, in the deportation of a prohibited migrants should they be found in the colony and proved to have entered under a particular shipping line. Only a very general provision for police officers to "prevent any prohibited immigrant from entering Natal by sea or land" was initially made and it was left to ship's captains to make their own arrangements in the actual event of guarding a ship. This was thus often done independent of the IRD as occasional police were arranged on *ad hoc* basis. It remained clear that in the prevention of the landing and ultimately removing of undesirables, the administration's first line of defence was that of the private shipping lines. This would give an added if somewhat unpredictable dimension to the IRD's incipient regime. In short, no particular guidelines were set down and captains were to make their own judgments and provisions.

As Harry Smith took up his new responsibility, one of the first tasks of administration was to furnish the act to all shipping companies that called at Durban and to draw specific attention to the master's liability in the event of an escape - this would be tallied against his passenger and crew list which he was compelled to display before landing and departure. Smith noted in a memo that "the strongest weapon for carrying out the object of the act is under section 8 of the act" and, eager to protect their financial interests, shipping masters were initially eager to co-operate and indeed often refused to book passengers if their landing was likely to be hindered or declared illegal.³² As Natal's legislative code constricted mobility around the port, so did its provisions start to

³¹ Colony of Natal, *Debates* XXV, p. 89.

³² PAR/IRD 1/1/1897. Suggestions in regard to carrying out the Act. 22 May 1897.

intervene and ripple out in a wider Indian ocean social economy: shipping companies regulated their booking practices, the act was translated into Gujarati and Tamil, copies were sent to major ports of call, and, in the post-war political vigour, linked Criminal Investigation Departments throughout South Africa and Europe kept in much better touch, informing the IRD and telling Smith to be look out for undesirables who, it later emerged, often got around the shipping companies ticketing strictures by booking a final destination *via* Durban, in the hope of effecting an undocumented landing.³³

It did not take long for the working of the act to be found wanting. Within weeks of the act coming into force an ‘Arab’ onboard the *Herzog* was declared prohibited, being unable to speak English, and was locked up in a ship’s bathroom by the master. The captain made only perfunctory arrangements and the man affected a break. The police-officer sent to investigate recorded “unnecessary difficulty and delay in producing the key of the bath-room before the discovery of the disappearance” and suspected that the Arab was “released from the bathroom by the mate of the ship and told to go,” something that was later admitted by the mate himself.³⁴ The captain protested his liability, but Smith was disconcerted: it was, he wrote:

The second time within a month that vessels of this line have utterly disregarded the Act; I submit that if it is found that these breaches of the law are passed over, the other shipping companies who study its provisions will have a cause of complaint.³⁵

Trying to administer the act evenly was difficult as all sides rarely agreed on the precise reasons for escapes or desertions and each case produced a flurry of accusations that ended either in a captain paying the fine under protest or Smith reducing or remitting the penalty entirely. The captain of the *Herzog* ultimately paid the fine, but claimed he had taken all necessary steps to prevent the landing and that he ultimately had no power over his crew or indeed migrants themselves.³⁶ This was an important gap in the legal provisions: while shipping masters were expected to detain prohibited immigrants in theory, they actually had no wider legal power to restrain individuals in practice – it would take some years for this problem to be fully resolved. The ‘Arab’ was eventually found on Point Road, served a month’s imprisonment and deported to

³³ ARIRD, 1897, pp.1-2.

³⁴ PAR/IRD 1/48/1897. Smith to Colonial Secretary, 14 Sep. 1897.

³⁵ PAR/IRD 1/48/1897. Smith to Colonial Secretary, 13 Jul. 1897.

³⁶ PAR/IRD 1/48/1897. Captain, SS *Herzog* to Clerk of the Peace, 26 Oct. 1897.

Delagoa Bay. The case left an unpromising commentary on the provisions of Section 8, and inspired Smith to suggest that ships employ more police officers. The boundary between immigration restriction and more explicit policing grew fuzzier, investing authority within an under-resourced and at times quite amateur agency that made the weighty IR Act somewhat rickety. This ambivalence needs to be drawn out more in studies of immigration restriction, and of colonial projects more generally.

Three months later, the SS *Julia Park* arrived at Durban where 6 cattlemen made a successful break, despite the captain having taken out police precautions. Smith again invoked section 8, and met with a vociferous response from the captain of that ship who argued that:

I have exercised every possible precaution and every favour to prevent these mule peons from landing and as you are aware the harbour police, employed by me, have been unable to cope with your most unreasonable demands.³⁷

By the end of year Smith published his first report³⁸, and concurred that the difficulties of captains were considerable and that they had no power to restrain the freedom of persons. The system in place meant that the police who might aid the shipping companies were rarely available in practice and this left the IRD with no real means of guarding a ship at the wharf – a captain might also employ fewer guards than was necessary to maintain a delicate financial balancing act. In the IRD offices, things could clearly not continue as they were. Evasions were frequent and various and were costing the department time and money which it did not always have. The law, at least until 1903, ruled that summary arrest of a prohibited immigrant was in fact illegal without a warrant, and the subsequent delay in doing the paperwork made it easy for those prohibited ashore to melt away.³⁹ This put even greater strain on the need to *prevent* undesirables from coming ashore.

As the South African war broke out the responsibility for the port and regulations on mobility were substantially aided by the military and the proclamation of

³⁷ PAR/IRD 1/109/1897. Captain, SS *Julia Park* to Smith, 14 Oct. 1897.

³⁸ ARIRD, 1897.

³⁹ This emerged after the magistrate ruled that one Charles Braun had been wrongfully arrested. He was, however, still a prohibited immigrant and carried away by the ship on which he arrived. The captain offered one of the most stinging early protests directed at the IRD. PAR/IRD 2/240/1898. Correspondence relating to Charles Braun, 16-17 May 1899.

Martial Law; complaints were dampened by the exigencies of the conflict. In the months leading to the signing of the peace, however, the grievances of the shipping companies resumed and continued to detain Smith: the law was harsh and the ethics of captains imprisoning passengers or crews highly questionable;⁴⁰ ships continued to be “placed in a most unfair position” and were often at the receiving end of the blame for escapes which they had precious little manpower or legal authority to prevent.⁴¹ In 1903, the 9 principal shipping agencies met and forwarded a petition to the IRD. In it, they argued that while they were in sympathy with the aims of the IRD, it was impossible to place undesirables under restraint as a ship was a working concern, day and night. “Desertions,” they said, “are of a frequent occurrence and we need hardly point out that the principal sufferers through desertion are the ship owners themselves, as frequently it places a vessel in an extremely awkward position on the point of sailing.”⁴² As the first year of peace ended, it was time for a review.

A New Era

As a new imperial South Africa woke up from the long night of conflict, the political, economic and social agenda was quickly set as Lord Milner’s new administration poured resources into a reconstructionist project that sought to strengthen British interests and solidify a particularly English civic culture that would be implemented by a range of intermediaries from pedagogues to the police.⁴³ But the war also left behind a severe ‘civil shock’ created by urban influxes (locally, regionally and internationally) that highlighted the weaknesses of the colonial state and was instrumental in spurring a interventionist and exclusionary imperative to answer pressing urban problems around crime, destitution and race. Greater policing, a system of barracks and compounds and the removal of African and Indian ‘undesirables’ from the city to ‘native locations’ were the principal means to effect this.⁴⁴ Harry Smith and the IRD joined the effort. Smith noted:

⁴⁰ PAR/IRD 7/38/1902. Correspondence relating to SS *Kuerfuerst*, 25 Jan.-3 Apr. 1902.

⁴¹ PAR/IRD 12/522/1902. Shipping Agent to Colonial Secretary, 29 Jul. 1902.

⁴² PAR/IRD 18/587/1903. Shipping Agents to Colonial Secretary, 15 Jun. 1903.

⁴³ See Bernard Semmel, *Imperialism and Social Reform: English Social-Imperial Thought, 1895-1914*. (London: George Allen & Unwin, 1960); Shula Marks and Stanley Trapido, “Lord Milner and the South African State,” *History Workshop Journal* 8, 1979: pp. 50-81; Albert Grundlingh, “‘Protectors, and Friends of the People?’ The South African Constabulary in the Transvaal and the Orange River Colony, 1900-08” in David Anderson and David Killingray, (eds.), *Policing the Empire*. pp. 168-182.

⁴⁴ Swanson, “Durban System” and “Asiatic Menace.” For a geographer’s perspective on this see Jeffrey Popke, “Managing Colonial Alterity: narratives of race, space and labour in Durban: 1870-1920,” in *Journal of Historical Geography* 29 (2): pp. 248-267.

If the colony wishes to keep itself free of those whose presence here will conduce [to] the lowering of the standard of life, both material and moral, then the colony must be prepared to spend money in the attempt...*we are now commencing a new era.*⁴⁵

Smith communicated with the colony's administrators that with the "bitter comment of the shipping people" ringing in his ears and the ineffectiveness of the *ad hoc* police arrangements – independent of the IRD, over-worked, understaffed and slow – a re-appraisal of the mechanisms of enforcement were overdue.⁴⁶ 13 000 arrivals over the year, 10 000 people at his offices and 1085 vessels affected by the legislation spoke much to the tensions of the immediate post-war crisis. "The magnitude of duties" he wrote, was

at once anxious, harassing, and exacting to the highest degree and arising from the dark ways of those that have to be dealt with, such as calls for exercise of the greatest vigilance...the work is full of incident.⁴⁷

The legislators met in mid-1903 and agreed. They set to amending the 1897 act and while not altering its principles to any large degree, sought to widen its powers in a number of key areas and to more closely regulate its functioning. During the debate the Colonial Secretary summarized that the "working of the Law has been found to be in practice rather difficult," an opinion which, given the story I have told thus far, was staggering understatement; I have already considered the tightening up of regulations in terms of embedding of the documentary regime. As for actually guarding the port, Smith's resolution drew on an initial suggestion made by the military authorities (under whose jurisdiction the port had come between 1899 and 1902) to detail a company of men to watch over berthed ships to help relieve the captains' of some of the responsibility.⁴⁸ It wasn't quite so straight-forward and the legislature maintained that captains would still be liable for the costs of these guards, but so long as the ship had made "a proper provision," the fine would be waived in the event of an escape.⁴⁹ Because the administration would be required to meet the shipping companies half-way

⁴⁵ PAR/ARIRD, 1902. p. 5. My italics.

⁴⁶ PAR/IRD 10/558/1902. Smith to Colonial Secretary, 9 Oct. 1902 and, looking back several years later, Report of the Principal Immigration Restriction Officer, 22 Mar. 1906

⁴⁷ PAR/ARIRD, 1902. p. 1

⁴⁸ Colony of Natal, *Debates of the Legislative Assembly XXXV* (1903), p. 489.

⁴⁹ Colony of Natal, Act 30 of 1903.

by actually providing guards, a new system was set-up using the Water-police, until then a minor division of the Durban police, to guard ships. This was again a rule-based administrative rather than a legal measure, and the ground – or the water, so to speak – had already been prepared in a conference at the end of 1902 between shipping officials, the Colonial Secretary and the IRD before the legislature met.⁵⁰ In short, 27 additional water-police were recruited and were to be temporarily transferred, when required, to work under Harry Smith's authority. Now that the IRD was at least partly responsible in enforcing the port guard, Smith would need to pay considerably more attention to its workings. (Importantly, Harry Smith had also recommended the provision of a detention ship in the bay on which Prohibited immigrants might be detained before the ship on which they arrived departed. In 1903 he met with a lukewarm response and though a provision for a "place of detention" was made in the new act, little administrative energy would be expended on this for a number of years. I will return later to this important aspect of exclusion).

The new police system did not solve the problems with escapes and desertions. Rather, it complicated them – travellers never quite played by the rules and in this Durban was no exception.⁵¹ Part of this was administrative inefficiency, and part of this was those escapes and inversions of the system, the 'lines of flight' that Deleuze and Guattari celebrated.⁵² When the SS *Abbey Holme* lost 10 men, Smith wrote to the superintendent of the Water Police complaining of the two guards who had been sent down under the new regulations. "Making all allowance" he wrote, "for the difficulties of maintaining an entirely effective guard over these vessels I cannot help thinking that in this instance there was grave carelessness on the part of the officers on duty."⁵³ Further enquiries revealed that there were numerous instances of people on shore who had been aiding passengers and "averring connivance" by bringing a small craft up on the blindside of the ship over which the Prohibited Immigrants might leap, to be conveyed ashore for a fee. Smith recognized it as a common problem and concluded it was almost impossible for a small group of police to keep watch on all exposed sides of a vessel. From the

⁵⁰ I have been unable to find any minutes of the conference itself, but its resolutions in this regard are clearly noted by Harry Smith in PAR/ARIRD, 1902. pp.4-5.

⁵¹ Erika Lee shows how Chinese immigrants overcame the borders of the United States simply by going in "through the back doors" of Canada and Mexico. Erika Lee, "Enforcing the Borders: Chinese Exclusion along the Borders with Canada and Mexico, 1882-1924" in *Journal of American History* 89 (1), 2002, available online at <http://www.historycooperative.org>

⁵² See G. Deleuze and F. Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia II* (Minneapolis: University of Minnesota Press, 1987).

⁵³ PAR/IRD 12/870/1902. Smith to Superintendent of the Water-Police, Oct. 1902. Exact date not legible.

Burgermeister, an Indian and European (to capitulate to the IRD's categories) availed of an exposed deck and with the help of the crew jumped aboard a passing ship named, in an almost implausible irony, the SS *Harry Escombe*. One of Smith's assistants was again confounded after "taking into consideration that it was daytime, on a Sunday, when everything on the ship was quiet, also the surroundings being all in favour of the guard, I consider there has been a certain amount of carelessness that these men should have been allowed to escape."⁵⁴ On the *Mfuli*, the guard on duty took a lunch break and left a crew member – a quartermaster – to guard the gangways – it was perhaps predictable that on the guard's return, one of the charges had escaped. The Superintendent of Water Police admitted the guard's failing, but claimed that "the Quartermaster [who] is Indian [was] probably interested in the landing of the Prohibited immigrant."⁵⁵ Smith must have felt a keen sense of impotence, where the crew on the ships and passenger traffic themselves might aid an immigrant to escape his confinement. What do all these empirical references tell us? The Immigration regime was beset by slippages and leakages – the abstract legalistic machine was easily 'undone' but, it must also be said, never entirely brought down the machine of domination. This ambiguity and the layers of complexity which arise from it, I argue, form the basis of the lived experience of port-side relationships in Durban at the turn of the century.

With the efficacy of the Act at stake, restricting intercourse and collusion between prohibited immigrants, crews and civilians was to become a prime motivation in the enforcement of the Act. Crowded wharves did not help. This fact was mentioned in a number of cases, but it reached an apogee when the *Kronprinz* suffered 8 desertions, something even water-police thought was "impossible." As the search for answers began, the problem was "the traffic at the wharves is too confusing." Smith again fumed about "gross negligence" on the part of the Water Police.⁵⁶

A year later accusations of "serious dereliction of duty" rang out as Smith complained after yet another failure to restrict an undesirable. In a case covered for similar reasons in the previous chapter, one of the Water Police had taken on the role of issuing landing permits – something only Smith had the power to do – and in so doing constituted himself "as both judge and jury" on the case, in the processes letting a

⁵⁴ PAR/IRD 20/876/1903. G.W Dick to Smith, 22 Sep. 1903.

⁵⁵ PAR/IRD 20/756/1903. Water Police officer Eaton to Superintendent of the Water-Police, 17. Aug. 1903.

⁵⁶ PAR/IRD 22/975/1903. G.W Dick quoting Smith to Colonial Secretary, 22 Oct. 1903.

number of people slip through the gate.⁵⁷ Smith was now made aware of the confusion over the overlapping functions, a “duality of control” as he termed it. The actual policemen themselves were often subject to contradictory instructions emanating from the different bureaucracies involved in administering the Water-police. When escapes occurred, the round of finger-pointing began to reach an almost personal level.⁵⁸ By 1905, the bickering had become for Smith “simply intolerable” while the Colonial Secretary realized that the “friction attended to with a certain loss of efficiency.” As Smith was grappling over how best to solve the “spirit of quiet hostility” that existed between the IRD and the Water-Police, the events of spring of 1905 encapsulated all that was rotten with the new system.⁵⁹

The *Somali* had reached the South-east African coast first at Lorenzo Marques, at which a number of Indian passengers had been prevented from landing. The vessel landed at Durban and the police-guard – it turned out to be a guard in the singular, to Smith’s dismay – duly called. 13 of the Indian contingent made an escape, something which Smith had described as “the most serious I can remember.” Smith went ahead and charged the company for having employed only one guard and in the arguments that followed, it was clear that matters were reaching something of a nadir. Short-staffed, the Water Police could offer only an inexperienced single officer to guard vessels, the Prohibited Immigrants easily became mixed up with crew and transit passengers; Smith accused the police of suffering from an institutionalized ‘habit of indecision’; the captain complained of the inconsistencies of the administration of the act. Writing with an almost audible sigh, Smith resigned himself to letting the ship go without paying the fine, but fretted that if things continued as they were, “we might as well be without an act.” Perhaps, in retrospect, this is precisely what he wanted: ever complex technologies of exclusion seemed only to increase the possibilities of landing and provided an edge on which undesirables could in fact grasp.

Such an appraisal would however give lie to any assumption that the act was powerless. Constraint and confinement was also attended to with a degree of physical violence, harshness and arbitrariness in its enforcement. Soon after Smith had instructed police officers not to allow anybody besides bona fide passengers onto the ships in an attempt to isolate undesirables, a Mr. F. Vaz and Doon Bhojroo went to see a friend off

⁵⁷ PAR/IRD 31/994/1904. Smith to Superintendent of the Water Police, 14 Oct. 1904

⁵⁸ See the enquiries into escapes at PAR/IRD 25/93/1904; 35/126/1905; 42/857/1905; 49/247/1906.

⁵⁹ The following is drawn from PAR/IRD 42/857/1905. Correspondence relating to the SS *Somali*. 19 Aug.-3 Oct.

as he embarked for a trip to Delagoa Bay, only to be violently hustled off the gangway by the guard, and receiving a bevy of insults from him. By all accounts Vaz and Bhoyroo were left thoroughly humiliated. All Smith and the Minister of Justice could do in response to the complaint was to say curtly and with a hint of irritation that the officer “was only carrying out the instructions of the Immigration Act.” Two months later, Beli Ram and Kanaiysan alleged the police had assaulted them while on deck as they went to meet a friend. While in the reports it does not appear that the Indians were entirely innocent in the fracas that resulted, Smith informed the Colonial Secretary that “I may say that the frequency with which the complaints of harsh treatment by the Police come to me, leads me to conclude that there is more in the allegations than I have been willing to believe.”

Laws around restriction were not only evaded and resisted, but also ‘captured.’ It was a frequent cause of complaint in the IRD that successful escapees, after a stay in the colony, simply presented themselves to claim Domicile status or even reported back to the IRD to avail of a free passage away, which the laws governing deportation demanded. Secondly, the provisions of the Immigration Act, a patriarchal legislative construction that could only imagine immigrants as male, gave women a relatively easier passage of entry so long as they were attached to a husband. As we have seen in chapter 4, this gap in the law helped to create an economy of “paper” wives (and sons), but it also had an important corporeal dimension as Smith noted that a rash of cases of disguise and smuggling, as men dressed as women to evade the scrutiny of the ships guards.⁶⁰ In an effort to prevent this, the IRD later took to ordering female passengers to remove veils, something a (male) deputation of Muslims found “insulting and repulsive” when they challenged Smith on the point.⁶¹ This gendered aspect of treatment of undesirables would resonate powerfully with an aspect of protest against the Transvaal’s policy on detention. The phrase “War on Women” became metonymic in the press for the immigration regime’s increasingly stricter scrutiny of women in an effort to overcome related evasions.⁶² The frustrations of the evasions had led to increasing severity and abrasiveness in the administration of exclusion. What had begun in 1897 as a commercially regulated system – ‘remote control’ - where prohibited immigrants would be confined to a cabin on the ship, had gradually morphed into a repressive and often

⁶⁰ Smith spoke about this in an interview in “Indian Grievances,” *The Mercury*, 8 Jan. 1910.

⁶¹ *The Mercury*, “Indian Grievances,” 8 Jan. 1910.

⁶² *The Mercury*, “War on Women,” 21 Sep. 1906.

arbitrary system of guarding ships and wharves and controlling the mobility of people passing them with heavy hands.

This was not attended, as the above illustrates, with any more success. As an inefficient, under-resourced and mal-administered colonial apparatus fussed and failed, the targets of the exclusion saw their opportunities and made good out of them. One of the first things that Harry Smith had done when the new system of Water-police guards had been installed in 1903 was to keep a close statistical record of escapes and desertions. In the three years between January 1903 and March 1906, there had been almost 500 separate cases of loss from 243 ships.⁶³ He had certainly tried to come down harder on the undesirables, but even the *Natal Mercury*, that tabloid which was in the vanguard of the call for fences and barriers around the wharves, found Smith and his police guards inept, indiscriminate and haphazard. The paper editorialized after a flurry of complaints about harsh treatment and the IRD's unaccountable response. In a neat and ironic pairing of words that referred to subsequent "government evasions," the editor begged:

How in the name of common sense are people to be expected to comply with regulations if the government will not say what they are? [It] would be a perfect boon if we could get a few ministers who would insist upon government departments conducting their business on business-like terms.⁶⁴

As Smith looked back on matters, it could not have made for happy reading and in [June] of 1906 he fired off a letter to the Colonial Secretary full of doubt, lamenting the heavy expense of a system roundly failing to deliver.⁶⁵

Another New Era

The IRD, as many other state apparatus essentially functioning as agents of the enforcement of law and order, drew heavily on the post-war momentum for greater

⁶³ Placed with PAR/IRD 10/558/1902. Returns of escapes 1903-1906. These are 'cases', not necessarily reflecting numbers of individuals which were often in multiples.

⁶⁴ For calls to erect fences around the Port as an aid in reducing the civil disturbances after the war, see *The Mercury*, "Disabilities at the Port," 7 Jul. 1902; the editorial, "Government Evasions," from which the above quote is taken, was pasted into Smith's memorandum file. See PAR/IRD 44/1086/1905. Correspondence on Complaints, Oct. 1905.

⁶⁵ Placed with PAR/IRD 10/558/1902. Report of the Principal Immigration Restriction Officer, 22 Mar. 1906.

efficiency, centralization and regulation. The IRD took special notice of the 1904 Police Commission. This sought to thoroughly professionalize and re-organize Natal's police forces to more adequately regulate the social landscape – it drew on a 'cult of the expert' and pushed increased administrative and organizational efficiency, better educated and linguistically competent recruits and increased supervision of the town generally and of the port particularly.⁶⁶ Indeed, the Natal police and immigration authorities were amongst the earliest to take up the development of finger printing techniques to counter criminality and regulate and restrict mobility.⁶⁷ In the section of the Police Commission dedicated to harbour matters, the experts recommended greater centralization to overcome "serious administrative difficulties" and that greater guarding of the port was necessary to quell both an epidemic of cargo shed thefts and free movement around the wharves. Two years later, as Smith thought how best to remedy the fiascos around escapes, he successfully argued that the IRD do away with the 27 man police guard requisitioning system to be replaced by 4 full time staff to be titled as Boarding Officers. These would take orders directly from Harry Smith and though police officers might still be stationed around the ships, they would be supervised and regulated by the Boarding Officer who would also be in sole charge of administering the paperwork, declaring prohibited status and acting as direct liaison with Harry Smith to ensure the Department's "own means of independent and expeditious movement."⁶⁸ Boarding Officer's duties would extend across all provisions of the Act to reduce the errors of judgment and practice that had bedevilled the policing system and caused so much internecine conflict. A system of diaries and registers was inaugurated to keep a close watch on the arriving ships, interpreters were employed and paper-based checks and balances were given much closer attention.⁶⁹ The police were to be left as a more secondary adjunct to restriction, supervised and managed by specialized Boarding Officers.

For their part, the superintendent of the Water Police published a booklet for circulation amongst his men.⁷⁰ Tellingly, the first instruction was that "civility is one of the most necessary things at all times, as is also the control of temper." Other points outlined the new duties regarded regulating order around the ships and all sought to

⁶⁶ Colony of Natal, *Report of the Natal Police Commission*, 1904.

⁶⁷ See Keith Breckenridge "Flesh Made Words: Fingerprinting and the Archival Imperative in the Union of South Africa, 1900-1930," paper presented at the *History and African Studies Seminar*, University of Natal-Durban, 10 Mar. 2001. For the wider context see Chandak Sengoopta, *Imprint of the Raj. How Fingerprinting was born in Colonial India* (London: Macmillan, 2003).

⁶⁸ PAR/IRD 50/417/1904. Correspondence of Smith to Colonial Secretary, 6 Apr.1905-19 Apr. 1906

⁶⁹ *Boarding Officers Duties*. Placed at PAR/IRD 77/1129/1909.

⁷⁰ *Notes and Standing Orders for the Guidance of Water Police*. PAR/IRD 46/1286/1905.

redeem the failures of the previous years by codifying the watch, spelling out clearly the necessary procedures and making water-police answerable to the Immigration Restriction Officer (IRO), whose authority was not to be negotiated. Although he often found his department overworked with the small staff, this system pleased Smith considerably. It was significantly cheaper than the Water-police system and had clearly reached, in his 1907 report, a much higher state of efficiency.⁷¹ Looking back from 1910 after several years experience with his boarding officers, he concluded that would never again entrust the IR responsibilities “to men employed by the hour or to men who owe allegiance elsewhere.” He continued,

We are an unpopular department, the nature of whose duties affords many openings of assault by those whom we offend – both white and black. So long as I have officers whom I know and trust I do not mind a little bit what any calumniators may attempt.⁷²

The number of escapes of prohibited passengers greatly reduced. From the 1 April 1906 to the 31 March 1907, there were but 6 cases of restricted passengers escaping.⁷³ The case of shipping crews deserting and absconding was still a problem, however. While only 6 passengers had outwitted the new centralised Boarding Officer system, the number of crews deserting was still 117, partly due the particular circumstances attending a working harbour in which crews had to come ashore by necessity to do their work. This called for a second refinement of the system of corporal restriction. In Smith’s initial correspondence with the Colonial Secretary on the subject of reform in the Water-Police system, Smith concluded although the Boarding Officer system would help, the port was still “weak on one point: a place of detention.”⁷⁴

This was of course not the first time that such a facility had been envisaged – the term had indeed made it into print as early as the 1898 Annual Report. In 1902 the argument was made more forcefully as Smith cajoled his superiors to think about a “commodious building” within easy reach of the wharves, but not so close that security might be jeopardized. Later Smith decided that having some kind of facility in the bay itself was necessary because by bringing people onto land the IRD would in effect be

⁷¹ PAR/ARIRD, 1907.

⁷² Placed with PAR/IRD 50/417/1904. Correspondence of Smith to Colonial Secretary, 15 Apr. 1910.

⁷³ Placed with PAR/IRD 10/558/1902. Returns of escapes 1903-1906. See.

⁷⁴ PAR/IRD 10/558/1902. Smith to Colonial Secretary, 22 Mar. 1906.

breaking its own laws.⁷⁵ As the post-war influx gathered momentum and the number of cattle-ships reached something of a crisis – almost 8000 men on 346 ships had landed – Smith continued to appeal for a secure structure, which despite a provision made in the 1903 Amendment, had remained only an idea. Smith was aware of the logistical difficulties and indeed the illegality of detaining men as prisoners on their own ships which, were it continue, might hinder the valuable cargo trade. By 1906 his arguments were falling onto more attuned ears.

The section of the 1903 Act held that it was legal for the IRD to detain – incarcerate – prohibited immigrants at the expense of the shipping company or captain, and that the ship was compelled by law to remove the immigrant on its departure. Smith wrote to his colleagues at Cape Town and realized the Durban arrangements had been falling behind the times.⁷⁶ In 1905, the Port Advisory Board met with Smith on the question of Detention Hulk, to pay “chief regard to cattlemen, but it has to be recognized that this is not the only class of Prohibited Immigrants by whom any form of accommodation that may be provided would be used.” The Advisory Board found that the geography of the harbour – with no available space on the Point side and the distance of Salisbury Island was too far for effective oversight – to suggest a ‘floating vessel’ to be best suited to their purposes. Furthermore, to offset the likely cost of procuring such a vessel, the board decided to charge rent for use by shipping masters, who would be happy to no longer have to rely on the inefficient guards around their ship. They concluded that an “effort be made to acquire a suitable craft at a reasonable price.”

A piece of luck fell the way of the cash-strapped IRD’s as a G.C Smith (no apparent relation to Harry) wrote to the department informing them that he had a ‘houseboat’ which he had little immediate use for and was prepared to hand it over to the authorities so long as they agreed to its upkeep and maintenance.⁷⁷ Pleased with his fortune and drawing again on the North American precedent, Smith proclaimed that a detention station was “the natural corollary of restrictive legislation” and set about placing the first of 902 people who would enjoy a stay on the IRD ‘Houseboat’, the *Litto*, from 1907-1910.⁷⁸

⁷⁵ PAR/IRD 12/552/1902. Smith to Colonial Secretary, 2 Aug. 1902

⁷⁶ PAR/IRD 62/141/1905. Papers and Correspondence relating to the purchase of a Detention Hulk, 1905-11

⁷⁷ PAR/IRD 62/345/1905. Papers and Correspondence relating to the purchase of a Detention Hulk, 1905-11

⁷⁸ PAR/ARIRD 1908 and 1909. It is not clear how many the ship could hold in total but Smith’s reports the highest number of immigrants aboard at the same time as 91. p. 10 (ARIRD 1909).

The detention ship – built of wood, 136 ft long and 15ft. wide – might well have trumped a shore depot on grounds of expense and security, but the actual conditions on board the boat deteriorated rapidly. The wood began to rot; difficulties were experienced in recruiting a caretaker for the low pay on offer and refuse built up to produce “a very foul matter.” Soon what had been described at the time of purchase as “tastefully furnished [with] comfortable accommodation” became, in the Port Health officers’ opinion, “altogether filthy, and sadly out of repair” as the boat sprung leaks, became infested with worms and generally fell to pieces.⁷⁹ The Port Health Officer ultimately recommended it “unfit for the accommodation of human beings;” Smith noted the mounting opposition to incarcerating people on the hulk and by 1910 he refused to send more undesirables onboard, preferring instead to make ad hoc arrangements for the use of the Department of Health buildings on the nearby Salisbury Island. The *Litto* was eventually auctioned off with the boat’s owner lamenting that the condition of the boat was “extremely discreditable” to the IRD to whom he lent the vessel in good faith.

With the *Litto* now decommissioned, it seemed the IRD had reverted to square one with the question of what to do with passengers who were declared prohibited on arrival or whose applications for admission took time to process but who could not be trusted, indeed allowed, to land. The old arguments with the shipping companies again flared. Initially, regulations returned to the quotidian: any Prohibited Immigrant “shall be detained on board the ship on which he arrived” whilst a case was settled and/or a deportation order arranged. Prohibited Immigrants were again placed in confinement aboard ships. But matters rested only uneasily.

A complex, triangular legal relationship between immigrants, colonial authorities and the private shipping lines sparked into life. From 1910, perhaps sensing a lack of co-ordination between courts, the IRD, and the vulnerabilities of the passenger-shipping economy, a number of Prohibited Immigrants who were confined to the ships in which they had arrived, awaiting deportation, brought a series of cases against Harry Smith.⁸⁰ In the Supreme Court, their lawyers argued that the undesirable clients could still prove their admissibility if only they were allowed to land. They also questioned the ultimate

⁷⁹ PAR/IRD 68/624/1907. Papers and Correspondence relating to the purchase of a Detention Hulk

⁸⁰ See reports IRD vs. Passengers of the SS *Gertrude Woerman*, PAR/IRD 85/1331/1910; IRD vs. Purbhoo and Valabh, PAR/IRD 90/706/1911; IRD vs. Ah Mian, PAR/IRD 91/783/1911; IRD vs. Hue Kan, PAR/IRD 92/1107/1911; IRD vs. Moothoosamy Latchmanen, PAR/IRD 93/1119/1911; IRD vs. Sheik Ally, PAR/IRD 94/241/1912. It is not clear if there were other cases subsequently un-filed with the IRD

legalities of indefinite confinement on a private ship. Judges were then weary of the force of argument that came from the shipping companies, who incurred heavy costs and possible delays if burdened in port with having to accommodate immigrants involved in protracted legal discussion with the IRD for admission. This would do the reputation of the port no good in shipping circles and the scope for injustice was wide. Shipping masters, if they had any further say in the matter, would also gladly wish to be rid of liabilities for detention and deportations and it was not always clear that a shipping company *had erred* in transporting a passenger to Durban. In the final reckoning, judges invariably agreed to their petitions and over-ruled Smith, who was subsequently served with a number of interdicts to allow prohibited immigrants to land or not to prevent ships from leaving port without migrants deemed for deportation. Smith was not happy in having to give “liberty to the applicant to stay in the country while evidence is manufactured in India with which to confound me,” but he had to comply with Supreme Court orders.⁸¹ In the aftermath of these legal scraps, several deportation orders were cancelled and prohibited immigrants were free to disembark in the *territory* of Natal.

Harry Smith, trying his utmost to stick to his duties required under act but finding himself second-guessed by the courts, the shipping companies and the immigrants themselves, was caught in all this legal crossfire. As a technocrat and perhaps was not overly enamoured with the subtleties of law, he described his experience of dealing with courts as “lengthy and peculiar and does not allow me to say that they have ever employed any sympathy or sentiment in my behalf.”⁸² Later, he put down his loss of authority - betraying the extent to which arbitrary powers had extended to his officers - to the courts’ “extreme jealousy of the powers exercisable by the officer under the Immigration Acts.”⁸³ His deputy, later looking back over numerous cases based on “frivolous applications,” felt that,

the courts have, in their anxiety to obviate possible injustice, granted interdicts far too freely, and often on ill-considered terms [and], encouraged by the lax rules governing the issue of interdicts [against the IRD] and by the fact that the department has yielded advantage of position in their manoeuvres, local attorneys

⁸¹ PAR/IRD 92/1904/1911. Smith to Secretary of the Interior, 4 Sep. 1911.

⁸² PAR/IRD 92/1904/1911. Smith to Secretary of the Interior, 4 Sep. 1911.

⁸³ PAR/IRD 92/1904/1911. Smith to Secretary of the Interior, 7 Oct. 1911.

who appear to find in their clients a rich harvest of fees, have had far too constant resort to the courts.⁸⁴

For the IRD, concluded the Acting PIRO, this was a far from workable situation, causing “endless trouble...fruitless and vexatious litigations have been initiated, considerable expense has been incurred and very frequently in the final reckoning even the intention of the law has been frustrated.” Too many prohibited immigrants *were* finding legal loopholes to enter the colony by having their detention orders on ships over-ruled. With the IRD and the Courts at cross purposes, immigrants and shipping companies were only too willing to exploit the spaces in-between. The disputes around where and in whom legal power rested to actually detain and confine continued to meander through the offices of the Secretary for the Interior in Pretoria, the IRD offices, the Attorney-General’s office and the Shipping companies, without any overall resolution or system.

From this unsettled din of legal bickering over detention and interdicts, emerged a new innovation that was eventually encoded in the new, Union immigration laws of 1913. To avoid the constant juridical traffic and to mitigate the evident tensions between the bureaucracy and the courts, the Minister of the Interior suggested for the appointment of Immigration Boards to deal with such disputes. Each board, to sit at the principal port towns, would be made up of delegates of all interested parties so that more workable and utilitarian decisions could be arrived at which would, in the words of the *Indian Opinion*, these would “take the matter out of the hands of the despotic immigration officers.”⁸⁵ Smith was still sceptical and seething at the backhanded demotion of his rarely questioned authority which over the previous 15 years he had become happily familiar with. Writing that he would “be very sorry to have confirmation” of the planned Appeal Boards, he pointed to the British precedent in which only a minuscule proportion of cases taken to such appeal boards ever resulted in prohibition.⁸⁶ Claiming that of some 600,000 arrivals in Britain in the previous year (1910), only 1,066 had been restricted; a similar proportion in South Africa, he argued, and “my views of an efficient administration would meet with some rough criticism.” In the same letter he hinted that by implication the establishment of Appeal Boards would also render his own position null and void, but ending his communiqué to the Secretary of the Interior with remarks on “the strain of an almost unbroken 10 years’ spell of

⁸⁴ PAR/IRD 92/1904/1911. Acting Principal Immigration Officer [G.W Dick?] to Secretary of the Interior, 1 Jul. 1912.

⁸⁵ *Indian Opinion*, “Immigration Boards Promised,” 14 Oct. 1911.

⁸⁶ PAR/IRD 92/1904/1911. Smith to Secretary of the Interior, 16. Oct. 1911.

work,” such might have been a blessing in disguise. By the end of the year, Smith took long-leave, with no doubt some frayed nerves to show for his troubles. His reaction is not clear when he heard that the Immigration Boards of Appeal would ultimately be legalized. They became a significant innovation in the new dispensation, but one, unfortunately, the lies beyond my focus here.

The question of confinement and detention remained an important one. Whereas the Appeal Boards mitigated and regulated legal *disputes* on prohibition in general, the question of what to do with unavoidably and categorically prohibited migrants remained. With the bureaucracy fully cognizant of the legally problems of confining undesirables to ships and diminishing concerns around the viability of detention on shore, it was uncomplicated enough to make an amendment to the law: the locus of confinement was shifted from ship to shore as Union gave opportunity to rework provisions in system.

As the Union Immigration Act was passed in 1913, undesirables could now legally be confined on shore and were simply detained in police cells, again at the expense of the shipping companies. For almost a decade this practice continued until it was agreed that the arrangement with the police stations, although successful at keeping undesirables under the close watch of the law, was “entirely unsatisfactory” where “whole ships [are] committed to goal.”⁸⁷ The impetus came in 1922 for a more fully regulated and state-provided “self-contained area as a Government-funded compound, made as secure as possible;” the shipping interests concurred, happy to be relieved of involvement in “the duties and anxieties in connection with the care, maintenance, discipline, control, identification, guarding and escort [of undesirables], and the complaints which such persons are prone to offer.” The Public Works Department set to altering the existing structures of the Indian Immigration Bureau Depot (this had been used as a transit point for indentured Indians in the decades before) and the adjacent Water Police Station. In 1923 the Government Gazette officially proclaimed a name change: the ‘Durban Immigration Depot’ would henceforth be known as the “Durban Detention Depot.”⁸⁸ The South African state at last had the “whip hand” that Harry Smith had been after almost two decades previously.⁸⁹

⁸⁷ SAB/PWD 2083/7367. Papers relating to the erection of the Durban Immigration Detention Station, 1915-1924.

⁸⁸ SAB/PWD 2083/7367 Papers relating to the erection of the Durban Immigration Detention Station, 1915-1924.

⁸⁹ PAR/IRD 60/185/1907. Correspondence between Smith and Immigration Restriction Officer, Cape Town, Jan. 1907.

Conclusion

If the post war ‘invasion’ had brought into sharp relief the not quite adequate initial measures of the 1897 Immigration Restriction Act (IR Act) and provoked an administrative offensive, however uneven, in the enforcement of restriction around the port, the development of these technologies of exclusion were also to create new spaces for conflict and negotiation which textured imaginations of state power and the borders of the colony. I have alluded to some of these in the story above.

As the first decade of the 20th century ended, the culture of detention and deportation at the port began to resonate with ‘passive resistance’ struggles in the Transvaal over imprisonment and the incarceration of Asiatics.⁹⁰ In 1910 Smith was charged in the Natal Indian press with “gross criminal negligence” and served with a court interdict for having refused entry to a ship of passive resisters and disallowing communication with their lawyers, placing them in the detention hulk, transferring them to Salisbury Island and then eventually deporting them.⁹¹ One of the passive resisters, A. Naryansamy, died as they were shipped “from pillar to post” and detention became a central metaphor as he became a *cause celebre* in the struggle over access to territory and a kind of nominal social citizenship in South Africa. Naryansamy’s death was due, for the *Indian Opinion*, precisely to the regime of detention and deportation that he had suffered (he had been, it seems, in poor health from the start). The *Indian Opinion* described Naryansamy’s death with some hyperbole, as “legalized murder.” This was an extreme case, but the general direction of immigration restriction policy was clearly discernable and the contours of official policy toward border-control had been firmly established. This regime emerged out of the politics of exclusion that began in Durban in mid-1897 but only reached a working institutionalized and administrative capacity in the decade following the South African War.⁹²

Where I have been concerned in this chapter is precisely at the liminal and actual space of the border – where restrictive laws did not actually keep undesirables from arriving at the port and where the policing of immigration became most amplified. The technologies of physical exclusion and prevention of landing in the 1897 Act were found

⁹⁰ See for example BPP/C.d. 4584 and Cd. 5363, *Correspondence Relating to Legislation Affecting Asiatics in the Transvaal*, 1909.

⁹¹ *The Indian Opinion*, “Death of another Passive Resister,” 22 Oct. 1910.

⁹² *The Indian Opinion*, “Legalised Murder,” 22. Oct 1910.

initially in placing responsibility primarily on the master's and owners of vessels. As I have shown, this initial measure was to be mostly ineffective. I have described how the failure of investing responsibility in shipping companies led to increased jurisdiction over migration by the Water Police. This too, however, was to fail as an effective instrument in guarding the gateway to Natal. The final resolution was the provision of a detention ship in the harbour and the appointment of specialized and professional Immigration Restriction Boarding Officers, closely linked in function to the Immigration Officials at which travellers are most familiar with today. These boarding officers were born out of the failure of an explicit police regime around the port, but their functions were to remain essentially the same. The consolidation of systems to guard the port – and indeed the frustrations in their implementation - led to increased harshness and arbitrariness in the operation of the laws, and the regime of detention did much to inform wider struggles around citizenship and political resistance, where detention and violence were themselves imagined, deployed and captured to create a space for negotiation.

Conclusion

A Whip Hand: 1910-1938

By the advent of Union in 1910 and in the decade that followed, the new consolidated South Africa began to stitch together a fabric of uniform legislation that blanketed the region in an oppressive bureaucratic embrace of segregation, racialised labour reservation, influx control and the regulation of land ownership by race, all of which the Apartheid state would retain as founding principles almost half a century later. Indeed, even as I write this in 2007, these together form a skin that South African society labours to shed. The shoring up of a racialised hierarchy and the juridical underpinning of a new formal sovereignty in the early 20th century conjoined senses of *whiteness* and fuelled the emergence, perhaps even the very discovery, of new nationalisms. Given this, it is relatively surprising that the 1913 Immigration Act has until recently received less attention than the more well-known Mines and Works Act (1911), the Native Land Act (1913), the Native Affairs Act (1920) and the Native Urban Areas Act (1922), amongst others, perhaps because these have been conceptually easier to relate to processes of capital accumulation.¹

The 1913 Immigration Act, after protracted discussions, settled on a Union-wide immigration policy that was not wildly different to the colonial – and Natal – statutes that preceded it. Several additions were made: the Immigration Appeal Boards discussed toward the end of chapter 5 were written into law and immigration was limited to specific ports (Durban remained a principal). ‘Asiatics’ and ‘poor whites’, notably eastern European Jews, remained conspicuous targets. The core justifications and overall framework of the earlier legislation was consolidated and centralised. Definitions of domicile were tightened and more rigorously enforced, the educational or dictation test remained; undesirability continued to be couched in the economic, moral, health and criminal logics that had evolved since the end of the 19th century. Like the Natal Formula 16 years previously, the new law continued to pose a riddle to those who might object to it: it was not on the surface discriminatory. The complex legal algebra of 1913 was that where *prohibition* was not to be based on any specific nationality or population group, exemption from its requirements *was* population specific.² In practice, this meant

¹ These themes form the bread and butter of much South African historiography. See, amongst many others, Frederick Johnston, *Class, Race and Gold, a Study of Class Relations and Racial Discrimination in South Africa* (London: Routledge, 1976); Ivan Evans, *Bureaucracy and Race. Native Administration in South Africa* (Berkeley: University of California Press, 1997)

² See Jonathan Klaaren. “Migrating to Citizenship: Mobility, Law and Nationality in South Africa, 1897-1937” (Ph.D. diss., Yale University, 2004). Chapter 4.

discretionary and bureaucratic power at the border – rather than the statue book – became the locus of exclusion.

The emphasis on border control, in short, became much stronger. One commentator, surveying the 1910-1948 period of immigration law, has even suggested that in comparison to the post-Union regime, the attention to immigrants pre-1910 was relatively ‘laissez-faire.’³ Such a rupture is possibly overstating matters, but the point is well-taken – the 1913 Immigration Act began to apply yet greater rigour to the patrol of South Africa’s borders. Social-Darwinist anxieties and ‘selective immigration’ were crux’s of policy in the decades that followed. The Quota Act of 1931, promulgated only slightly after the Reed-Johnstone Act in the United States, was choreographed to the tune of a by now fully globalised migration regime. Both turned on the concept of ‘assimilability’ of individuals but cushioned these in ‘national’ terms and limited immigration numerically.⁴ Less than a decade later the Quota Act in South Africa was repealed and replaced by the Aliens Act of 1938, which over-ruled recourse to any specific ‘national’ origins in regulating admission, but continued to display the conventional postures of selective tests and managerial discretion through bureaucratic boards, which also conventionality removed judicial oversight from the process of immigration restriction. This arguably gave even more flexibility and discretion to whom might be admitted. Perhaps it stands as testament to the restrictive thrust that immigrants to South Africa between 1946 and 1963 made up only 2% of the total population, as opposed to some 22% in the United States and even 14% in a similarly exclusionist Australia.⁵

I would argue that pre-Union experiences in Durban and Natal were highly significant in stiffening the resolve of the immigration bureaucracy in the post 1910 period. As the founding bureaucracy of Immigration Restriction in the region, the Natal technocrats were highly influential on the policies of the remaining colonies of South Africa and in his own blinkered way, Harry Smith remained a kind of visionary, happily replying to requests for descriptions of procedures adopted at his port sent from Cape

³ Edna Bradlow, “Immigration into the Union 1910-1948: policies and attitudes, 1910-1948” (PhD. diss., University of Cape Town, 1978).

⁴ See Bradlow, “Immigration” and Mae Ngai, *Impossible Subjects. Illegal Aliens and the Making of Modern America* (Princeton. Princeton University Press, 2005).

⁵ Cogent reasons put forward for this are the racial and economic demographics of South Africa: low-skilled labour immigration from ‘within’ trumped the need to for large-scale extra-territorial schemes; the protection and redemption of poor whites from possible displacement; and the ever growing strains of an exclusive political and cultural nationalism. For the figures noted, and the surrounding discussion, see Bradlow, “Immigration”. p. 753-760.

Town, Lorenzo Marques, Mombasa and elsewhere around the late colonial world.⁶ The challenges and initial failures of enforcing the basic policies of exclusion had the paradoxical effect of actually reinforcing the determination of the South African bureaucracies to exclude immigrants, be they ‘Asiatic’ or those from elsewhere – notably central, south-eastern and Eastern Europe – thought likely to alter and contaminate the integrity of white, ‘civilised’ South Africa. Later schemes in the Apartheid period to *encourage* immigration from northern Europe specifically seem to bear this out.⁷ The manifest disarray in which the IRD often found itself and the practical contingencies of restriction pre-1910 made the path to greater centralization and legal and technocratic professionalisation of immigration law the more obvious one to take. By the 1930s, more supple and complex systems of immigration restriction were in place. Borders required and acquired ever more sophisticated regulation and permanency, an inevitability that anti-discrimination protest movements – notably the Satyagraha campaigns – could do little, in the final reckoning, to prevent. Even the ample evidence of subversion that I have presented shows how deep the inscriptions of documentary and exclusionary technologies in the lives of migrant economies went. A new technological and police border-culture, within no more than 2 decades, became firmly fixed in the mind of administrators and migrants alike.

Past and Present

This dissertation began, in its very first sentences, with allusions to the development of South African citizenship. I attempted in the pages that followed to draw attention to how this performed in terms of *praxis*. A recent article⁸ in the *Sunday Times* newspaper confirmed what analysts have known and what citizens have long suspected for some time – that is, the country’s Department of Home Affairs and the bureaucracies over which it presides are in many instances, however unwittingly, working against the creation a broad-based and participatory democracy in South Africa. The Department of Home Affairs and its administrative imperatives towards the citizen and non-citizen population incorporate a wide range of often quite different but related concerns – identity documentation, welfare access, migrancy management and refugee-asylum are amongst the most important. The governmental practices which are invested

⁶ PAR/IRD 95/305/1912. Correspondence between Smith and Principal Immigration Officer, Mombasa. 1912. No exact date given.

⁷ For the background and detail to these schemes see Bradlow, “Immigration”, Vol.2

⁸ See *The Sunday Times*, “A Sorry State of Affairs,” 15 Oct. 2006. The report is damning, pointing to 240 sackings for corruption in just two years, concluding that department has “consistently defied every effort to make it helpful, effective and efficient.”

in the Department, relating especially to mobility and identity documentation, hold considerable sway over crucial aspects of the lives of South Africans and those who seek admission to the social body. While applaudable strides have indeed been made in recent years in Immigration law in South Africa, functional and capacity aspects have not always kept pace with legal and theoretical improvements. We need to be aware that ostensibly 'objective', or 'neutral' technologies – mere pieces of paper and those deceptively 'obvious' border-fences - have been shown in this dissertation, from the very beginning, to have been disputed and contingent. Their development has stemmed from a profoundly exclusionary impulse and their overall schemas have been deeply implicated in economies of fraud. These latter questions around capacity assume even greater importance as the 21st century brings increased and exponential growth in international migrancy, corporatised and financially conscious government, the rise (or continuation?) of xenophobia, and a newly evolving discourse of national-security, while less pronounced in South Africa than elsewhere, is still of vital import.

As I hope to have shown, this administrative complex has a long and not unproblematic history in South Africa – whose framework rests upon the imposition and modification of colonial systems geared toward regulation, social control and anxieties over space rather than the empowerment and welfare of citizens. In terms of social exclusion, this may be traced back to the prohibitive migration and pass regimes of the late 1890s which was in time, it has been argued, 'transplanted' onto a more general legal framework of citizenship.⁹ With such significant issues at stake, the need for further research into technologies of inclusion/exclusion is paramount. Home Affairs is notorious for its inefficiency, corruption and administrative failures that in many cases seriously prejudice the rights of individuals, be they South Africans or foreigners. New technologies are today enthusiastically hailed as saviours of this disarray without historical awareness of the ways in which new technologies actually create such bureaucratic fiascos.¹⁰ My study hopes to have shed much needed light on these aspects of South African governance and state's historically skewed fixations over mobility, segregation, 'social contamination' and the technocratic manias that both preceded and have outlived the Apartheid heyday of the *dompas* and assorted documentary fantasies.

⁹ Klaaren, "Migrating to Citizenship."

¹⁰ See Keith Breckenridge, "The Biometric State: The Promise and Peril of Digital Government" in *Journal of African Studies* 31 (2), 2005: 267-282

With these broad and contemporary inspirations in mind, I have, in the pages preceding, offered a historical analysis of state capacity to regulate and ‘embrace’ immigration along its formative borders and points of entry, focusing essentially on that of Natal and the port-town of Durban. This has involved going beyond a mere study of policy and legislation – instead I have made a close and historically attentive study of the actual mechanisms of regulation and inclusion/exclusion and where these routinely failed. Through this, I have built upon and deepened legal studies of immigration restriction by considering the practical and, to some degree, lived experience of restriction.

To review: as the drums of the South African War rolled in the late 1890s, the echo of a precocious Victorian progressivism coupled with eugenic race-science could clearly be discerned in political and intellectual circles. As peace erupted in 1902, progress would in practice be underwritten by a new climate of scientific, technical and managerial agency that, I argue, also percolated through state bureaucracies. Technological proficiency, testimony to an enlightened and advanced society, provided a legitimate and unproblematic guise for highly politicized state intervention. The Immigration Bureau was at the heart of the new technocratic impulse, revealing a new-fangled statism founded on bureaucratic rationality. Far from being an ‘exceptional’ case, Natal’s immigration policies were at the very vanguard of a new global migration regime based on documentation and rigorous policing of boundaries. This, in short, is the backdrop to which territorial borders were imagined and managed in the first decade of the 20th century, at time when *technologies* of exclusion underwent intensive innovation and consolidation. We are left to pose, from our 21st century vantage point, how much this overall conception of borders has evolved.

In tracing the ‘technologies of exclusion’ used to enforce immigration restriction in the port space of Durban following the passing of the 1897 Immigration Restriction Act, my thesis structure began by pointing at length to the specific contours of ‘undesirability’ in turn of the century Durban before covering the ‘technologies of exclusion’ in two streams: “paper-based” technologies of pass regimes, domicile certificates and education/language tests, and secondly more explicit forms of internment through police-guard systems, and detention policies. An important aspect of the question that I have considered turns on the growing capacity of the state to arrest and intern during and following the South African war, and this in part drew off and

contributed to an international migration regime that was preciously modern in its response to plurality. The South African war might well have been a “white-man’s war,” perhaps largely forgotten by most besides military enthusiasts, commemorative tourists and, it might said, in some of the more bland historical research. Yet, we all live with its legacy, disguised in meticulous regulations over mobility and the forging of the steel gates of *South African* citizenship.

Future

As the 21st century world, and Africa in particular, re-adjusts to the demands, challenges and promises of an agenda increasingly influenced by the rising economies of China and India, so will South Africa find itself once again at the interstices of exchanges of material and human capital around a regional African and broader Indian-Ocean economy.¹¹ Crucial in this negotiation, however, will be state-based regulatory and legal frameworks around mobility and migrancy. The value, I hope, of this study, lay in positioning South Africa in a transnational and long-term perspective that rethinks institutions, borders and their administration. The call is to place the South African perspective within current and international debates around citizenship and sovereignty, to rethink the practical implications of and limitations to (re)constituting an Indian-ocean arena,¹² while considering local genealogies of administrative inertia and perennial, disturbing outbreaks of xenophobia. The production of illegality, especially where it is twinned to mobility/migrancy, remains a significant challenge and hinders the creation of an accessible and unprejudiced public culture through which all manner of benefits might accrue. Framing state policy in a manner that is historically and theoretically informed remains the practical outcome of such considerations, with a strong bias towards making South Africa’s universalist aspirations workable and genuine, and, finally, that all who find in the schizophrenic country something worth savouring, may no longer be strangers in a strange land.

¹¹ See Barry Sautman and Yan Hairong, “Friends and Interests: China’s Distinctive Links with Africa” in *African Studies Review* 50 (2), 2007: forthcoming; see also the concerns emerging, for example, in *China in Africa: Race, Relations and Reflections*, University of Johannesburg, Centre for Sociological Research, National Research Foundation and Mail&Guardian Public Seminar, Johannesburg, 28-29 July 2007; see also the papers delivered at *South Africa/India: Re-imagining the Disciplines* conference at the University of the Witwatersrand, May 19-21, 2006.

¹² See the two conferences *Exploring the Indian Ocean as a Cultural Terrain*, Centre for the Study of Culture and Society, Bangalore, December 9-10, 2005 and January 13-14 2006.

APPENDIX

Immigration Restriction Act 1, 1897

“TO PLACE CERTAIN RESTRICTIONS ON IMMIGRATION”

WHEREAS it is desirable to place certain restrictions on Immigration:

BE IT THEREFORE ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:

1. This Act may be known as “The Immigration Restriction Act, 1897”.
2. This Act shall not apply to:
 - (a) Any person possessed of a certificate in the form set out in the Schedule A to this Act annexed, and signed by the Colonial Secretary, or the Agent-General of Natal, or any officer appointed by the Natal Government for the purposes of this Act **whether in or out of Natal**.
 - (b) Any person of a class for whose immigration into Natal provision is made by law or by a scheme approved by Government.
 - (c) Any person specially exempted from the operation of this Act by a writing under the hand of the Colonial Secretary.
 - (d) Her Majesty’s land and sea forces.
 - (e) The officers and crew of any ship of war of any Government.
 - (f) Any person duly accredited to Natal by or under the authority of the Imperial or any other Government.
3. The immigration into Natal, by land or sea, of any person of any of the classes defined in the following sub-sections, hereafter called “prohibited immigrant”, is prohibited, namely:

2/...

- (a) Any person who, when asked to do so by an officer appointed under this Act, shall fail to himself write out and sign, in the character of any language

of Europe, an application to the Colonial Secretary in the form set out in Schedule B of this Act.

- (b) Any person being a pauper, or likely to become a public charge.
- (c) Any idiot or insane person.
- (d) Any person suffering from a loathsome or a dangerous contagious disease.
- (e) Any person who, not having received a free pardon, has within two years been convicted of a felony or other infamous crimes or misdemeanour involving moral turpitude and not being a mere political offence.
- (f) Any prostitute and any person living on the prostitution of others.

4. Any prohibited immigrant making his way into, or being found within Natal, in disregard of the provisions of this Act, shall be deemed to have contravened this Act and shall be liable, in addition to any other penalty, to be removed from the Colony, and upon conviction may be sentenced to imprisonment not exceeding six months without hard labour. Provided that such imprisonment shall cease for the purpose of deportation of the offender, or if he shall find two approved sureties each in the sum of fifty pounds sterling, that he will leave the Colony within one month.

5. Any person appearing to be a prohibited immigrant within the meaning of Section 3 of this Act and not coming within the meaning of any of the Sub-sections (c), (d), (e), (f) of the said Section 3 shall be allowed to enter Natal upon the following conditions:

- (a) He shall, before landing, deposit with an officer appointed under this Act the sum of one hundred pounds sterling.
- (b) If such person shall, within one week after entering Natal, obtain from the Colonial Secretary, or a Magistrate a certificate that he does not come within the prohibition of this Act, the deposit of one hundred pounds sterling shall be returned.
- (c) If such person shall fail to obtain such certificate within one week, the deposit of one hundred pounds sterling may be forfeited, and he may be treated as a prohibited immigrant:

3/...

Provided that, in the case of any person entering Natal under this section, no liability shall attach to the vessel or to the owners of the vessel in which he may have arrived at any port of the Colony.

6. Any person who shall satisfy an officer appointed under this Act that he has been formerly domiciled in Natal, and that he does not come within the meaning of any of the sub-sections (c), (d), (e), (f) of Section 3 of this Act, shall not be regarded as a prohibited immigrant.

7. The wife and any minor child of a person not being a prohibited immigrant shall be free from any prohibition imposed by this Act.

8. The master and owners of any vessel from which any prohibited immigrant may be landed shall be jointly and severally liable to a penalty of not less than one hundred pounds sterling, and such penalty may be increased up to five thousand pounds sterling by sums of one hundred pounds sterling each for every five prohibited immigrants after the first five, and the vessel may be made executable by a decree of the Supreme Court in satisfaction of any such penalty, and the vessel may be refused a clearance outwards until such penalty has been paid, and until provision has been made by the master to the satisfaction of an officer appointed under this Act for the conveyance out of the Colony of each prohibited immigrant who may have been so landed.

9. A prohibited immigrant shall not be entitled to a license to carry on any trade or calling, nor shall he be entitled to acquire land in leasehold, freehold, or otherwise, or to exercise the franchise, or to be enrolled as a burgess of any borough or on the roll of any township; and any license or franchise right which may have been acquired in contravention of this Act shall be void.

10. Any officer thereto authorized by Government may make a contract with the master, owner, or agent of any vessel for the conveyance of any prohibited immigrant found in Natal to a port in or near to such immigrant's country of birth, and any such immigrant with his personal effects may be placed by a police officer on board such vessel, and shall in such 4/...

case, if destitute, be supplied with a sufficient sum of money to enable him to live for one month according to his circumstances in life after disembarking from such vessel.

11. Any person who shall in any way willfully assist any prohibited immigrant to contravene the provisions of this Act shall be deemed to have contravened this Act.

12. Any person who shall willfully assist the entry into Natal of any prohibited immigrant of the class (f) in Section 3 of this Act shall be deemed to have contravened this Act, and shall upon conviction be liable to be imprisoned with hard labour for any period not exceeding twelve months.

13. Any person who shall be willfully instrumental in bringing into Natal an idiot or insane person without a written or printed authority, signed by the Colonial Secretary, shall be deemed to have contravened this Act, and in addition to any other penalty shall be liable for the cost of the maintenance of such idiot or insane person whilst in the Colony.

14. Any police officer or other officer appointed therefore under this Act, may, subject to the provisions of Section 5, prevent any prohibited immigrant from entering Natal by sea or land.

15. The Governor may from time to time appoint, and at pleasure remove, officers for the purpose of carrying out the provisions of this Act, and may define the duties of such officers, and such officers shall carry out the instructions from time to time given to them by the Ministerial head of their department.

16. The Governor-in-Council may, from time to time make, amend, and repeal rules and regulations for the better carrying out of the provisions of this Act.

17. The penalty for any contravention of this Act, or of any rule or regulation passed thereunder, where no higher penalty is expressly imposed, shall not exceed a fine of fifty pounds sterling, or imprisonment, with or without hard labour, until payment of such fine or in addition to such fine, but not exceeding in any case three months.

5/...

18. All contraventions of this Act or of rules or regulations thereunder and suits for penalties or other moneys not exceeding one hundred pounds sterling shall be cognizable by Magistrates.

SCHEDULE A

Colony of Natal,

This is to certify that of aged
by trade or calling a is a fit and proper person to be received as
an Immigrant in Natal.

Dated at this day of
.

(Signature)

SCHEDULE B

TO
THE COLONIAL SECRETARY,

SIR,

I claim to be exempt from the operation of Act No.
. . . . , 1897. My full name is My place of
abode for the past twelve months has been. My
business or calling is. I was born at in the
year

Yours, etc.,

Given at Government House, Natal, this Fifth day of May, 1897.

By command of His Excellency the Governor,

THOS. K. MURRAY,
COLONIAL SECRETARY

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* Owing to the quite diffuse themes covered in this dissertation which attempts to link broad (and vast) immigration historiography with the quite specific but well-developed urban, racial and labour histories of South Africa, this bibliography cannot hope to be but selective and general. I am quite sure the eagle-eyed will find a number of omissions, particularly of works dealing with immigrants more generally. I have not provided these because I have been at pains to focus on the *administrative* border-controls, rather than specific biographies of communities. I list here all the material referenced in the chapters, with occasional additions or general works that pertain to the sometimes eclectic themes I have pursued and, indeed, tried to marry.

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