

Migration, Naturalisation, and the 'British' World, c.1900-1920

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Summary

This article explores the distinctly legal vagueness that underpinned citizenship and subjecthood in the British empire in the early twentieth century, drawing on examples from South Africa and Australia. Situating the administration of citizenship laws within a global context, this offers a revision of the current scholarship on the global 'color line'. The white 'color line' which developed within the British empire was less a shared legal system and more of a constant negotiation between different actors. Unlike other recent studies of citizenship and subjecthood, this is not an intellectual history. This, instead, is a close scrutiny of bureaucratic decision-making precisely because the system which flourished under British rule was designed to accommodate colonial discrimination by encouraging legal vagueness and executive privilege, allowing considerable space for official and unofficial influence. By focusing on liminal groups (Jews in South Africa and women in Australia), it illuminates how a 'British' world was constructed, who was included and who excluded from this process, and how this process unfolded, especially concerning issues of race and gender.

I Introduction

The flow of people, ideas and goods has been of central import in the scholarship of the British world. The question of what exactly was 'British' about a British world has remained elusive, however, as discussed by Andrew Dilley and myself elsewhere.¹ Today, I want to explore the legal, social and racial issues surrounding citizenship in the empire, and how these worked in practice in order to better answer this question.

This article examines this issue within two colonies: Australia and South Africa, exploring the degree to which the growing numbers of laws and bureaucracy meant to control migration and naturalisation shaped both the construction of a system of migration control, and how wider ideas of Britishness were constructed and imagined. This can help us better understand the power dynamics within empire, politically and socially, and the ways people imagined who belonged and who did not.

I situate this research within recent scholarship portraying the global history of migration control, especially during the nineteenth and twentieth century 'Age of Migration'.² Thanks

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¹ Bright and Dilley, 'After the British World', pp. 547-568.

² Torpey, *The Invention of the Passport*; Douman and Lee, *Every Assistance & Protection*; Singha, 'The Great War and a "Proper" Passport for the Colony'; Stepan, *The Hour of Eugenics*; Kraut, *Silent Travellers*; Donnan

to this recent scholarship, it seems impossible to dispute now that the development of our modern system of migration control, and the international laws which frame it, was a global process, and the US, Canada, South Africa and Australia were key to its development.

As settler societies dependent on migration, they were at the forefront of wanting to regulate that migration, to be able to distinguish between good and bad migrants. The creation of this system has been famously called by Lake and Reynolds the ‘global color line’, set up by European settlers who wanted to exclude Asian migrants from ‘white’ colonies. The ‘color line’ was the legislative framework created by white settler societies who wished to protect their privilege through excluding other ‘colors’ of people (a commonplace colloquialism at the time for other ‘races’) from a range of rights, including migration, citizenship, and suffrage.³

In showing us what these systems had in common, (namely a focus on white identity), the significant differences in practice have become obscured.⁴ Laws can be interpreted in many different ways, however carefully worded. Part of my argument today is that such a focus on a white settler colonial world of exclusion ignores this, and ignores the distinctive British legal system which had developed. Settler colonies were not sovereign like the US, and had a significantly different legal tradition. Adam McKeown has described a migration system in the US where specialists created ‘an orderly and impersonal procedure based on clearly stated law and scientific inquiry’ which was ‘applied equally to all migrants’, even if those laws were fundamentally racist, sexist and classist.⁵

In contrast, within the British system, “‘much is left to tacit understanding.’”⁶ Most laws have evolved over hundreds of years and involve a variety of quite contradictory precedents.⁷ This vagueness has been particularly evident when it comes to any discussion of nationality: before 1948, there was no such thing as British citizenship. This meant that many of the ways it was decided who was British legally depended on common law, court decisions, and the individual interpretations of officials at any given time. Each part of the empire had their own legal precedent and their own naturalisation laws. Usually anyone born on British soil (including the colonies) was legally a subject of the Crown. The monarch would protect the subject in exchange for loyalty and possible military service. The only rights clearly defined for British subjects in Britain were the right to own land, inherit property, or sit in Parliament, but this male only affected the tiny number of subjects with property, and this did not automatically apply abroad or in the colonies, where different laws evolved. Citizenship did not exist, although the term was used frequently by contemporaries. The British state was hardly recognised in this relationship.

and Wilson, *Border Identities*; Caplan and Torpey, eds., *Documenting Individual Identity*; Fairchild, *Science at the Borders*; McKeown, *Melancholy Order*; Lake and Reynolds, *Drawing the Global Colour Line*; Castles and Miller, *The Age of Migration*; Robertson, *Passport in America*; Breckenridge and Szreter, eds., *Recognition and Registration*; Bashford, ed., *Medicine at the Border*; Taylor, ‘Immigration, Statecraft and Public Health’.

³ Lake and Reynolds, *Drawing the Global Colour Line*. They borrowed this term from W. E. B. Du Bois, *The Souls of Black Folk* (1903).

⁴ Bright, ‘A “Great Deal of Discrimination Is Necessary”’; Bashford and Gilchrist, ‘The Colonial History of the 1905 Aliens Act’.

⁵ McKeown, ‘Ritualization and Regulation’, p. 399; McKeown, *Melancholy Order*, pp. 268–291.

⁶ Henry Sidgwick, *Elements of Politics* (1891), p. 548, quoted in Bell, *The Idea of Greater Britain*, p. 103.

⁷ The best overview of the laws and precedents affecting naturalisation can be found in Karatani, *Defining British Citizenship*. See also Dummett and Nicol, *Subjects, Citizens, Aliens and Others*, pp. 3–4, 59; Dummett, ‘The Acquisition of British Citizenship’, p. 75; Clarke, ‘Citizenship and Naturalization’, p. 320; Muller, ‘Bonds of Belonging’, p. 32; Anderson, ‘Britons Abroad, Aliens at Home’; Baldwin, ‘Subject to Empire’, pp. 522–556; Fahrmeir, *Citizens and Aliens*; Kettner, *The Development of American Citizenship*; Kim, *Aliens in Medieval Law*; Sen, ‘Imperial Subjects on Trial’.

Adding to this mix was the fact that all colonial governments had the centuries-old right to naturalise aliens within the colony. Subjecthood anywhere in the British empire was always about declaring allegiance to the Crown - so people were either born under the Crown, and so had a 'natural' duty of allegiance to the Crown, or they could choose allegiance through the process of naturalisation. An alien migrant could be naturalised in Britain or in any colony, provided they met whatever local requirements existed, and local requirements varied considerably. For instance, in New Zealand, no residency was required before applying for naturalisation, while in Britain, an alien had to wait five years before applying.

Such legal vagueness and inconsistency caused little controversy until the early twentieth century. As universal suffrage and the welfare state spread, so the rights people associated (or wanted to link) with subjecthood became significant areas for debate. This particularly focused on what the relationship should be between being a subject and having rights, such as the right to vote or move freely within the empire. As migration and communication increased, the disparate ways these issues were addressed in different places also became more evident.⁸ Canada's naturalisation act was unusual in specifically stating what rights were associated with local naturalisation (as in Britain, this largely related to property ownership and inheritance), but most other colonies had not directly addressed the matter at all, simply acting as if Britain's legal system applied in their colony (even when this was not clear).⁹ For instance, Australia's Naturalization Act (1903) and Nationality Act (1920) did not specify how 'natural born British subject' was defined, nor did they make clear what the rights or duties were for any subjects, naturalised or 'natural born'. Such ambiguities could lead to considerable differences in practice.¹⁰

The general public most commonly assumed that subjecthood granted the right to travel anywhere unrestricted throughout the empire.¹¹ In practice, while British subjects were rarely prevented from entering Britain itself, British subjects were regularly prevented from travelling between different parts of the empire.¹² Indeed, while scholars have frequently depicted the rise of migration controls in the twentieth century as marking the death of laissez faire movements, recent revisionist scholars have recognised that such migratory openness was perhaps always more of an idea than a practice.¹³ To take an example from my own research in South Africa, it was common for people naturalised in Britain to be excluded. In 1911, a 'Mr and Mrs Otto were refused admission because Mr Otto was indisposed', despite the fact that both had been 'naturalized in England.'¹⁴ In another case, a man naturalized in the neighbouring Transvaal found that his eleven year old son was denied the right to pass through the Cape because he had 'a cut lip'.¹⁵ This was despite

⁸ British Parliamentary Papers, Cd 3524, Papers laid before the Conference, Enclosure 4 in No. 1, M. D. Chalmers, Law of Aliens and Naturalization Bill, Memorandum, November 1902, pp. 142, 146.

⁹ Dummett and Nicol, *Subjects, Citizens, Aliens and Others*, p. 76.

¹⁰ See Rubenstein with Field, *Australian Citizenship Law in Context*; Davidson, *From Subject to Citizen*; Chesterman and Galligan, *Citizens without Rights*; Chesterman, 'Natural-Born Subjects?', pp. 30-39.

¹¹ British Parliamentary Papers, Cd 3524, Papers laid before the Conference. Enclosure 4 in No. 1, M. D. Chalmers, Law of Aliens and Naturalization Bill, Memorandum, November 1902, p. 143; see also Haycraft, 'Alien Legislation and the Prerogative of the Crown', *Law Quarterly Review* (1897), pp. 165-186; Cd.1742, Royal Commission on Alien Immigration, Report, pp. 35-36.

¹² There were exceptions to this rule, however. See the restrictions placed on West African men married to British women in the twentieth century in Ray, *Crossing the Color Line*.

¹³ Fahrmeir, *Citizens and Aliens*, p. 3; Maclean, 'Examinations, Access, and Inequity within the Empire', p. 115; Gammerl, 'Subjects, Citizens and Others', pp. 523-549.

¹⁴ UCT, BC 160, Morris Alexander Papers, 'Immigration', 5 August 1911, passenger from "Bon Louis".

¹⁵ UCT, BC 160, Morris Alexander Papers, 3.D63/499, 10d: 'the Trintapel[?] Castle 20 Aug. 1911'; pencilled above 'cut' is 'split'.

Union in 1910, as a common law uniting the naturalisation policies of the separate South African parts was not agreed until 1913. Such cases reflect the lack of reciprocal recognition of naturalisation across the empire, as well as the anti-Semitism of the border system in the Cape at the time (I shall discuss this more later).

One significant problem with the naturalisation law which developed, and which these cases highlight, was the lack of clarity about whether an alien naturalised in one part of the empire was naturalised outside of that territory as well. A 1669 court case ruled that colonial law only applied within the colony, but various laws and rulings at different times reached different conclusions about whether British naturalisation law applied in the colonies.¹⁶ Such vagueness meant that being ‘British’, even in a legal sense, meant very different things in different parts of the empire, and that decisions on specific cases often reflected broader social constructions of citizenship.¹⁷

I use Linda Bosniak’s formulation here, that citizenship needs to be thought of as several different things: a legal status, a system of rights and duties, and a form of group identity.¹⁸ It is also essential to understand this within the context of the growing historiography about the creation of ideas of Britishness in the eighteenth century onwards, most notably Linda Colley’s *Britons*.¹⁹ In it, she explained that, from the legal creation of Britain in 1707, the public used and identified with the label of being British in many different ways, and only gradually came to adopt it.

My research will show, when dealing with applicants for naturalisation, there was no clear definition of Britishness provided, but that the question implicitly pervaded decision-making. Looking at the naturalisation of aliens within Britain’s settler colonies puts a spotlight on people whose position within a ‘British’ world was always marginal - if they were British, they would not have to be naturalised. Often their claims to whiteness, or to being desirable migrants, were also marginal - they were Germans, French and other Europeans on the whole, but there are also Japanese, Chinese, Egyptian, Lebanese, Syrian, Turkish, and Pacific Islanders within their ranks. It lays bare the liminal spaces of identity and belonging within settler societies and challenges the dominance of the *British* migrant experience (e.g. migrants from Britain) within existing British world scholarship.

In the empire, the myriad identities of migrants and indigenous groups have complicated the political identification of residents even further, a situation exacerbated by a lack of clear constitution outlining who was and who was not British, nor how the label could be acquired or removed. Naturalisation law and bureaucracy was meant to assign legal status, but it was also tied to different rights and duties (real and imaginary) and to broader ideas of race, class and other aspects of group identity. This tension did not lead to Britain or its colonies developing a legalistic bureaucratic machine, as has been described as developing in the US. Instead, because settler colonies wanted to exclude Asians but Britain did not want to sanction overt racism against Indians (who were British subjects) or against Japanese (who were allies), Britain encouraged a deliberate vagueness in legislation,

¹⁶ *Craw v Ramey* (1669), Vaugh. 274, 124, E. R. 1072, quoted in Dummett and Nicol, *Subjects, Citizens, Aliens and Others*, p. 76; The British National Archives (TNA), HO 45/10489/112229: Aliens, Bills and Acts, Naturalisation: Under Sec of State, Foreign Office, to Under Sect of State, Colonial Office, 2 October 1903. See also *Markwald v. Attorney-General*, Chancery Division, 1920, Vol. 1, pp. 348 and 370, quoted in John Chesterman, ‘Natural-Born Subjects?’, p. 33; Clarke, ‘Citizenship and Naturalization’, p. 321.

¹⁷ Muller, ‘Bonds of Belonging’, p. 53.

¹⁸ Bosniak, ‘Citizenship Denationalized’. Psychologists have differentiated further by pointing out that group identity and individual identity may overlap, or even contradict, and are not necessarily the same thing. See Condor, ‘Towards a Social Psychology of Citizenship?’, Rubenstein with Field, *Australian Citizenship Law*.

¹⁹ Colley, *Britons*.

perpetuating wider constitutional vagueness about citizenship, rather than clarifying it.

To take one example of how different conceptions of citizenship could affect what happened, consider the debates surrounding the writing of the Australian constitution. There one attendee perfectly illustrates the ways that contemporaries used 'subject' and 'citizen' to mean many different things:

'it would simply be monstrous that those who were born in England should in any way be subjected to the slightest disabilities. It is impossible to contemplate the exclusion of natural born subjects of this character; but on the other hand, we must not forget that there are other native-born British subjects whom we are far from desiring to see come here in any considerable numbers'²⁰

Here, distinctions were made between 'natural-born' subjects, described interestingly as 'English' and not 'British', and 'native-born' subjects who were technically British subjects but should not be allowed to migrate into the country. The example of Hong Kong 'Chinamen' and Indians were the most common in such debates; people who were technically British but somehow were not really British. It was exactly the difficulty in defining how to draw the line between the two that led Australian politicians to deliberately *not* define colonial citizenship in the final version of the Constitution, nor did the eventual 1903 Naturalisation Act (or subsequent acts) entirely clarify the matter. Instead, who was entitled to citizenship, as well as the rights and duties associated with citizenship, was left to inference by individual bureaucrats, government ministers, and occasional judicial review.²¹

The most famous and arguably the most influential law to do this was Natal's 1897 Immigration Restriction Act, more commonly known as the Natal Language Test. It allowed border officials to implement a literacy test in any European language to anyone arriving at a port. In other words, they could decide whether someone looked desirable and impose a literacy test if they wanted to keep the potential migrant out of the colony. At the 1897 Colonial Conference, Britain's Secretary of State for the Colonies, Joseph Chamberlain, pushed this language test as an acceptable model of migration control. Although neither he nor the Natal governor (who devised it) denied that it was formulated to keep out Asians, they could still deny accusations that it racially targeted them. While this legislation was not universally popular, all of the settler colonies adopted versions of it.²²

Less analysed by scholars was a concession made by Chamberlain at the same meeting, concerning executive privilege. The New South Wales Prime Minister, George Reid, had asked whether 'power should be given to the Governor in Council at any time to exclude any person or class of person... an executive power, which would be exercised with discretion', and was specifically described as a kind of 'common law.'²³ While Chamberlain showed reluctance at the time, subsequent colonial laws were allowed to contain clauses about executive privilege. This meant that the executive could always decide to grant or

²⁰ Australian *Record of the Debates of the Convention* (Melbourne, 1898), vol V, p. 1760, quoted in Rubenstein with Field, *Australian Citizenship Law*, p. 52.

²¹ For a full breakdown of these early debates, see Rubenstein with Field, *Australian Citizenship Law*, esp. pp. 50-54. She has argued that this lack of definition remains today in Australia, meaning the rights and duties associated with it are equally unclear in the most recent Australian Citizenship Act (2007).

²² See Bright, 'Asian Migration and the British World, 1850-1914', pp. 128-149; Huttenback, 'The British Empire as a "White Man's Country"', p. 111; Lake, 'Translating Needs into Rights', p. 203.

²³ UK Parliamentary Papers, Cd8596, 1897 Colonial Conference, London Proceedings, p. 139.

withhold naturalisation for anyone on any grounds, and did not have to provide a reason.²⁴ Naturalisation applicants in settler colonies found it almost impossible to appeal any decisions as power rested with the executive, and no reason had to be given for refusal.²⁵

These types of laws, which put so much power in the hands of executive privilege and bureaucratic decision-making, shaped a distinctive migration system. Subsequent legislation embraced this method, and discriminated increasingly on the basis of ‘morality’, ‘health’, wealth, and other very flexible categories, often left to border officials to interpret.²⁶ Vague legislation like this meant that Greater Britain could simultaneously promote their unity on migration matters, what Ratiki Karatani has called the ‘common code’²⁷, while excluding whomever they pleased.²⁸ This code, of course, operated differently in each colony, precisely because the ‘code’ that developed was developed to be vague. While important to recognise the overlapping push for a ‘global color line’, in practice, it is crucial to recognise how different such systems could actually work, and the ways this fed into wider debates about citizenship.

Even when governments attempted to be specific, the restrictions on explicit racism led to further confusion and inconsistency. For instance, in Australia, the Commonwealth Franchise Act of 1902 excluded any ‘aboriginal native of Australia, Asia, Africa, or the Island of the Pacific except New Zealand’ from ever voting, or applying for naturalisation.²⁹ They were not allowed to specify race, only geography, but this in turn led to endless debates about the boundaries of continents. Most famously, Turkey was divided by the Bosphorus River, with residents to the West deemed acceptable European migrants and those to the East banned. Those in ‘Syria’, a generic name for the territory south of Turkey until somewhere around Jerusalem (the exact boundaries were inconsistently imagined by different people), were occasionally allowed in and even naturalised, but on other occasions they were labelled Asians or Africans and banned from migration and naturalisation accordingly.³⁰

We need to understand then the white ‘color line’ which developed within the British empire as less a shared legal system and more of a constant negotiation between different actors. Robin Cohen’s phrase, ‘frontier guards’, works well at helping conceptualise these actors as any person or even a movement that seeks ‘to influence the ideological and legal parameters of nationality, citizenship and belonging’, to decide who to include and who to

²⁴ UK Parliamentary Papers, Cd8596, 1897 Colonial Conference, London Proceedings, p. 140.

²⁵ For example, the Australian Naturalisation Act (1903), Section 7: ‘The Governor-General in Council, if satisfied with the evidence adduced, shall consider the application, and may, with or without assigning any reason, in his discretion grant or withhold a certificate of naturalization, as he thinks most conducive to the public good.’ Conversely, executive privilege was used frequently during the First World War in Australia to grant German women naturalisation, despite ‘enemy aliens’ being banned from applying. See Bright, ‘Women’s Naturalisation in Australia during World War I’, forthcoming.

²⁶ Huttenback, *Racism and Empire*; Martens, *Empire and Asian Migration*; Lake and Reynolds, *Drawing a Global Colour Line*, pp. 125–132; McKeown, *Melancholy Order*, pp. 185–214. Britain referenced this legislation when passing their own first migration control legislation in 1905; see Bashford and Gilchrist, ‘The Colonial History of the 1905 Aliens Act’, pp. 409–437; TNA, HO 45/10489/112229/18: Aliens, Bills and Acts, Naturalisation, Elgin Circular to self-governing colonies, 14 December 1906.

²⁷ Karatani, *Defining British Citizenship*, pp. 70–83.

²⁸ Bright, ‘A “Great Deal of Discrimination Is Necessary”’.

²⁹ TNA CO 885/19/7: Sir Charles Prestwood Lucas, ‘Native races in the British empire. Memorandum.’ This deals with the position and rights of the indigenous populations of Crown colonies, self-governing colonies and protectorates, 31 December 1907, p. 2. See also Chesterman, ‘Natural-Born Subjects?’ p. 32.

³⁰ See, for instance, National Archives of Australia (NAA): A1, 1904/9135, M. Betro (1904); A1, 1912/18004, Salma Betros (1905); ST1233/1/0, N6777, Rachel Nasser (1916–28); ST1233/1, N2930, Mrs Freda Abraham (1916–25); A1, 1906/6969, Revocation of certain Naturalization Certificates, Confidential letter, Atlee Hunt to P. J. McDermott, Under Secretary, Chief Secretary’s Office, Brisbane, 22 May 1905, pp.35–36.

exclude.³¹ Examining how such frontier guards imagined citizenship and administered the systems of naturalisation helps illuminate much about how contemporaries understood their world and their place in it, and will make up the bulk of the rest of this article.

Unlike other recent studies of citizenship and subjecthood, this is not an intellectual history³². The popular political and intellectual theories underpinning the global colour line do share many features, as several recent histories have emphasised.³³ This, instead, is a close scrutiny of bureaucratic decision-making precisely because the British legislative vagueness was so important.

I have chosen South Africa and Australia as case studies for several reasons. They were important in shaping the 'global color line'.³⁴ Senior bureaucrats left private papers, which can be combined with very thorough official migration and naturalisation files to gain a much clearer sense of the negotiations which shaped migration in practice.

A similar process would probably be evident in Britain itself and would be of great interest but Britain has historically done a poor job of preserving records for migrant entry and naturalisation.³⁵ And while this issue of naturalisation and law also fed into questions of legal sovereignty, and did affect the eventual development of separate citizenships (first in Canada in 1946) this is not my primary focus today.³⁶ Precisely because of the vagueness of the laws, it is clear that broader social ideas of citizenship bled into how laws were implemented, thus giving administrators and policy-makers as well as external agents the opportunity to influence who the state recognised as legal subjects, and who were granted rights.

You may notice some slippage between naturalisation and migration throughout this article; this is because any focus on naturalisation laws must also take into account migration laws. In both Australia and South Africa (and throughout most of the world at the time), the same departments governed both initial migration and later naturalisation. These bureaucracies were primarily designed to enforce any exclusion at the port of entry (and in South Africa, there were virtually no border checks on their land borders with other African colonies until the 1920s).³⁷ Neither put much effort into recording or policing migrants once they had arrived within the country until after WWI. Passports were also quite rare until after WWI. For instance, the total number of passports issued to Australian women before 1914 appears to be less than 20.³⁸ Fundamentally, while there was a recognition that naturalisation was quite important, and the laws often attracted considerable attention, the administration of those laws was almost always of secondary concern, and both administrations seem to have depended on external bodies (individuals, charities, even shipping companies), to help police the system, rather than doing much active policing themselves. This meant that the number of people who could shape the system was considerable.

³¹ Cohen, *Frontiers of Identity*, p. 2.

³² Bell, *The Idea of Greater Britain*; Behm, *Imperial History and the Global Politics of Exclusion*; Gorman, *Imperial Citizenship*.

³³ See footnote 3.

³⁴ Castles and Miller, *The Age of Migration*; Caplan and Torpey, eds., *Documenting Individual Identity*; Lake and Reynolds, *Drawing the Global Colour Line*.

³⁵ Gammerl, 'Subjects, Citizens and Others', pp. 532, 542; Farhrmeir, *Citizens and Aliens*, p. 93.

³⁶ Karatani, *Defining British Citizenship*, p. 40.

³⁷ See Hyslop, 'Oceanic Mobility and Settler-Colonial Power', pp. 248-267; MacDonald, 'Colonial Trespassers in the Making of South Africa's International Borders'.

³⁸ According to a search in the NAA database for passport applications from females, July 2019.

II South Africa

In South Africa, I want to start with the colourful Clarence Wilfred Cousins (1872-1954), who ran the Cape migration office from 1905 until 1915, as Chief Immigration Officer, before being appointed the Union's head of migration until 1922. In addition to official records, he left extensive letters and diaries, and even a memoir.

Cousins' chief responsibility was to create a paperwork system for processing all migrants and to train and supervise his staff. This included the implementation of the language test, and a range of other laws and regulations. The Cape 1906 Migration Act, for instance, banned anyone suffering from one of a range of medical or pseudo-medical conditions, including 'idiots'.³⁹ Similarly, when South Africa passed its first national Immigration Exclusion Act in 1913, it banned the 'diseased' and 'disabled', and could also exclude anyone on 'economic grounds' and 'habits of life'. These terms were kept deliberately vague by the government to ensure (successfully) that Britain did not interfere, and anyone could be excluded in practice.⁴⁰

Politicians in South Africa perfected such vague legislation, and Cousins clearly embraced the power this gave him personally. Cousins wrote extensively about his work in a private diary and long letters to family, making it clear that his personal identity was linked to his migration work, (although it is worth noting that this rarely accompanied any statements about Britishness or South Africanness). He frequently framed his work, and his own identity, as being a 'custodian of the gate' for white colonials. In this respect, it is worth noting that he was himself an immigrant: born in Madagascar in 1872 to a missionary father (employed by the London Missionary Society) and educated in Oxford before attending the university, where he studied modern history. His career hopes were dashed, however, when due to family finances, he had to find work before completing his degree. Like many before him, the colonies offered a solution, and he arrived in Cape Town in 1896, where he worked in a variety of government departments before running the Migration Office.⁴¹

Cousins's writings reveal two overriding concerns: keeping out 'Orientals' (a group which included Chinese, Indians, and Jews, but apparently not Japanese), and helping young 'English' women. When a woman arrived to join a husband who had deserted her and landed in jail, he considered excluding them as undesirable migrants, but decided that, as they were English, he would 'giv[e] them every chance'.⁴² On another occasion during the war, a young English girl, 'clearly a nice girl, well-educated, and a lady' arrived in Cape Town, sent by her mother to marry a local man, but Cousins suspected something closer to white slavery (although that term was not used by him). The man who came to collect her produced a letter from the mother, giving permission for her daughter marrying "any of your old pals" as long as he had plenty of money and would be kind to the girl.' This put Cousins in a dilemma. The letter from the mother seemed to make everything legal, but it also seemed to indicate human trafficking, a child sold by her own mother and sent alone to South Africa for, at best, marriage, and, at worst, prostitution. He eventually persuaded her to travel back to her mother in England. Although he was concerned about her fate with her 'horrid mother', it was the best he could do, and he used considerable

³⁹ See the *Annual Reports of the Immigration Restriction Department in the Cape* (1902–9); Dhupelia-Mesthrie, 'The Form, the Permit and the Photograph', p. 7 for detailed residency requirements, and how it was used to exclude Indians.

⁴⁰ Peberdy, *Selecting immigrants*, pp. 39, 47, 51; Saron, 'Jewish immigration', pp.101–102.

⁴¹ University of Cape Town Archives (UCT), BC1154, C. W. Cousins Papers, E4.

⁴² UCT, BC 1154, Cousins Papers, A4.1.3, Diary, 29 April 1913.

time and effort, and some of his own money, helping the girl 'escape' her fate in South Africa.⁴³ She was not an unusual case, with his letters and diaries full of cases of young 'English' women in distress and his own efforts to save them.⁴⁴ The growing administrative body, overseen by Cousins spent considerably energy protecting such women and excluding 'undesirables'.

One of the notable features of Cousins' oversight was his faith, not in documentation, but in the ability to 'see' whether migrants were desirable. Cousins was frequently explicit in explaining how personal encounters were more important than the actual paperwork:

'There are of course other things to look for than signatures to declarations or answers to stated questions. The experienced officer has for example to possess an instinct of all sorts of possible disqualifications which the passenger's papers will not reveal.'⁴⁵

He noted with approval when an Immigration Officer detained 'a young London Jew' because he 'did not like the look of him'.⁴⁶ The law and Cousins both encouraged migration decisions based on the 'look' of arrivals. If they saw someone they thought 'looked' wrong, they were encouraged to use the laws creatively, as described earlier concerning naturalised British Jews. Conversely, if he liked the look of English girls, he helped them.

It is worth emphasising here, however, the constant negotiation between different actors. While the law gave Cousins the power to enforce his anti-Semitic exclusionary desires,⁴⁷ the vague laws and executive power built into those laws meant others could also influence decision-making. One such person was Morris Alexander (1877–1946), a Jewish lawyer and member of Parliament. He frequently was the lawyer for Jews and Indians who wished to appeal migration decisions in court, and was an outspoken champion of racial equality in South Africa. In 1904, he co-founded a charity which sought to regulate and protect Jewish migrants, the Cape Jewish Board of Deputies, which became nationally amalgamated in 1912. He left meticulous records of everything he did.⁴⁸

Now I want to draw attention to notes Alexander made during seven visits between June and October 1911, when he watched border officials at work on behalf of the Board. In Alexander's notebook, he documented 26 cases of suspicious rejections of Jews, almost all on medical grounds. In one case, 'a Mr Kaplan and his three children, already resident in [a] Johannesburg suburb, were refused entry because 'one eye of one child was defective.' On the same ship, 'Mrs Omdur & four children were stopped, because the one child appeared to be a little pale.'⁴⁹ Others were turned away on different days for being 'unclean', 'a dwarf', or being 'pale' or 'sickly'.⁵⁰ Many of these refusals on health grounds appear specious, or at least vague. Such were the concerns, the South African Jewish Board of Deputies subsequently employed a medical man to greet each ship and monitor

⁴³ UCT, BC 1154, Cousins Papers, B1.3, Monthly Family Letter from Cousins to England, 20 December 1914; see also 198-9, 1 November 1914; 278-9, 14 December 1914; A4.1.2, Diary, 5 August 1912; A4.1.3, Diary, 19 March 1913 and 21 October 1913 (2).

⁴⁴ See Bright, 'A "Great Deal of Discrimination Is Necessary"'.
⁴⁵ UCT, BC 1154, Cousins Papers, SC 16 – 1908, Report of the Select Committee on Asiatic Grievances (1908), p. 111, quoted in Dhupelia-Mesthrie, 'False Fathers', p. 108.

⁴⁶ UCT, BC 1154, Cousins Papers, A4.1.3, Diary, 21 October 1913.

⁴⁷ Peberdy, *Selecting immigrants*, pp. 4, 28. For more on 'contagion' and migration, See works by Alison Bashford.

⁴⁸ Saron, *Morris Alexander*; Alexander, *Morris Alexander*; Mendelsohn and Shain, *The Jews in South Africa*.

⁴⁹ UCT, BC 160, Morris Alexander Papers, D63/499, 10d – 'Immigration' booklet, 5 August 1911, passenger from "Bon Louis".

⁵⁰ UCT, BC 160, Morris Alexander Papers, 3.D63/499, 10d – 'Immigration' booklet. See especially 20 August 1911, passenger from 'Trintapel[?] Castle'; Per Garth Castle, 11 September 1911. See also UCT BC 1154, Cousins Papers, A4.1.3, Diary, 19 March 1913.

refusals.⁵¹

The observational role of Alexander and his charity, however, does not just confirm discrimination by Cousins and the border officials under him. It was worth employing a medical man because they had personal networks which could be utilised to go over the head of Cousins and his staff. While it is difficult to identify specific cases where official decisions were reversed because of external pressure, Cousins complained regularly in his diary that Jews contacted his minister to exert such pressure.⁵² The South African Board of Jewish Refugees claimed to engineer such changes of mind on multiple occasions.⁵³ By the time of Union, the Board worked closely together with authorities to protect and police the Jewish community.⁵⁴ This cooperation reflected the fact that both Indian and Jewish populations accepted that it was ‘undesirable’ to have unregulated migration and took on elements of self-policing as a way to protect existing residents from racism.⁵⁵ The Board did this in a far more semi-official capacity than Indians did, possibly reflecting their greater integration within the wider white settler society (however much people like Cousins wished to exclude them from the category of white). According to Alexander’s memoir, this close relationship went back to 1904, (before Cousins was even hired), at the behest of the Colonial Secretary, Colonel Crewe. It is worth noting that when the Board was launched in the same year, their guest speaker was Alfred Milner, the Governor.⁵⁶ Those connections meant they could go over Cousin’s head concerning admission at the ports, and once they had entered the colony, the Board had a virtual monopoly on deciding which Jews to support through the naturalisation process.⁵⁷

So, here we have a legal system deliberately designed to be vague, allowing frontier guards (official and semi-official) to discriminate with regards to naturalisation and migration policy. Cousins hated Jews and sought to exclude them, but the Board proved largely effective in circumnavigating his power by forming semi-official partnerships with more senior government figures. It is also worth noting that Alexander, when fighting for the rights of Indians, Chinese, and Africans, proved far less effective, earning his label as

⁵¹ See Rabinowitz, ‘From the Morris Alexander “Immigration” Notebook, 1911’. The office ran from 1914-15, closed due to the war, and reopened again in 1923 through the 1930s as a growing number of Eastern European Jews arrived.

⁵² See, for instance, UCT, BC 1154, Cousins Papers, A4.1.3, Diary, 19 March 1913.

⁵³ Saron, *Morris Alexander*, p. 21. Some oral history suggests other prominent Cape Town Jews engaged in similar activities. See Schrire, *From Eastern Europe to South Africa*, pp. 33–34; Saron, ‘Jewish Immigration’, p. 101. This is part of ongoing research into the Board’s archival records and those of official migration and naturalisation records.

⁵⁴ Mendelsohn and Shain, *The Jews in South Africa*, p. 65; Cape Town Archives Repository (KAB): GH, 23/79, 127, application for admission to the Cape Colony from Mr. Von Sever, A Russian Jew; Transvaal National Archives Repository (TAB), PSY, 52, J7/00, 1900, political secretary to military governor: undesirables Jews not to be counted as class undesirables; TAB, GOV, 636, PS 6/04, Jewish Board of Deputies (1904); TAB, GOV, 803, PS 7/19/05, Jewish Board of Deputies (1905); Pietermaritzburg Archives Repository (NAB), CSO, 1727, 1903/2494, R. Levisohn, Honourary Secretary, Durban Hebrew Congregation, Durgan, Relative to the Landing of Person of the Jewish Persuasion at Durban; NAB, IRD, 19 IRD, 688/1903, Colonial Secretary: Deputation from Jewish Community; NAB, IRD, LEER, 91 IRD, 708/1911, Private Secretary, Minister of the Interior, Pretoria, correspondence with Sigried Raphaely, President of Jewish Board of Deputies; South African National Archives Repository (SAB), GG, 1306, 36/26, Exclusion of Certain Russo-Jewish Immigrants from the Union of South Africa; SAB, PM, 1/1/237, PM110/2/1913, Immigration: Jewish Board of Deputies; SAB, GG, 170, 3/3360, Defines SA Jewish Board of Deputies, Stating Objects, Forwards Report from 14 April – 31 March 1919; SAB, GG, 960 19/417, Governor-General: Resolution of Loyalty Passed by South African Jewish Board of Deputies (1920).

⁵⁵ See *Indian Opinion* throughout the early 1900s; Saron, ‘Jewish Immigration’, p. 104; Mendelsohn and Shain, *The Jews in South Africa*, p. 44.

⁵⁶ Alexander, *Morris Alexander*, p. 31.

⁵⁷ Alexander, *Morris Alexander*, p. 32; The South African Jewish Board of Deputies Report, 1912-14, quoted in Saron, ‘Jewish Immigration’, p. 104; Mendelsohn and Shain, *The Jews in South Africa*, p. 60.

the champion of lost causes. The Board was able to wield such political power primarily because, as middle class men, they shared many of the same social and economic links, and 'shared interests and values, including empire loyalism and racial prejudice' with other powerful members of settler society, a social position which excluded other groups championed by Alexander.⁵⁸

While explicit references to Britishness were rare, the question of belonging and nationhood were implicit throughout Cousins' and Alexander's work. Indians, Chinese, and Jews, from Cousins' perspective, were eternally sojourners and eternally dishonest, while English women needed rescuing by an English man. On the other hand, Alexander clearly believed strongly in 'British ideals', constantly referring to them in his various fights for the rights of British subjects in South Africa. Despite being a lawyer, he constantly appealed to inclusive, largely mythic, cultural ideas of the rights and duties of British citizenship. His memoir, completed and published by his wife after his death, explained that he saw naturalisation as a particularly important part of this process. He

'held the conviction... that it was the duty of everyone eligible for naturalization to become naturalized and to accept the responsibilities of citizenship. He believed that naturalization was a vital step towards identification with the immigrant's new country, and that it brought with it a new dignity and status, as well as a feeling of security.'⁵⁹

Such imaginings of naturalisation had little to do with the specific laws in place, nothing to do with subjecthood to a Crown, or loyalty to Britain or South Africa. Yet these demonstrate competing ideas of group identity, civic responsibility, and race, all bound by the imagined rights and duties of citizenship. And vague legislation ensured that imagined rights and belongings could prove significant in shaping what actually happened in practice, who was included and who excluded.

III Australia

I do not plan to now offer a direct comparison with Australia. Rather, I want to show how similar laws were implemented in Australia. Specifically I want to show how a very different personality running Australia's system sought to develop a more legalistic and consistent approach (perhaps more like in the US), but ultimately he oversaw a system riddled with inconsistencies because of the legal and constitutional situation within the empire. In short, in South Africa the vagueness was embraced, while Australian bureaucrats tried to pretend the laws were clear, fair, and consistent (even when privately acknowledging that they were not).

The head of migration control from Federation in 1901 until 1916 was Atlee Hunt, an Australian-born and educated lawyer. While policing the border was Cousin's whole life, for Hunt, overseeing migration and naturalisation matters was a small part of his job. As head of the Department of External Affairs (DEA), his job included all broadly imperial or foreign policy matters for the federal government.⁶⁰ He took a less personal interest (perhaps he was simply more secure in his place within Australian society) and seems to have adopted a much more conservative attitude towards using his powers. When

⁵⁸ Mendelsohn and Shain, *The Jews in South Africa*, p. 65.

⁵⁹ Alexander, *Morris Alexander*, p. 32.

⁶⁰ National Archives of Australia (NAA): A1, 1903/2284, Nature of work carried on by External Affairs Department, report by Secretary, Atlee Hunt, 23 April 1903.

confronted with a specific question about when to administer the language test to white passengers, for instance, he encouraged far less personal discrimination than Cousins had done: the test, he said, should only be applied if there was ‘some specific reason... known to [the] officer why that course should be adopted’ and made little effort to single out Jews or other groups (although he did tell border officials to always be suspicious of Chinese people’s paperwork).⁶¹ On another occasion, he expressed a liking for Japanese officials in Australia, but still refused to interfere in granting their wives visas, as he could have done. He explained:

‘I do not intend to discuss whether or not we ought to wish to have these people here or not. My own view is that the law is a necessity of our very existence, but whether or not I concur in it is beside the question. The fact remains that the object of the law is to exclude certain classes of people from Australia, and eventually, by refusing to admit any more, to entirely free Australia from them.’⁶²

Elsewhere, when discussing the thorny matter of German naturalisation during the First World War, he described his oversight of naturalisation to include ‘a general obligation to see that the terms of the law are faithfully carried out’, so did not think it would be fair to deprive already-naturalised Germans of that status.⁶³ In other words, he supported Asian exclusion and was suspicious of German-born migrants (regardless of whether they had been naturalised) but, unlike Cousins, did not think his personal views on the matter should interfere with the administration of the law.

This does not mean that discrimination did not occur, but that it was less systematic, lacking direction from a senior bureaucrat. Discrimination was especially evident when laws were vague (such as where the boundaries between Europe and Asia were). Women in Australia became a particular source of inconsistency, because naturalisation laws and the forms used for applicants assumed applicants were male. This meant that the forms opened up a variety of problems for both women filling in the forms and bureaucrats processing them.

If we look at the plight of married women, the problems become especially pronounced. In most countries around the world between roughly 1850 and 1945, a woman’s nationality depended entirely on her husband’s nationality. Married women were almost universally no longer citizens in their own country if they married an alien, and usually automatically adopted the nationality of their husband.⁶⁴ For instance, a British woman marrying a Japanese man would find herself no longer British, but Japanese.⁶⁵ (Censuses often adopted a similar recording mechanism, so that, when ‘race’ was recorded, wives were recorded as belonging to the same race as their husband.) Married women could not apply for naturalisation at all under British law. Both the 1870 and 1914 British Nationality Acts stated that people suffering from a ‘disability’ could not be naturalised; ‘disability’ included

⁶¹ NAA: J3116, 14, Alien Immigration – correspondence relating to arrival of SS Duke of Argyll, 25 January 1902 and an inquiry from a Customs Officer as to whether the Education Test is to apply to Europeans [White Aliens]. See also Atlee Hunt Papers, National Library of Australia, Series 14, MS 52/822, Hunt to Collins, 1 May 1912; MS 52/840, Collins to Hunt, 22 August 1912; MS 52/14/846.

⁶² Atlee Hunt Papers, MS 52/1313, Hunt to F. W. Foxall Esq., Japanese Consulate General, Sydney, 8 December 1908.

⁶³ Atlee Hunt Papers, MS52/1517, Hunt to Mahon, 19 January 1916.

⁶⁴ Irving, *Citizenship, Alienage, and the Modern Constitutional State*.

⁶⁵ A Japanese woman marrying an alien would only lose her nationality if she acquired her husband’s nationality, according to the Japanese Law of 1899. See Irving, *Citizenship, Alienage, and the Modern Constitutional State*, p. 109.

'married women, infants, lunatics, and idiots'.⁶⁶ Historians have generally assumed that this meant no married women could have applied successfully in Australia or anywhere else in the empire.⁶⁷ However, my current research shows that approximately 45% of all applicants in Australia were married women, and only a small handful had their applications rejected.⁶⁸

The reasons for this are complicated. Until 1911, there was no dedicated space on the form to list a spouse or children, so sometimes administrators made women fill out forms for themselves at the same time as their husbands applied, while on other occasions women were told they did not need to do this.⁶⁹ In some cases, administrators knew that the husband had previously been rejected in his own right, but the wife was still successful.⁷⁰ In a few cases, administrators were clearly sympathetic to cases of desertion.⁷¹ Most frequently, officials did not even ask why a married woman was applying, or the status of her husband.

The success of these women was not merely a matter of bureaucratic incompetence or indifference. In one 1910 case, the applicant, Alice Shong Kew Wong Sing, was born in Gympie, Queensland, to a Chinese father and 'English' mother, and had subsequently married a Chinese man who was ineligible to apply. She was applying because a local bank had insisted that she had to be naturalised before taking out a mortgage.⁷² Despite her appearing to be exactly the sort of person not desired in Australia, (in fact someone pencilled 'Chinese' at the top of her application, showing how they identified her), she was successful. The files do not make it entirely clear why, but in her case, and several subsequent cases, especially involving women married to 'enemy aliens' during the War, being born in Australia (regardless of parentage), and being the mother of children born in Australia, seems to have been powerful factors in shaping their inclusion into the body politic. It is worth remembering that, theoretically, this certificate of naturalisation gave her access to the vote, to maternity cover and old age pension, and, of course, to securing a mortgage and an inheritance which she would otherwise be denied (at least in Australia; remember that naturalisation guaranteed no rights outside of Australia).⁷³ Perhaps, while her husband was forever Chinese, her life in Australia, and her role as a woman and a mother, and her own 'English' mother, meant that state agents thought of her as both less threatening and as more easily absorbed, or even conquered, by the dominant British culture of Australia.⁷⁴ Many German women granted naturalisation during World War One

⁶⁶ Section 17 (1870): "'Disability" shall mean the status of being an infant, lunatic, idiot, or married woman'; Section 27 (1914): 'The expression "disability" means the status of being a married woman, or a minor, lunatic, or idiot'. See Irving, *Citizenship, Alienage, and the Modern Constitutional State*; Baldwin, 'Subject to Empire', pp. 522-556.

⁶⁷ From Dutton, 'Women - Citizenship in Australia'. The Naturalization Act of 1903, section 9: 'A woman who, not being a British subject, marries a British subject, shall in the Commonwealth be deemed to be thereby naturalized, and have the same rights powers and privileges, and be subject to the same obligations, as a person who has obtained a certificate of naturalization.'

⁶⁸ Based on all digitised NAA applications from females between 1901 and 1909, as of 13 November 2019. The database, once completed, will be freely available online at <https://naturalisation.online/database/>.

⁶⁹ See, for instance, NAA: A1, 1912/6502, Margaretha Klose (1908); NAA: A1, 1905/83, Carolina Rurade (1905); NAA: A1, 1904/321, Gertie Wolper (1904). This was still a problem concerning women and children in 1939: NAA: A406, E1947/10, J. E. Stewart, Commonwealth Electoral Officer, Queensland, Memorandum, 13 December 1939.

⁷⁰ NAA: A1, 1904/9341, Mary Joseph (1904).

⁷¹ NAA: A1, 1904/5299, Rose Lestrem (1904).

⁷² NAA: A63, A1910/4814, Alice Shong Kew Wong Sing (1910); See a similar example at NAA: A1, 1908/6179, Sarah Jane Karl, nee Wilson (1908).

⁷³ NAA: A63, A1910/4814, Alice Shong Kew Wong Sing (1910).

⁷⁴ See other examples from World War one, such as the files for Mrs. Fauvette Erdos, born to Portuguese

through executive power were able to do so by emphasising their position as mothers of Australian children, who in turn were contributing to the war effort, an appeal authorities did not accept from fathers.⁷⁵ It certainly appears that, probably due to gender considerations, female applicants were simply not scrutinised as closely as male applicants, what Michelle Langfield has referred to as the ‘differential treatment of men and women’ embedded within Australia’s migration system.⁷⁶ This ‘differential treatment’ was not always reflected in specific legislation, but because laws were written by men for men; the application to women led to further confusion. The vagueness of legislation also meant that the system encouraged what we would now call unconscious bias in making decisions. Women were seen as less threatening and less important, and so received less scrutiny.

Both ministers overseeing the DEA and Attorney Generals changed rapidly during this period, with it rare for one to be in place for even two years. Their interpretations of the laws varied considerably and their rulings were not always widely disseminated. To take one example, in 1904, R. R. Janan gave the opinion that: ‘Not being either natural-born or naturalized under the Act, she [a married woman] is not a “British Subject”, and is eligible under section 5’ to apply for naturalisation, a ruling confirmed in 1910 by a different Attorney General.⁷⁷ In 1906, however, Isaac A. Isaacs, the then Attorney General, gave a completely different ruling, that marriage itself could not take away a woman’s ‘British nationality’, seeming to draw on older ideas of the inalienable status of subjecthood. Under his interpretation, British female subjects who married aliens did not need to apply for naturalisation at all, and ‘should be given the benefit of the doubt, and be enrolled as an elector.’⁷⁸ He drew not just on British traditions of subjecthood but also on the *intention* of Australian constitution writers who had not included a clause about women and nationality.⁷⁹

These legal Opinions were never publicly advertised by the government and seem to have been adopted haphazardly by various electoral officials and migration and nationality officials. Married women were never told they could apply for naturalisation. Indeed, other scholars have written about how women’s groups championed the renaturalisation of British women who married aliens during this period.⁸⁰ Both contemporaries and this subsequent scholarship have been seemingly unaware of how easy being re-naturalised was. Still, in practice, if a woman applied in Australia, whether married or not, she was usually successful until 1916.

This changed after a revealing exchange between Hunt, a law professor friend of his, the Australian Prime Minister, the Australian Attorney General, and the Colonial Office in London. Starting in 1913, and again in 1914, 1915, and 1916, the Colonial Office wrote to

parents in Tasmania, and married to an Austro-Hungarian, described by her lawyers ‘as British as anyone in character, sympathy and feeling’. NAA: A11803, 1914/89/84, correspondence concerning Mrs Fauvette Erdos; NAA: A1, 1916/12834, Fauvette Erdos; NAA: A401, Erdos. Further discussion of women’s applications during World War I can be found in Bright, ‘Women’s Naturalisation in Australia during World War I’, forthcoming.

⁷⁵ See NAA: A1, 1917/14627, Schedule Showing Names of Germans Applying for Naturalization (Approved by Minister), pp. 7-14.

⁷⁶ Langfield, ‘Gender Blind?’, p. 143.

⁷⁷ NAA: A1, 1904/7646, Naturalization of Married Women in NSW, Opinion from the Attorney General, 29 August 1904, pp. 2-3. Confirmed in A63, A1910/7244, Naturalization British Women married to aliens, C. Hughes, Attorney-General, Opinion: Eligibility of a British Born Woman Who Has Married an Alien to Apply for a Certificate of Naturalization, to DEA, 7 November 1910.

⁷⁸ NAA: A63, A1910/7244, Isaac A. Isaacs, Attorney General, Opinion: Franchise - British Woman Married to an Alien: Naturalization Act 1905, 29 March 1906.

⁷⁹ He referenced Australia Parliamentary Debates (1903) Vol.14, p. 2200.

⁸⁰ See Irving, *Citizenship, Alienage, and the Modern Constitutional State*; Baldwin, ‘Subject to Empire’, pp. 522-556.

Hunt to complain that married women should not be naturalised, as they were prohibited by British law. Never mind that the Home Office and Foreign Office kept telling the Colonial Office that it was not clear that British naturalisation law applied in the colonies, or what the relationship between its law and colonial law was. Despite this, the Colonial Office also complained that Australia's failure to charge a fee was another case of serious inconsistency within the empire, at a time when various imperial conferences were promising to try to move towards common naturalisation laws. This then led to a rather heated debate over sovereignty that was only quietly resolved in 1916 when Australia agreed to stop naturalising married women, in an apparent nod to the 'common code' they were supposed to strive to achieve.⁸¹ These inconsistencies in Australia reflect some of the unintended consequences of legal vagueness, a vagueness which allowed positive discrimination on behalf of women until executive privilege led the minister to remove this right from married women in 1916. Pointedly, this was done without accepting the Colonial Office claim that British naturalisation law trumped Australian law and involved no actual change in naturalisation law.

It also reveals how social construction of citizenship meant women born in Australia, regardless of her parentage, received favourable treatment, and that a form of positive discrimination operated for women. This was never an intention of Hunt or others working with him. That women seem to have been allowed a far more racially inclusive version of subjecthood than men is all the more surprising in this context, given wider popular concerns about eugenics and miscegenation. Perhaps in a society which so often lacked female migrants, any married woman bearing children in Australia was a good migrant.⁸²

IV Conclusion

These case studies show how the issue of naturalisation in the early twentieth century reflects the complex ways in which citizenship and subjecthood were constructed, problematised, and reconfigured. Because of the specific British legal and constitutional context, how these things were imagined really mattered. It is perhaps unsurprising that the people most susceptible to discriminatory practices under the naturalisation laws which existed in the empire were people whose claim to whiteness or Europeanness were debatable (such as Russian Jews or Syrians), or women, since the system was designed largely to accommodate men. The vague laws were fostered, not just to accommodate colonial racism, but were part of a much longer legal and constitutional tradition within Britain and its empire.

As settler colonies introduced new rights and duties, connected at least tenuously to local citizenship, citizenship became highly contentious (and, while I have not had space to discuss it here, more desirable for migrants themselves⁸³). Who was entitled to legal citizenship, as well as the rights and duties associated with citizenship, were left to individual bureaucrats, government ministers, the odd external agents like the Jewish Board of Deputies, and occasional judicial review. A 'common code' was never possible, but

⁸¹ NAA: A1, 1914/20769, Atlee Hunt to Prime Minister's Secretary, 5 August 1914, pp. 27-28; Colonial Office to Hunt, 18 July 1913; NAA: A435, 1944/4/4347, Attorney-General's Opinion, Eligibility of the Wives of Aliens for Naturalization, 31 May 1916; Hunt Papers, MS 52/1536, Hunt to Harrison Moore, 17 March 1916; NAA: A2863, 1917/25, Naturalization Act - No. 25, 1917, p. 8, handwritten note by S. Mahon, 18 April 1916.

⁸² This remains the subject of ongoing research, and will appear in a forthcoming book, *The Good Migrant: Naturalisation, Race and Gender in South Africa and Australia in the Early Twentieth Century*.

⁸³ Fortier, 'What's the big deal?', pp. 697-711.

Greater Britain was united in having systems that relied on the personal judgements and prejudices (conscious and unconscious), from a variety of official and unofficial border agents.

This was a distinctly British system, one which has to be distinguished from other legal systems at the time, such as that which developed in the United States. While the language of whiteness and focus on Asian exclusion were common issues in all of these settler societies, the legal and unwritten constitutional boundaries of the British empire ultimately did matter when it came to citizenship. That citizenship did not actually exist, that this was an exercise of contemporary imagination as legal interpretation, does not diminish the import of considering these local examples and how they fit within the imperial and global dimensions of citizenship and migration control in the early twentieth century.

Examining South Africa and Australia together can also help scholars better understand the global system of migration control which developed, and which still exists. While the more overtly racist and sexist discriminatory laws of the past have disappeared, the discretionary powers given to border officials are still largely in place. Once we realise that the ‘color line’ which developed in the late nineteenth and early twentieth centuries was less a system of laws and more of a constant negotiation between different actors, we can begin to recognise that such a system still exists and is still open to manipulation and discrimination. And while we may never have a definitive answer to the question of how British the British world was, the vague legal underpinnings of nationhood, citizenship and naturalisation were decidedly British. In many former colonies and in Britain itself, those vague legal underpinnings remain.

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