

Entangled Patriarchies: Sex, Gender and Relationality in the Forging of Natal

- A paper presented in critical tribute to Jeff Guy -

The arguments presented here are offered in critical appraisal of Guy's contribution to the scholarship of colonial Natal and are informed by two primary concerns: the first is a politics of producing desegregated historiography, and the second is the need for local historical studies to relate to areas of wider scholarly concern, in this instance relating Shepstonian politics to liberalism and the nineteenth-century British Empire.

Theophilus Shepstone and the Forging of Natal is Jeff Guy's magnum opus and a meticulously researched and richly detailed book. Guy's finely considered archival narrative builds a vision of a colony forged out of the local contingencies of Native administration centred around Shepstone's mediations of power. In this telling, it is out of the struggles between the powerful Shepstone; a small, fractious settler elite – his friends and enemies; and an intricate network of chiefly authorities that Natal is made.¹ It is clear from this tome, as it is in his considerable body of earlier work, that Guy was not one to countenance theoretical generalizations about Shepstone's Natal. It is the contention of this essay that Guy's writing of this history of the colony is, at best, a history in part, and that connections and generalizations beyond these groups and beyond the colony are political and scholarly imperatives. In addressing this, I will draw on instances of my own research on race, sex, marriage and state-making to demonstrate the necessity of, and the possibilities for, a broader, more complex telling of the history of colonial Natal.

¹ J. Guy, *Theophilus Shepstone and the Forging of Natal*, Pietermaritzburg: University of KwaZulu-Natal Press, 2013.

The Problem of Historiographical Ghettoes

It remains a difficulty that historical scholarship about Natal continues to reproduce the segregated terms of the colonial archive. The isiZulu-speaking inhabitants of Natal and its immediate surrounds – the primary group referred to by the term ‘Native’ in the parlance of colonial Natal – were not the only inhabitants who demanded colonial administrative attention. Though difficult to discern in Guy’s own work, their government and regulation by a separate Native administration referenced processes and institutions that were a common feature of colonial government, shared by the administration of indentured Indians and European settlers even as each group was identified in discrete, ethnological terms by colonial officials.

Social histories produced about the colony and the primary inhabitants of the region – ‘white’, ‘African’ and ‘Indian’ – have typically tended to focus on the experiences of one of these groups either to the exclusion of others, or (in the case of Indians and Africans) by locking them into a Manichean relationship to whites, who are with all too rare exceptions treated as synonymous with oppressive power, ultimately reducing black experience to suffering and resistance.²

The latter trend (itself reflective of a larger long-standing tendency in the South African, and arguably African, historiography), has been personified until very recently by two dominant and mutually exclusive sub-traditions within the historiography of Natal: work on Zulu-speaking Africans and work on British Indians who came to the region as part of an indentured labor scheme in the second half of the nineteenth century. Marxist-inspired work in particular has foregrounded class difference and tethered the analysis of Indian working

² Some of the best of this work has explicated a more complicated ‘whiteness’ than the earlier Marxist history writing by employing greater sensitivity to class differences within white communities in Natal as well as gender. See R. Morrell, *From Boys to Gentlemen: Settler Masculinity in Colonial Natal, 1880-1920*. Pretoria: Unisa Press, 2001 and A. Shadbolt, *Daughters of the British Empire: A Study of Five British Women in Colonial Natal*. Unpublished Masters Thesis, University of Natal, Durban, 1998.

class development in particular to cultural developments of family life. This has unwittingly assisted with elaborating longstanding liberal assumptions about the centrality of ethnicity to the development of divergent 'Indian' and 'African' histories and the reinforcement of social ideas contrasting Indian industriousness with African recalcitrance toward labour exploitation. Scholarly explanations proffered as the basis for differences in Indian and African histories of development have, on the one hand, correctly identified the colonial exploitation of labour as a key element of differentiation. On the other hand, this work has taken crucial aspects of the laboring histories of colonial subjects largely for granted, shoe-horning complex social processes in which these labours feature prominently into class identities exemplifying discrete modes of production.³ My research suggests that the distinctiveness of experience to which existing scholarship is wedded is the product of an a priori assumption of working-class identity for Indians in Natal which has, perhaps unwittingly, replicated lines of difference assumed by the rhetoric and practices of a colonial government that simultaneously created and viewed racial and cultural difference through the lens of a propensity for industry. There were some important early exceptions to this trend, and newer historical work – on healing traditions and Indian/African racial dynamics in this region – has self-consciously set about doing the hard and important work of bringing together aspects of the nineteenth and twentieth century social and political lives of Indians and Africans (and in some cases a more complicated sense of 'whiteness' too) in Natal.⁴

³ Bill Freund, *Insiders and Outsiders. The Indian Working Class of Durban, 1910-1990*. Portsmouth and London, Heinemann, 1995; Jeff Guy, 'Gender Oppression in Southern Africa's precapitalist societies' in Cheryl Walker (ed) *Women and Gender in Southern Africa to 1945*. Cape Town: David Philip, 1990, 33-47; Jeff Guy, 'Women in Labour: The Birth of Colonial Natal', unpublished History and African Studies Seminar Paper, University of KwaZulu-Natal, 29 April 2009.

⁴ Especially S. Marks, *Not Either an Experimental Doll: The Separate Worlds of Three South African Women*, Bloomington: Indiana University Press, 1987; J. Parle, *States of Mind: Searching for Mental Health in Natal and Zululand, 1868-1918*, Pietermaritzburg: University of KwaZulu-Natal Press, 2007; J. Soske, "'Wash Me Black Again': African Nationalism, the Indian Diaspora, and Kwa-Zulu Natal, 1944-1960", PhD Thesis, University of Toronto, 2009; K. E. Flint, *Healing Traditions: African Medicine, Cultural Exchange, and Competition in South Africa, 1820-1948*. Athens: Ohio University Press, 2008; H. Hughes, 'The Coolies will elbow us out of the country': African reactions to Indian Immigration in the Colony of Natal, South Africa'

The insular, racialized ghettos that dominate the historiography of Natal do not reflect pre-existing categories but were, in fact, new invocations of the colonial moment. We still have very little sense of how the twentieth century legal and social categories of ‘Indian’ and ‘African’ and ‘white’ came to be made, and even less sense of how this evolved out of the colonial categories of ‘European’, ‘Native’ and ‘Asiatic’ or how the differentiation of colonialism’s Others may have been achieved in relation to a colonizing white Self in a context where Indians and Africans together outnumbered European settlers by more than five to one by the turn of the twentieth century. In its attempt to make righteous the wretched subjects of colonial history, the historiography of this region of South East Africa of which Guy’s work is a central part, has refined the colonial binaries of ‘white’ and ‘black’ into their individual racial essences, and produced the history of each of these groups – their political identities always and forever separately embodied in the notions of ‘citizen’ and ‘subject’ – as discrete entities.⁵ In order to find a way out of this Manichean divide, it is imperative that we historicize and contextualize the colonial creation of racialized categories of difference, as well as their scholarly deployment.

Shepstone’s Politics of Difference

The second concern informing this essay is the need to write more broadly, bringing this colonial scholarship into conversation with writing on the wider imperial context of which the Shepstonian colonial moment was a part. I propose that Guy’s subject is part of an important period of difference-making in the British Empire, and that the narrative reliance and investment in colonial terms of difference needs to reflect a critical understanding of their

Labour History Review, 72, 2, August 2007, 155-168; P. Kaarsholm, ‘Population Movements, Islam and the interaction of Indian and African Identity Strategies in South Africa during and after Apartheid’, *Journal of Natal and Zulu History*, 24 & 25 (2006-2007), 37-63.

⁵ M. Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton: Princeton University Press, 1996, 16-23.

emergence in Shepstone's Natal during a period of increasing differentiation of colonial populations in the nineteenth century British Empire.

Sex and gender are key analytical tools to opening up the writing of this history. Analysis that places gender at the center of an account of this history not only makes it possible to illuminate the gendered constructions and effects of colonial rule but, importantly, to draw out some of the similarities, complexities and contingencies of ostensibly separate policies for supposedly distinct racial groups in the same colonial space. In the South African context, writing histories of any one of the aforementioned communities, marked as racially and socially distinct, requires an understanding that colonial realities were instances of interconnected processes and histories and not moments of rupture in discrete historical trajectories for single groups of people.

The contestations over the categories of ruler and ruled which lay at the heart of colonial politics in Natal were, early on, confounded by the racial ambiguities of gendered customs of sex and marriage which existed in the pre-colony. The acculturation of early 'white' traders in the area to local African customary ways of life not only confounded the binaries of a colonial encounter, but placed colonists like Theophilus Shepstone at the forefront of the struggle to delineate the boundaries of whiteness.⁶

The legal lines which men like Shepstone were attempting to use to divide desire from racial discipline were an attempt to 'other' the ambiguous sexual and social existences of these early settlers who had arrived in Natal in the late pre-colonial period. State focus on marriage regulation as the basis for new legal differentiations between colonial groupings

⁶ C. Ballard, *John Dunn: The White Chief of Zululand*, A.D. Donker: Craighall, 1985, 20-21. This mid-nineteenth century turn to difference is outlined in A. Bank, 'Losing Faith in the Civilizing Mission: The Premature Decline of Humanitarian Liberalism at the Cape, 1840-60' in Martin Dauntun and Rick Halpern (eds), *Empire and Others: British Encounters with Indigenous Peoples, 1600-1850*, Philadelphia: University of Pennsylvania Press, 1999, 364-381.

from the middle of the nineteenth century arguably reflected the sharper turn to difference in the British Empire in this moment, in the aftermath of colonial rebellions in India and Jamaica. Shepstone was a key advocate of a conservative, segregationist politics through his Native administration which centred upon the regulation of marriage as the focal point of sexual and cultural reproduction.

The threat of unruly sex and racial impropriety loomed large in Shepstone's administration but was not unique in the mid-1800s as colonial administrative concerns elsewhere reflected new languages of racial conflict which 'made a much more direct appeal to white male phobias about a presumed sexual threat black males posed to white females'.⁷

Guy's contention that Shepstone's autocracy meant that he acted out of his own political interests rather than in step with the Colonial Office (or indeed any other source of authority in the empire or the colony) might well be correct⁸, but Shepstone's accommodations with Zulu patriarchs nonetheless took place in an imperial moment in which any project of liberal reform was increasingly giving way to a more circumspect politics of intervention in the lives of colonial subjects in far flung parts of the British Empire.⁹

The Shepstonian rejection of assimilation and defence of 'separate development' was at home in a broader nineteenth century imperial context which saw a more aggressive, exclusionary racialism overtake longer-standing reformist ambitions.¹⁰ While the

⁷ D. Lorimer, *Science, Race Relations and Resistance: Britain, 1870-1914*, Manchester: Manchester University Press, 2013, 43. While this was true throughout the British Empire in the late nineteenth century it is also interestingly reflected, as Lorimer points out, in British views of the American Reconstruction period of the 1860s and 1870s.

⁸ Guy, *Theophilus Shepstone*, 5.

⁹ The 1857 rebellion in India and the rising of former slaves at Morant Bay in Jamaica in 1865 marked spectacular symbolic ruptures undermining the liberal reformist imperialism, heralding the ascendancy of a sharper-toothed imperialism and the 'Invention of Tradition' turn within the British Empire. See T. Metcalf, *Ideologies of the Raj*, Cambridge: Cambridge University Press, 1994, especially chapter 2; and B. Cohn, 'Representing Authority in Victorian India' in T. Ranger and E. Hobsbawm, (Eds.) *The Invention of Tradition*, Cambridge University Press, 1983, 165-210.

¹⁰ D. Lorimer, *Science, Race Relations and Resistance*, 42.

assumptions of difference that informed Shepstone's administration in particular may have been cultural rather than biological in the manner of Herman Merivale's assessments of racial difference, Shepstone did not share Merivale's goals of amalgamation through a closer union between Native and settler which included a belief in intermarriage.¹¹

More applicable is Douglas Lorimer's contention that an implicitly racialist policy of separate development or 'global apartheid' was one option taken by Victorian colonial administrators who viewed imperial goals of assimilation to be wrong-headed. Such thinking is certainly borne out in the conservative political practices of Shepstone's Native administration which sought separation not just in the application of the law but also in the allocation of reserve land and the protection of customary life. This, Lorimer argues, was a policy that gained the ascendancy in the Victorian world of the nineteenth century over an increasingly out-of-favour belief in assimilation, and showcased the uninhibited colonial and imperial conceit in a 'sense of white masculine superiority'.¹²

Gender Analysis and Historical Relationality

Two decades ago, Guy underlined the manner in which the economic reproduction of the colony was tied to the daily labours of African women by focusing on the productive and reproductive life of the homestead in 'Gender Oppression in Southern Africa's Precapitalist Societies'.¹³ By placing the exchange of women at the heart of precolonial strategies of accumulation he inextricably tied precolonial production with foundational cultural practices

¹¹ Guy, *Theophilus Shepstone*, 5 & 10; D. Lorimer, *Science, Race Relations and Resistance*, 176.

¹² D. Lorimer, *Science, Race Relations and Resistance*, 43.

¹³ Jeff Guy 'Gender Oppression', 33-47.

of marriage.¹⁴ It seemed a feminist intervention of note, not just in the historiography of colonial Natal, but in a wider revisionist literature which had, in the dozen years preceding ‘Gender Oppression’, done precious little to take up Bozzoli’s injunction to consider generative loci of women’s oppression apart from capitalism.¹⁵

His perspicacious placing of gendered cultural life at the centre of the historical reproduction of Southern African societies opened up a huge area for feminist, gendered analysis. He seemed to have made it impossible, at least, to write about colonial administration and state-making in a much broader literature without taking cognisance of how these processes were gendered. In a society in which processes of modernization were seriously attenuated and where any understanding of its material, temporal and affective contours continue to be tied to a rural-urban dialectic, this single piece on gender continues to be important to understanding the gendered nature of power and oppression in the region.

Nonetheless, there are two key theoretical problems I see as arising from Guy’s work that are key to desegregating and deparochializing Natal’s forging. They are that:

1. Sex and gender are structurally defined through the cultural signs of precolonial southern African society
2. Neither sex, nor sexuality, is really represented in Guy’s sex/gender system.

The first comes from its theoretical positioning in ‘Gender Oppression’, but is amply borne out in other work: the sex/gender system Guy describes is so structurally definitive to what is not just a precolonial political economy, but a very tightly bound cultural system, that both

¹⁴ Though never cited by Guy, this echoed what Gayle Rubin had laid out two decades earlier as the ‘traffic in women’. G. Rubin, ‘The Traffic in Women: Notes on the ‘Political Economy’ of Sex,’ in *Toward an Anthropology of Women*, ed. Rayna R. Reiter, Monthly Review Press: New York, 1975, 27-62.

¹⁵ Belinda Bozzoli, ‘Marxism, Feminism and South African Studies’, *Journal of Southern African Studies*, 9, 2, 1983. 139-171.

sex and gender only work through the very particular cultural signs of Nguni society.

Surely, one might counter, it does not have to be read so narrowly? I would argue that Guy's body of work sets the terms of reference for a reading that circumscribes gender analysis to the terms of colonial ethnographic practice in the Shepstonian mode. In this way gender analysis is limited to the very processes that made difference in the colony in the mid-nineteenth century. So while his recognition of the centrality of women's labour to Shepstone's policies such as the hut tax presents a gendered interpretation of state practice, this only applies to Shepstone's Native administration and the government of African life.¹⁶

If he was willing to use the structuring concepts of Marxist political economy flexibly to apply them to pre-capitalist society, he was not willing to be as flexible with what he understood to be the structuring concepts of Zulu society. As cunning and complicated as Guy's Shepstone is, he is considered to possess expert cultural knowledge of Zulu society, which meant that Shepstone's interactions with Africans – acknowledged as manipulative or self-serving – could be read through the structure of homestead-based patriarchy.¹⁷ On the one hand, this enabled the idea of Shepstone's mid-nineteenth century administration as an 'Accommodation of Patriarchs'. But on the other hand, it limits Guy's gender analysis to one kind of culturally-circumscribed masculinity.

In the unpublished but widely cited paper 'An Accommodation of Patriarchs' he offers a tantalizing glimpse into colonial masculinity but never fully opens the door as he

¹⁶ Guy noted as much in his strong criticism of Carolyn Hamilton's treatment of Shepstonian patriarchy as 'vague and unspecific' in a review in 1998: J. Guy, 'Shaka's Shadow', *South African Historical Journal*, 39, 1, 225-6.

¹⁷ This is a feature of much of Guy's scholarly presentation of Shepstone throughout his career, but is fully realized in the book under discussion as Shepstone's claims to expertise in dealing with Chiefs, the Colonial Office's regard for these claims and the actual fact of the expertise become inextricably tied together. See especially Guy, *Theophilus Shepstone*, 1-6.

describes only the one, structural form of patriarchy he had articulated in 'Gender Oppression'. It opens promisingly with the claim that

...much of the common ground upon which Theophilus Shepstone, Secretary for Native Affairs, and leading Africans, negotiated their claims to political authority was their...patriarchy, through which an accommodation between white and black authorities was reached.¹⁸

This is the closest we get to learning anything at all about the character of the patriarchal masculinity represented by Shepstone in the accommodation with Zulu patriarchs. Despite the extensive elaboration of how gender structures the lives of colonialisms subjects, we learn nothing about the patriarchy with which Zulu men have to come to accommodations. Settler patriarchy remains a thin concept flimsily distinguished as white and tautological figured as representing male power over women as it comes up against the imposing gendered structures of African life. We never learn what, precisely, Shepstone's patriarchy represents in coming to the accommodation, only how he - as a metonym for settler colonial power - uses Zulu idiom to come to accommodations with the very well-described patriarchy of his Native interlocutors. The irony of this characterization is that Guy himself argued strongly for the personal distinctiveness of Shepstone's political project and his contradictory relationship with the rest of Natal's settlers, few of whom seemed to share his goals with regard to Native administration. In short, Guy missed the possibility of identifying what the various features of Shepstonian and settler patriarchies were that enabled and sustained accommodations with African patriarchs and that continued beyond the Shepstonian encounter - something that is of concern not only to gender historians but for a broader framing of the history of Natal as

¹⁸ Jeff Guy, 'An Accommodation of Patriarchs: Theophilus Shepstone and the Foundations of the System of Native Administration in Natal' Unpublished paper presented at *Colloquium on Masculinities in Southern Africa*, University of Natal, Durban, 2-4 July, 1997, p.1.

part of a regional history and that of settler colonialism and the British Empire.

The relations among colonial officials inside of the colonial state bureaucracy, employers of labor, white settlers and Indian and Native subjects in this period involved particular forms of gendered negotiation and contestation which worked to shape new social hierarchies at contingent moments of colonial rule. Women were both discursively and materially drawn into these struggles over the relative masculinity and femininity of colonialism's citizens and its subjects. Thus, women and men who were both the citizens and subjects of British colonialism might be viewed as actors in a wide field of gendered contestation. In the context of the colonial history of late nineteenth and early twentieth century Natal, a gendered analysis of the relations of colonial rule has further implications: it permits viewing 'African', 'Indian' and 'White' subjects within the same analytical frame, by considering colonial processes of regulation which were common to all of these legally-identified groups.

From Bifurcation to Complexity

Colonial lawmaking cast customary practices which constitute and reproduce the gendered roles of men and women as husbands and wives in relation to each other as deviations from an always moral common law norm. The laws that applied to white settlers then were continually in conversation with laws that were being made for Natal's non-citizens. The common law exclusion of 'uncivilized' (and therefore unassimilable) custom which applied in both Native and Indian immigrant administration identified practices and their practitioners as different, marking custom as deviant to moral convention. The colonial common law default against which custom was, and is, imagined, and which came to embody the normative gendered prescriptions of the mid-nineteenth century is simultaneously understood as 'white', and an embodiment of an aspirantly 'universal' morality in that it is supposedly constituted of material which has no cultural particularity.

Native administration, with customary regulation at its core, was not imagined in isolation, but built in relation to the common laws of Natal which were simultaneously being established by this new colonial state.¹⁹ Colonial common law, as the normative law to which white citizens of Natal were bound was the referent for the Shepstonian creation and reification of Native customary practice. But what ignoring the making of settler life, and particularly **its** gendered customs and cultures of patriarchy does is to accept this referent for colonial legal exclusion as essentially without cultural content, further assisting with the reification of an abstracted, deracinated colonizer.

This bifurcation of common law and customary law is not peculiar to the historiography of colonial Natal. It has become one of the defining characteristics of postcolonial African historiography and the ‘colonial moment’ is often posited as one of binary oppositions. To quote Ann Stoler and Fred Cooper, while we might in our ‘postcolonial’ existence be assured that the world which we inhabit is “infinitely more complicated, more fragmented and more blurred...we need to think through not only a colonial history that appears as Manichaeic but [an] historiography that has invested in that myth as well.”²⁰

When Mahmood Mamdani’s *Citizen and Subject* was published more than a decade and a half ago, it offered a critique of liberal visions of colonial lawmaking and helped to further an understanding of the authoritative substance encapsulated in reifications of colonial difference.²¹ But it did not offer a critique of the binary notions of difference which it

¹⁹ This explored in greater depth in Nafisa Essop Sheik, ‘Colonial Rites: Custom, Marriage Law and the Making of Difference in Natal, 1830s – c.1910’, Doctoral dissertation, University of Michigan, Ann Arbor, 2012.

²⁰ Frederick Cooper and Ann Laura Stoler, ‘Between Metropole and Colony’ in *Tensions of Empire: Colonial Cultures in a Bourgeois World*, Frederick Cooper and Ann Laura Stoler eds. Berkeley: University of California Press, 1997, **9**.

²¹ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton: Princeton University Press, 1996, **109-137**.

identified, as being colonially-reified. As such it simply established a basis for furthering Manichean visions of colonial rule by inverting them to suit a particular, bifurcated, postcolonial understanding of historical virtue.

The modernization of ‘whites’ and the installation of white minority rule in twentieth century South Africa was neither a teleological movement, nor a politically and socially manifest destiny in the mid-nineteenth century. For what would become a politically and socially dominant racial grouping, fractures of language, ethnicity, class and respectability dogged the social mobility of many. As Cooper and Stoler have argued, “the resonance and reverberation between European class politics and colonial racial policies was far more complicated than we have imagined...The language of class itself in Europe drew on a range of images and metaphors that were racialized to the core.”²² The basis of a racialized social hierarchy which allowed for the discursive assimilation of settlers of all classes into the privileged position of ‘whites’ came to depend on the new differentiations of race and class which political elites were only beginning to shape in relation to their colonial ‘Others’ in nineteenth century Natal.

It is curious that the racial terms of ‘white’, ‘Indian’ and ‘African’ as they are used in much of the historiography of Southern Africa, reserves capital letters for the ‘Others’ that colonialism made, and a small ‘w’ for this region’s colonial rulers. Perhaps this represents an act of self-consciously virtuous postcolonial re-enactment, diminishing the textual prominence of the once-powerful. Likely, it hints at a more depressing historical and historiographical reality. The un-capitalized “w” represents the taken-for-granted realm of colonial citizenship, the uncritical unmarked domain of whiteness, representing a stability of

²²Frederick Cooper and Ann Laura Stoler, ‘Between Metropole and Colony’ in Frederick Cooper and Ann Laura Stoler. *Tensions of empire: colonial cultures in a bourgeois world*. Berkeley: University of California Press, 1997, 9; John Comaroff and Jean Comaroff, *Of Revelation and Revolution Vol. II: The Dialectics of Modernity on a South African Frontier*, University of Chicago Press, 1997; Gareth Stedman-Jones, *Outcast London: A Study of the relationship between the classes in Victorian Society*, Oxford: Clarendon Press, 1971.

subjectivity, and a security of colonial existence which we have come to accept as being out of reach for the Capitalized Ones. ‘Blacks’ (or ‘Africans’) and ‘Indians’ are specific, they are marked as the essential bearers of race, ethnicity and culture against the ‘whites’ who claimed dominion over them through abstractions of law which have, for the most part, remained unexamined. But ‘whiteness’ in the colonies, as much as in Europe, had to be made through discursive and material struggles in relation to its ‘Others’. Our scholarship must begin to ‘unwrite’ these racially ghettoized histories.

Common Laws of (Marriage) Custom

Much of the writing about the administration of Native law in Natal has attempted to illuminate the character of the legal ‘outside’ created by Theophilus Shepstone and his colonial contemporaries to rule Africans in Natal.²³ With respect to understanding the making of ‘difference’ in this region that there is little historiographical sense of the content, or the making of the colonial legal norm, in relation to which which ‘African custom’ is understood to be differently, and supposedly antagonistically, made.²⁴

This is in some measure because of the undue emphasis placed on aspects of customary ‘reform’ seemingly initiated by Shepstone’s administration to bring Native custom in line with civilized practice. Nowhere is this more the case than in regard to the institutionalizing of women’s consent to marriage in the 1869 Native Marriage Law as McClendon and others have argued.²⁵ But as I demonstrate in great detail elsewhere, these

²³ Jeff Guy, ‘An Accommodation of Patriarchs’; Thomas McClendon, *White Chief, Black Lords: Shepstone and the Colonial State in Natal, 1845-1878*, Rochester: University of Rochester Press, 2010; Norman Etherington ‘The Shepstone system in the colony of Natal and beyond the borders’ in Andrew Duminy and Bill Guest (eds), *Natal and Zululand from earliest times to 1910*. Pietermaritzburg: University of Natal Press, 1989, 170-192; David Welsh, *The Roots of Segregation: Native Policy in Colonial Natal, 1845-1910*. Cape Town: Oxford University Press, 1971; Martin Chanock, *Fear, Favor and Prejudice: The Making of South African Legal Culture, 1902-1936*, Cambridge: Cambridge University Press, 2004

²⁴ Mamdani, *Citizen and Subject*.

²⁵ McClendon, *White Chief, Black Lords*, 87.

scholarly assessments do not reflect the fact that such legal action was patriarchal rather than feminist on Shepstone's part and actually worked to establish – for the first time in colonial law – the legal basis for *parental* consent and the minority of African women.²⁶

A struggle over settler marriage laws that took hold in Natal from the 1870s reveals that colonial laws for settlers had customary roots and were constructed out of the contested cultural material of English customary practice.²⁷ No previous scholarship has picked up that the customary marriage practices upon which Native administration was founded were remarkably similar to the contested customary practices of settlers which came to be enshrined in the unmarked colonial law. The 'Deceased Wife's Sister Bill' was an example of parallel forms of customary contestation. It proposed lifting the Anglican prohibition on Sororate Marriage, or a man marrying the sister of his deceased wife, a restriction that proved to be an obstacle to the successful reproduction of white settler families and through this, colonial masculinity, not just in Natal but throughout the British Empire in the second half of the 1800s.²⁸ Eventually passed as the 'Colonial Marriages Act' at the close of the century, the debate over the morality of the law reveals much more crossover and complexity in the making of custom and common law in this region than is acknowledged by the existing

²⁶ Claims about reform must be viewed alongside Shepstone's often-stated understanding that African male authority was, in fact, more benevolent than settler reformers understood. While McClendon acknowledges certain similarities between the 1869 law and the 1753 Marriage Act in England, he fails to note that the 1869 law acted similarly to the 1753 act in establishing parental consent as a legal principle in marriage. McClendon, *White Chief, Black Lords*, p.85. The Natal law went even further in cementing the legal minority of women in perpetuity. The act was less about freeing women from 'degradation' than it was about shifting the generational power of men by allowing younger men access to women on the same basis as older men of greater customary status. For a fuller discussion of the 1869 law and the illiberal impulses behind what was seemingly an instance of reform, see Nafisa Essop Sheik, 'African Marriage Regulation and the Remaking of Gendered Authority in Colonial Natal, 1843-1875', *African Studies Review*, 57, 02, 2014, 73-92.

²⁷ Nafisa Essop Sheik, 'Colonial Rites: Custom, Marriage Law and the Making of Difference in Natal, 1830s – c.1910', Doctoral dissertation, University of Michigan, Ann Arbor, 2012, 65-105.

²⁸ As Robert Morrell notes, 'the standing of a man in colonial society rested in large measure on his success in creating a family and spreading his wealth and prominence'. Robert Morrell, 'The Family Man and Empire: Sir Albert Hime of Natal, 1875-1903', *Journal of Natal and Zulu History*, 18, 1998, 23.

historiography.²⁹

The moral compromise proposed by this law for white settlers was being hotly debated by religious authorities, settlers, lawmakers and cultural critics just as Shepstone was providing for the analogous Levirate (the marriage of a woman to the brother of her deceased husband), known as *ukungena*, to be upheld as a customary exception under the exclusionary code of Native Law for those who were ‘uncivilized’.³⁰ It reveals that law that came to be offered by colonial rulers and legislators as the moral default was constituted out of practices based on the selfsame principles that it regarded as immoral and uncivilized in those who were made to be colonial subjects.

Considered together rather than as historically unrelated events, we can see the commonality of customary practices to the lives of all those who found themselves in mid-nineteenth century Natal, not least of all the European settlers who inhabit the unmarked, and unremarked upon, domain of civil law in the scholarship. As well as arguing for the simultaneous making of ‘Self’ and ‘Other’, the broadening of our field of scholarly vision also permits understanding the centrality of gender and marriage to the making of colonial respectability, as Robert Morrell has so impressively shown over the years, as well as to a broader imperial politics.³¹

²⁹ Pietermaritzburg Archives Repository (NAB) Colonial Secretary’s Office (CSO) 739/1880/440, 28th January 1880; Natal Colonial Publication (NCP) Legislative Assembly Debates 2/2/2/5 Marriage Law Amendment Bill. March 29, 1897; Bishop of Exeter, *Marriage with a Deceased Wife’s Sister*. Exeter: James Townsend, 1882.

³⁰ ‘Editorial’, *Natal Witness*, July 17, 1877; NAB 1/LDS 3/3/3 H54/1870 Ukungena Rules.

³¹ For example in R. Morrell, *From Boys to Gentlemen: Settler Masculinity in Colonial Natal, 1880-1920*. Unisa Press, Pretoria, 2001.

Marriage, Sex and Segregation

In 1883, a small section of legislators proposed a parallel ‘hut tax’ for Indians to the one already imposed upon Africans – something I noted with interest in a seminar presentation a few years ago and which drew a dismissive response from Guy.³² To begin with, it was common that the rural dwellings of Natives, indentured Indians and indeed, even early white settlers, approximated the description of ‘huts’ with their mud walls and thatched roofs, but the ‘hut tax’ was more than an attempt to generate revenue by taxing simple, rural dwellings. It was a political instrument of Native administration whose premise and ultimate profitability for the state came from the structure of Native homestead life. While it purported to be a civilizing instrument used to discourage polygyny, it became a key source of state revenue that ultimately rested on the maintenance of African customary life and the labours of women.³³ It was a colonial policy by which Shepstone targeted the structure of Zulu society.

It could well be claimed that there was no similar form of social organization discernible in early indentured Indian domestic life in Natal. To be sure, there existed no comparable relationship between taxation and colonial ethnography of Indian customary practices in the Shepstonian mode. I would argue that for Guy, the hut tax represented the supposed integrity of Shepstone’s ethnographic mode of governance. But what if we applied an idea of gender not limited by the insular cultural terms of the accommodations between Shepstone and his African interlocutors? We might learn something more broadly interesting about the character of colonial rule and state practice from this moment of supposedly

³² NAB NCP 2/1/1/5 Legislative Council Debates ‘Taxing Indian occupants of Huts’, Oct 8, 1883.

³³ Guy, ‘An Accommodation of Patriarchs’, 13. Patrick Harries demonstrates the importance of the tax to colonial revenue generation in P. Harries, ‘Plantations, Passes and Proletarians: Labour and the Colonial State in Nineteenth Century Natal’ *Journal of Southern African Studies*, Vol. 13, No. 3 (Apr., 1987), 372-399.

unlikely colonial policy.

To begin with, Charles Mitchell who had served as the Protector of Indian Immigrants and was the Colonial Secretary when the tax was proposed, referred to the polygamous structure of African life in his remarks during the debate:

[Indians] are not uncivilized people; they are not living in an uncivilized fashion, and for that reason I decline to accede to the principle laid down, that these men are to be civilized by taxation - for practically it amounts to that. The incidence of the...tax is solely meant to civilise our Natives.³⁴

Mitchell's statement centred around the contradictory aim that the tax was intended as a disincentive to polygamy, even if this was not its effect in practice. Considering his juxtaposition of the gendering of Indian and African domestic arrangements as differential aspects of civilization is important because it shows the relationality of what we now understand as racially-discrete groups in the practice of colonial administration. It also resonates with both Shepstone's claims about the cultural integrity of African life and imperial officials exalting difference in the British Empire in this moment (thus linking colony and empire in processes of differentiation), and centres gendered regulation of the institution of marriage in particular, in racial and cultural difference-making in the mid-nineteenth century colony.

Analyzing the administration of similar forms of customary practice amongst these colonially-identified groupings demonstrates the manner in which colonial negotiations and legislative contestations over custom were gendered processes which elaborated lines of cultural difference between these colonial populations.³⁵ It was through the state regulation of

³⁴ NAB NCP 2/1/1/5 Legislative Council Debates 'Taxing Indian occupants of Huts', Oct 8, 1883, 594.

³⁵ Nafisa Essop Sheik, 'Colonial Rites: Custom, Marriage Law and the Making of Difference in Natal, 1830s – c.1910', Doctoral dissertation, University of Michigan, Ann Arbor, 2012.

customs of marriage, which were key to the social makings of culture at the most basic level for all of the colony's people, that gender in the form of historically specific notions of masculinity and femininity was negotiated, assigned, contested, refused, assumed and socially embedded through state practices and institutions in conversation with the men and women who were subject to state power.

But the cultural insularity of Guy's deployment of gendered ideas is only part of the problem because gender alone is insufficient to the task of understanding this colonial moment. It does not tell us why marriage was the basis for the state's project of difference-making in the first place. The answer to that lies at the historical intersection of marriage with sex. And this brings me to the second theoretical problem: neither sex, nor sexuality, is really represented in Guy's sex/gender system.

Under the sign of sex there is only fertility which is opaquely about sex and bodies at all. Here, fertility simply points to how the reproduction of labour power and the production of wealth in people is gendered.³⁶ The result is that gender in Guy's analysis works to obscure sex and sexuality rather than to enable its study. So how can gender analysis, relating institutions such as marriage across colonial populations and archive categories, enable an understanding of sex in the colony and why is sex important?

Differentially regulating marriage practices along the lines of 'Native custom', 'Indian custom' and 'Civil Law' was an important way in which the Natal colonial state asserted differentiations of race and culture, supported by the mid-nineteenth century turn to difference in the Empire. Colonial forms of marriage historically provided ritual and institutional sanctification to sexual reproduction, sublimating and ordering diverse forms of sexual, bodily desire in terms of emerging social norms. The link between marriage and the

³⁶ Guy, 'Gender Oppression', 40-43

social reproductive expectations of settler contexts like Natal placed unmanaged sexual relations as a threat to reproducing and projecting colonial power.

The history of marriage shows that authoritative sanctions and prescriptions on marriage reflected the interests of regulating authorities in policing and delimiting sex and desire.³⁷ Shepstone's patriarchal administration was centrally concerned with policing sex and racial discipline. Gender abounds in an analysis of his interactions with Zulu patriarchs, but because of the centrality of marriage so does sex, which is why drawing cultural boundaries was so important to Shepstone.

When John Dunn was appointed chief in Zululand in 1879, Shepstone denounced him as an 'English polygamist', declaring his participation in Zulu marriage to be a renunciation of civilization:

a great deal has been said, and is still said, about efforts being made by the government to advance the civilization of the Zulus in Natal, but what will happen if the government appoints to be chief over Zulus in Zululand, a man who, despite being an Englishman has renounced it because he has renounced civilization? Polygamy amongst the Natal Zulus is looked upon as being, and no doubt is, the root of much mischief. The suppression of this practice in Natal is an object which the government has always professed to desire, but it appoints an English polygamist, i.e. an Englishman who has taken several Zulu women to wife.³⁸

³⁷ S. Coontz, 'The World Historical Transformation of Marriage', *Journal of Marriage and Family*, 66, 4, 2004, 974-979; M. Ingram, *Church Courts, Sex and Marriage, 1570-1640*, Cambridge: Cambridge University Press, 1987; R. Phillips, *Putting Asunder: A History of Divorce in Western Society*, Cambridge: Cambridge University Press, 1988.

³⁸ Colonial Office 879/17/224, Appendix M. Settlement of Zululand. Wolseley to Hicks Beach, 9th October 1879.

And yet, some decades earlier, in 1852, in a manner redolent of the interactions of the likes of Dunn with powerful African interlocutors, Shepstone was ‘given’ King Mswati’s sister, Tifokati, as his ‘wife’ as part of diplomatic alliance-making with Swazi rulers.³⁹ Shepstone graciously accepted the gift, indicating his recognition of, and participation in, a particular gendered, cultural instantiation of African patriarchal expression. Soon afterward he ‘re-gifted’ the young woman to his senior assistant, a Zulu headman named Ngoza, thereby engaging in a patrimonial cultural politics of alliance-making, while simultaneously underlining the emergent colonial limits he desired for the practice of racially differentiated customs of sex.

Shepstone’s actions distinguished him from men like Dunn. While he accepted African customary practice as a desirable political tool, and permissible and even desirable for Africans themselves, he understood his civilizational position as an Englishman to prevent his full participation in what he saw as a racially-distinct form of customary practice. This single incident provides a remarkable retrospective measure of Shepstone’s longer term relationship to the discourse and practice of racialized civilization and African customary patriarchy. In light of Shepstone’s words and actions throughout the nineteenth century, which I describe elsewhere⁴⁰, we might discern that his rebuke of **Dunn’s position** appears to have been tied less to Dunn’s mere approval of the practice of polygamy (as Shepstone himself expressed similar – even romantic – approval for the structural relationships implicating polygynous practice in African society), than the fact that the kind of masculinity to which Dunn subscribed indicated a full embrace of a racially ‘othered’ form of cultural expression which denied him the right, in Shepstone’s view, to claim the respectable,

³⁹ Phillip Bonner, *Kings, Commoners, and Concessionaires: The Evolution and Dissolution of the Nineteenth-Century Swazi State*. New York: Cambridge University Press, 1983, 63.

⁴⁰ Nafisa Essop Sheik, ‘African Marriage Regulation’.

civilized position of a colonial Englishman.

The colonies were a domain for the indulgence of the sexual fantasies of colonizing men, but elites were additionally intent to mark the boundaries of a colonizing population, to prevent men of their own race from ‘going native’, and ‘to curb a proliferating mixed-race population that compromised their claims to superiority and thus the legitimacy of white rule’.⁴¹ In colonial spaces, as in European societies, the survival of a ruling race was often seen to be precariously predicated on a strict adherence to cultural- and gendered-prescriptions of sexual practice.⁴² This drawing of boundaries in pursuit of ‘racial survival’ was especially the case in Natal in the mid-1800s where the settler population of a few thousand or so lived in fear of being racially overrun by the **more than one hundred thousand Africans in and around the district.**⁴³

Regulating sex and policing social reproduction through the regulation of marriage custom established cultural difference and the segregation of legally defined populations as the pre-eminently desirable form of social order. The colonial government differentiated between marriage customs in the law for settlers, Indians and Natives, making the sexual distinctions these laws implied – from the number of sex partners permitted in marriage to the age of availability of women for specific types of sexual intercourse – the basis for reproducing cultural forms of race difference.⁴⁴

⁴¹ Frederick Cooper and Ann Laura Stoler, ‘Between Metropole and Colony’ in *Tensions of Empire*, 5. See also Ronald Hyam, ‘Empire and Sexual Opportunity’, *Journal of Imperial and Commonwealth History*, 14, 2, 1986, 34-90; Kenneth Ballhatchet, *Race, Class and Sex under the Raj: Imperial Attitudes and Policies and their Critics, 1793-1905*. New York; St. Martin’s Press, 1980.

⁴² Frederick Cooper and Ann Laura Stoler, ‘Between Metropole and Colony’ in *Tensions of Empire*, 5-6; Ann Laura Stoler, *Race and the Education of Desire: Foucault’s History of Sexuality and the Colonial Order of Things*, Durham, North Carolina: Duke University Press, 1995.

⁴³ The Natal Blue Books put the population figures for 1852 at 7 629 whites and 112 988 blacks. See Colony of Natal, *Blue Book on Native Affairs* 1909, 3.

⁴⁴ J. Parle and M. Mahoney, ‘An Ambiguous Sexual Revolution: Sexual Change and Inter-Generational Conflict in Colonial Natal’, *South African Historical Journal*, 50, 2004, 134-151; Martens, Jeremy. ‘Civilised domesticity’,

This difference had to be defined and constantly maintained in relation to the making of ‘whiteness.’ In early colonial Natal, as missionaries took pains to point out, social boundaries delineating racial purity were not clear but had to be made so through discourses and institutions of ‘civilization’ and by legal attention to differentiation between ‘Native’ custom and an unmarked (and by implication ‘white’) common law which was provided by state legislation.

Racial difference in Natal was institutionalized through the establishment of colonial legal categories. Rather than the claim that *a priori* ‘difference’ is the basis for the making of a colonial legal culture, it is the contention of this essay that new colonial understandings of difference, of social boundaries, of ‘civilized’ behaviors and of the possibilities and limits of race and respectability, were co-constructed in conversation with emerging legal institutions which assist with the reproduction of these new understandings of colonial difference.

The ghettoized scholarship of customary administration which this essay has sought to critique reproduces colonial assumptions of racialized customary difference as a priori fact rather than understanding these racialized categories of administration as the contingent creations of a nineteenth century colonial moment.

The intersections of sex, gender and custom not only allows for nuanced historical comparison, but also gets at the heart of a set of imperial practices, making the history of this parochial space speak to the knowledges and practices of empire. So while existing historiography frames imperial policies as separate for discretely defined groups, placing sex and gender at the centre of analysis as I suggest here can bring together these colonial interventions by drawing out the similarities, complexities and contingencies of ostensibly separate policies in the same colonial space.

race and European attempts to regulate African marriage practices in colonial Natal, 1868–1875, *History of the Family* 14 (2009) 340–355.

Conclusion

While the gender analysis that a scholar such as Jeff Guy conducted permitted the gendering of structural changes in Zulu society, what we need is gender analysis that transcends the segregated divisions of the colonial archive to enable the theorization of state institutions and processes beyond the parochial character of insular colonial groupings. Gender analysis of this sort also reveals continuities between the assumptions of Natal's colonial history and its segregated historiography. But if gender illuminates the institutions through which colonial difference-making materializes, then it is sex, and the setting of its possibilities and limits in laws governing marriage for all of the colony's people, that shaped the colonial imagination of this difference.